

**Notice of Reconsideration of and Amended Special Education Investigative Report
November 30, 2022**

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Local Educational Agency (LEA): International Leadership of Texas
Co-Dist: 057-848
FY: 2022-2023
Complaint: 202319978

On November 8, 2022, the Texas Education Agency (TEA) received a reconsideration request from the local educational agency (LEA) requesting a reconsideration of the October 24, 2022 investigative report.

Procedural History

In the September 1, 2022 letter of complaint, the complainant raises the following allegation.

Did the LEA ensure that the parent was provided with an independent educational evaluation (IEE) without unreasonable delay in accordance with 34 CFR §300.502?

Current Request and TEA's Response

In the reconsideration request, the LEA asks that TEA reconsider its findings regarding the following.

The LEA states that the Finding of Fact 1 is in error because the individualized education program (IEP) team did not meet on March 3, 2022, the originally scheduled date of the meeting, but instead met on April 12, 2022, and again on April 21, 2022, after the April 12, 2022 meeting ended in disagreement.

In response, TEA notes that the IEP in question, and as submitted by the LEA, is dated March 3, 2022. (exhibit D-7, starting on page 10) The IEP notes that the meeting was scheduled for March 3, 2022, but was rescheduled to April 12, 2022. Therefore, TEA has amended the investigative report to reflect the April 2022 date.

The LEA states that the parent's April 21, 2022 letter to the LEA referenced in Finding of Fact 2 was the parent's first request for an IEE. This request is documented in the IEP notes from the April 21, 2022 meeting. TEA has amended the investigative report, Finding of Fact 2, to remove the reference to the April 21, 2022 letter being the parent's second request for an IEE.

The LEA contends that the LEA's provision of information to the parent on May 18, 2022, regarding the IEE was not an unreasonable delay and requests that the agency reverse its finding of noncompliance and requirement for the LEA to implement corrective actions. However, in its request for reconsideration, the LEA does not address each of the reasons that the TEA found the LEA to be out of compliance.

The conclusion in the investigative report reads below.

The complainant requested an IEE for autism on April 21, 2022. The LEA did not provide the parent with information about where an IEE could be obtained until May 18, 2022, which was almost a month later. This resulted in an unnecessary delay in providing the IEE.

On July 18, 2022, the complainant requested an IEE in additional areas. The LEA notified the complainant on July 22, 2022, that the additional IEEs were granted except for an IEE for other health impairment. However, the LEA was required to either have granted the IEE for other health impairment or filed a due process hearing to show that its evaluation was appropriate. The LEA did neither at the time.

From August 2022 through October 2022, the LEA worked to contract with the complainant's two selected providers, one of whom appears to be able to conduct the other health impairment evaluation.

Because of the delay in providing the complainant with information regarding where the IEE could be obtained, the allegation is substantiated.

First, there was no justification for the LEA to have waited from April 21, 2022, to May 18, 2022, to provide the parent with information about the IEE. Had there been a valid reason in the record for the LEA to take four weeks to provide the information, then there may not have been an unreasonable delay. However, there is nothing in the record to show that there was a valid reason for the LEA taking four weeks to provide the information to the parent.

Second, as explained in the investigative report, the LEA did not respond to the parent's July 18, 2022 request for additional IEEs as required by 34 CFR §300.502.

While the amended investigative report corrects the errors in Findings of Fact 1 and 2, TEA finds no cause to reverse the finding of noncompliance or to rescind the required corrective actions.

TEA's decision is final. Questions regarding this letter may be directed to Krystal Greene-Basile at Krystal.Greene@tea.texas.gov.

Respectfully,

Keith Swink

Keith Swink
Texas Education Agency

The specific allegation and TEA's findings of fact and conclusions, together with the reasons for TEA's final decision, are as follows.

Allegation

Did the LEA ensure that the parent was provided with an IEE without unreasonable delay in accordance with 34 CFR §300.502?

Statement of the Complaint for the Allegation

The complainant contends that she requested an IEE for her child and alleges that the LEA did not provide the IEE in accordance with 34 CFR §300.502.

Findings of Fact for the Allegation

1. An April 2022 IEP team meeting report documents the parent's disagreement with the current evaluation and her request for an IEE. The parent was provided the name of the LEA staff member she may contact to request an IEE.
2. In a letter dated April 21, 2022, the complainant sends a request for an IEE for autism.
3. On May 17, 2022, the LEA emailed the complainant and explained that the IEE was granted and it had found someone who could do the IEE. However, the LEA did not provide the parent with information on where to obtain the IEE. The LEA explained that its IEE guidelines were from 2017 and that the relevant board policy was from 2021.
4. In a May 18, 2022 email, the complainant questions whether the information provided by the LEA regarding the IEE was accurate and up-to-date.
5. The LEA responded to the complainant by email on May 18, 2022, again iterating that it was granting the IEE and providing the parent the most up-to-date guidelines and policies regarding IEEs. In the same email, the LEA provided the complainant a list of individuals she may choose from for the IEE and explained to the complainant that she could select her own provider so long as the provider met the LEA's board policies and related guidelines.
6. The complainant emailed the LEA on May 20, 2022, to inform the LEA that she had started contacting possible providers.
7. In June 13 and 14, 2022 emails to the LEA, the complainant informs the LEA of her chosen providers.
8. In a July 18, 2022 email to the LEA, the complainant asks for additional IEEs in the areas of specific learning disability, other health impairment (attention deficit hyperactivity disorder), speech, occupational therapy, dyslexia, dysgraphia, and dyscalculia.
9. The LEA emailed the parent on July 22, 2022, granting all of the additional IEEs except for the other health impairment. In correspondence with the complainant's advocate, the LEA explains that an other health impairment (OHI) evaluation "comes from a physician and we are happy to send a request for that information, should the [individualized education program (IEP) team] agree to request the evaluation." The LEA provided the parent a second copy of a list of providers she may choose from for the IEE.
10. In a July 26, 2022 email to the LEA, the complainant states that she provided the LEA with information regarding her selected provider on June 13, 2022, and June 14, 2022. The complainant again asks for additional IEEs in the areas of specific learning disability, other health impairment (attention deficit hyperactivity disorder), speech, occupational therapy, dyslexia, dysgraphia, and dyscalculia.
11. In an August 1, 2022 email to the parent, an LEA staff member informs the parent that, once the IEE contract is completed by the school and provider, the parent will be informed so that a time for testing can be set up.

12. An August 8, 2022 IEP team completed a review of existing evaluation data (REED). The REED documents the parent's request for the school to consider ADHD and that an OHI form would be sent to the student's physician once the parent's consent was received.
13. An August 8, 2022 prior written notice documents the decision regarding OHI.
14. On August 10, 2022, the parent signed consent for the student to begin receiving special education services.
15. In an August 12, 2022 email, the parent informs the LEA that she has spoken to both IEE providers she selected and was informed that no one from the LEA has contacted either provider about the student's IEEs. In response, an LEA staff member informs the parent that vendor packets were sent to the vendors the previous week but the LEA will resend them.
16. In an August 12, 2022 email to IEE provider Dr. Laura Eskridge, an LEA staff member writes in part.

I am working with [the parent] on moving forward with a contract for your services for her student that attends our school. I have attached our vendor packet which apologetically should have been sent to you before. If you could please complete it and return it to me I can get it to our legal department to draft an official contract.

The email strand indicates Dr. Laura Eskridge completed the packet on August 15, 2022.

17. In an August 15, 2022 email to the LEA, IEE provider Ms. Sabina Duhon submitted a vendor packet and quote for services.
18. In an August 26, 2022 email to the IEE provider, an LEA staff member writes, "I know parent has requested an evaluation for autism. Do you do testing (more than DSM criteria) for a specific learning disability? It would include dyslexia, dysgraphia and dyscalculia testing as well."
19. In an August 26, 2022 email to the LEA, the IEE provider responds, "I can do all of that. So, it sounds like a Psychoeducational (SLD) and psychological (autism, OHI, emotional disturbance) plus an FBA. Thanks. I'll touch base with []. Hoping to observe next week."
20. On September 1, 2022, an LEA staff member asked the IEE provider, Ms. Sabina Duhon, to resend the LEA her quote for the IEE as well as the other documents requested. The provider forwarded a copy of the August 15, 2022 email she sent to the LEA with the information.
21. A September 23, 2022 IEP meeting report documents the following regarding additional assessment for OHI.

Evaluation is current. There was a discussion as at prior [IEP team] meeting, and evaluation was requested for counseling and to request OHI-ADHD form from physician. However, parent did not sign consent for this assessment so it has not been completed.

. . . . At the last IEP team meeting, the [IEP team] wanted to investigate the possibility of ADHD. In order to do so, the doctor will need to sign an [OHI] form and parent was requested to sign a consent for disclosure. Also, parent was provided a copy of OHI form for her to take to the doctor. It was never returned. [The parent] explained doctor has previous evaluated for ADHD and said no. The previous advocate said to request ADHD as part of the IEE. The parent requested her doctor to evaluate for ADHD and the doctor said no at this time.

[An LEA staff member] provided an update on the IEE status. As part of the IEE, district requested an occupational therapy evaluation but the LSSP conducting the IEE is not recommending this service. The parent and [an LEA staff member] clarified that if the pediatrician recommends occupational therapy, this can be done privately.

22. The LEA's response to the complaint reads in part below, with references to exhibits removed.

Parent selected Dr. Laura Eskridge to do one IEE and Ms. Sabina Duhon to do a speech IEE. ILTexas worked diligently with both providers to register them as vendors and develop a contract so they could begin their evaluations. As of the date of this filing (October 5, 2022), Dr. Eskridge has been sent a Purchase Order ("PO"), but she has not yet begun her evaluation. Ms. Duhon received her contract, but then she increased the rate she quoted to ILTexas. ILTexas had to amend the contract with Ms. Duhon to reflect the increased cost. The amended contract has been sent to Ms. Duhon. The process at which the IEEs proceed now is based on the actions of the two IEE providers, Ms. Eskridge and Ms. Duhon.

Conclusions and Reasons for TEA's Final Decision for Allegation

34 CFR §300.502 requires the LEA to provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations. If a parent requests an independent educational evaluation at public expense, the LEA must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate or must ensure that an independent educational evaluation is provided at public expense, unless the LEA demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

The complainant requested an IEE for autism on April 21, 2022. The LEA did not provide the parent with information about where an IEE could be obtained until May 18, 2022, which was almost a month later. This resulted in an unnecessary delay in providing the IEE.

On July 18, 2022, the complainant requested an IEE in additional areas. The LEA notified the complainant on July 22, 2022, that additional IEEs were granted except for an IEE for other health impairment. However, the LEA was required to either have granted the IEE for other health impairment or filed a due process hearing to show that its evaluation was appropriate. The LEA did neither at the time.

From August 2022 through October 2022, the LEA worked to contract with the complainant's two selected providers, one of whom appears to be able to conduct the other health impairment evaluation.

Because of the delay in providing the complainant with information regarding where the IEE could be obtained, the allegation is substantiated.

Identified Noncompliance

Based on the evidence and current state and federal requirements, TEA finds the following noncompliance.

The LEA does not always ensure that IEEs are provided in accordance with 34 CFR §300.502.

Required Corrective Actions

In accordance with 34 CFR §300.151, TEA must address: (1) how to remediate the denial of those services based on the needs of the student and (2) appropriate future provision of services for all students with disabilities when resolving a complaint in which appropriate services were not provided. TEA requires the following corrective actions of the LEA.

For the student subject to this complaint:

Upon completion of the IEEs, the LEA must convene an IEP team meeting to consider the IEE reports to determine if the student's IEP requires revision and, if so, must revise the student's IEP appropriately.

Additionally, the IEP team must determine if the student requires compensatory services based on the student's needs to address the delay in providing the complainant with information about where to obtain the IEE. If the IEP team determines that the student requires compensatory services, the IEP team must include a statement of the type, frequency, location, and duration of the compensatory services in the student's IEP. Compensatory services are services that the student needs to make up for any reduced educational benefit caused by the noncompliance cited in this report and are services that are over and above the student's current IEP services.

For all students with disabilities in the LEA:

The LEA shall review its policies and related guidelines pertaining to the noncompliance cited in this report to determine if revision is necessary to prevent the noncompliance from reoccurring. If the LEA revises its policies and related guidelines, the LEA must provide written notice of revised policies/guidelines to LEA staff affected by the revisions.

The LEA must provide focused technical assistance to all special education and administrative personnel on the campus subject to the complaint to address the noncompliance cited in this report.

Required submission:

By **November 30, 2022**, the LEA must provide TEA with a proposed timeline for completing the corrective actions or must provide TEA with the following documentation demonstrating completion of the corrective actions.

- A copy of the IEP team report documenting the consideration of the IEE reports and the compensatory services determination.
- A copy of service logs or other documentation showing the implementation of the compensatory services, if applicable.
- A copy of any revised portions of special education policies and related guidelines.
- A copy of any relevant memoranda and/or guidance letters issued to staff.
- A copy of the training agenda describing the information presented in the staff development and a listing of the individuals, indicating their positions, who participated in the staff development.

In accordance with 34 CFR §300.600(e), TEA must ensure that the LEA corrects identified noncompliance “as soon as possible, and in no case later than one year after the State’s identification of the noncompliance.”

This concludes TEA’s investigation of the complaint.