

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-20

PROCEDURAL HISTORY

On February 23, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of two students (Student A and Student B) attending the Northshore School District (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 Students' education.

On February 23, 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 March 15, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on March 16, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On March 27, 2018, OSPI received the Parent's reply and forwarded that reply to the District on March 29, 2018.

On April 19, 2018, OSPI requested additional information from the District. The District provided the requested information on April 20, 2018, and OSPI forwarded the information to the Parent on the same day.

On April 23, 2018, OSPI received additional information from the Parent. OSPI forwarded that information to the District on April 24, 2018.

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

OVERVIEW

During the 2016-2017 school year, both Student A and Student B, who are siblings, attended a District elementary school, and the District conducted initial evaluations of both students. In April 2017, Student A was determined not eligible for special education. The Parent disagreed with the District's determination and requested an independent educational evaluation (IEE), and the District agreed to pay for an IEE. In May 2017, the Parent requested a copy of Student A's educational records and was provided with a copy of the records that same week. However, some of Student A's records were not provided. In October 2017, the Parent requested a copy of Student A's educational record and was provided copies that same week. Also in October 2017, the District agreed to conduct a new initial evaluation of Student A. In January 2018, the Parent made a public records request, asking for copies of all emails authored by multiple District staff members in regard to Student A and the Parent. In response, the District provided records in March 2018.

In August 2017, Student B was determined eligible for special education services under the category of specific learning disability, and after several meetings and proposed drafts, an initial individualized education program (IEP) for Student B was finalized in December 2017. In May 2017, the Parent requested a copy of Student B's education records and was provided the records a few days later. In December 2017, the Parent asked to review Student B's testing protocols and in January 2018, the District proposed a date to meet with the Parent to do so, but the Parent did not respond. In February 2018, the Parent requested records relating to Student B's testing and the District provided records in March 2018.

The Parent alleged that the District failed to follow procedures for responding to the Parent's request for Student A and Student B's educational records, as the District did not either not respond to her requests or did not provide her copies of all requested records. The District denied the allegations.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on February 24, 2017. These references are included to add context to the issue under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period. Additionally, the scope of this complaint is limited to the issue identified for investigation. Facts have been included to provide context for the issue under investigation and do not address all communication between the parties in regard to special education programs of Student A and Student B.

ISSUE

1. Did the District follow procedures for responding to the Parent's request for Student A and Student B's educational records?

LEGAL STANDARDS

Education Records: Education records means the type of records covered under the definition of "education records" in the Family Educational Rights and Privacy Act (FERPA), 34 CFR Part 99. WAC 392-172A-05180. Under FERPA, "education records" means those records that are: 1) directly related to a student; and 2) maintained by an educational agency or institution or by a party acting for the agency or institution. These records include but are not limited to grades, transcripts, class lists, student course schedules, health records (at the K-12 level), student financial information (at the postsecondary level), and student discipline files. The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail. 34 CFR §99.3.

The term "education records" does not include records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute; records maintained by a law enforcement unit of the

institution that were created by that law enforcement unit for the purpose of law enforcement; or, in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose. 20 USC §1232 (g)(4)(b).

Parents' Access Rights to Student Records: Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an individualized education program (IEP), hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a free appropriate public education (FAPE) to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made. The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

As a general rule, parents do not have a right under FERPA to review and inspect documents that are not education records, that is, information that is not personally identifiable to the parents' child. 20 USC §1232g(a)(4); 34 CFR §99.3.

"Records that are not directly related to a student and maintained by an agency or institution are not 'education records' under FERPA and parents do not have a right to inspect and review such records. For example, a test protocol or question booklet which is separate from the sheet on which a student records answers and which is not personally identifiable to the student would not be apart of his or her 'education records.'" However, if a school were to maintain a copy of a student's test answer sheet (an "education record") the parent would have a right under the IDEA and FERPA to request an explanation and interpretation of the record. The explanation and interpretation by the school could entail showing the parent the test question booklet, reading the questions to the parent, or providing an interpretation for the response in some other adequate manner that would inform the parent. *Letter to Shuster*, 108 LRP 2302, Office of Special Education Programs (August 2007). A school district should, upon request, provide an opportunity for a parent to review education records and provide any explanations and interpretations necessary. This could include the interpretation of standardized test scores, such as reviewing the test questions with the parent. *Letter to Fonda-Fultonville (NY) Central School*, 31 IDELR 149, Family Policy Compliance Office (April 1998).

"With respect to the issue of liability for disclosing information to parents when other laws or contractual obligations would prohibit it, public agencies are required to comply with the provisions of IDEA and FERPA, and must ensure that State law and other contractual obligations

do not interfere with compliance with IDEA and FERPA. Federal copyright law protects against the distribution of copies of copyrighted document, such as a test protocol. Since IDEA and FERPA generally do not require the distribution of copies of an education record, but rather parental access to inspect and review, Federal copyright law generally should not be implicated under these regulations." *Letter to Shuster*, 108 LRP 2302, Office of Special Education Programs (August 2007).

Public Record: A public record includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives. This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who do not serve in an administrative capacity, have not been appointed by the agency to an agency board, commission, or internship, and do not have a supervisory role or delegated agency authority. "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated. RCW 42.56.010.

Request for Public Records: Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of RCW 42.56.070 or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by this chapter, an agency shall delete identifying details in a manner consistent with this chapter when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing. RCW 42.56.070. Personal information in any files maintained for students in public schools is exempt from public inspection and copying. RCW 42.56.230.

Amendment of Records and Hearing Rights: A parent of a student who believes that information in educational records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the student may request that the school district which maintains the information amend the information. The school district shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request. If the school district refuses to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing, conducted by the school district, in accordance with school district procedures. The school district, on request, shall provide the parent an opportunity for a hearing to challenge information, in the educational

records, to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student. If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the agency shall amend the information accordingly and so inform the parent in writing. If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the agency shall inform the parents of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school district in the records it maintains on the student. Any explanation placed in the records of the student in compliance with this section shall: be maintained by the school district as part of the records of the student as long as the records or the contested portion is maintained by the educational agency; and be disclosed to any party to whom the records of the student (or the contested portion thereof) are disclosed. 34 CFR §300.618; WAC 392-172A-05215.

FINDINGS OF FACT

2016-2017 School Year

1. Student A and Student B are siblings.
2. During the 2016-2017 school year, both Student A and Student B attended the same District elementary school and neither student was eligible to receive special education services.
3. In February 2017, the District agreed to evaluate Student A for special education after receiving a copy of the results of a private neuropsychological evaluation of Student A.

Timeline for this Complaint Begins on February 24, 2017

4. In April 2017, the District completed Student A's evaluation and determined that he was not eligible for special education. The Parent then requested that the District pay for an independent educational evaluation (IEE) of Student A, because she disagreed with the District's eligibility determination. The District agreed to pay for an IEE. Additionally, the District proposed developing a Section 504 plan for Student A.
5. On May 2, 2017, the District agreed to evaluate Student B for special education.
6. On May 15 and 16, 2017, the office manager at the elementary school and the Parent exchanged emails about educational records. The emails are summarized below:
 - The office manager emailed the Parent, stating that she had made copies of Student A and Student B's office files and Student B's first semester report card, and that the documentation was ready for the Parent to pick up in the school office.
 - The Parent responded, asking if the school kept a "compliance file", and if so, to also be provided a copy of that.
 - The office manager replied that she was unfamiliar with the term (compliance file), and that she did not have any other files in the school office, but would check for the Parent. The office manager asked what sort of information the Parent needed.

- The Parent responded by providing information from a website regarding types of student records. The information stated that a compliance file was kept by some school systems and contained “reports of eligibility meetings, correspondence between parents and school officials, and other similar documents”. The information also stated that the contents of a compliance file demonstrated that the school system met the timelines, notifications, and consent regulations of the Individuals with Disabilities Education Act (IDEA). The information also provided a definition of “confidential files”.
 - The office manager replied that she believed that the files referred to as compliance files and confidential files would be considered special education files, and that the Parent could request those files from the District special education department. The office manager provided contact information for the special education department.
7. In May 17, 2017, the Parent wrote a letter to the District director of elementary special education (elementary director), asking “to review any and all educational records held in any form and in any location by [the District] for my son/daughter [Student A].”
 8. On May 18, 2017, the Parent completed a District release of records form, indicating that she wanted to receive a copy of Student A’s “whole file”. According to the District’s response to this complaint, District special education office staff then provided the Parent with Student A’s special education record and referred the Parent to the elementary school office to obtain copies of Student A’s other educational records. The records provided by the special education office included:
 - Special education referral dated 2/14/17, including a Consent for an Initial Evaluation form and a Medicaid Consent form
 - Authorization for release of records dated 3/15/17
 - Initial evaluation dated 4/18/17, including the following attachments:
 - Private Psychologist Report
 - Private Speech Language Therapy Report
 - Private Occupational Therapy Report
 - Parent Dissenting Opinion
 - Signature Page
 - Prior Written Notice dated 4/25/17, with an “LD Addendum”
 - Prior Written Notice dated 5/1/17
 - Authorization for release of records dated 5/1/17
 9. Also on May 18, 2017, the Parent emailed the office manager at the elementary school, stating that there were no “exit files or information” in Student A’s “files”, and asked if the office manager had that information. In response, the office manager asked if the Parent needed Student A’s school entry and withdrawal dates. The office manager stated that she should be able to get the dates from the information in the District’s student database. The office manager asked if this was what the Parent needed. The Parent replied that someone unenrolled Student A on April 7, 2017, and that she wanted to know who had unenrolled Student A and wanted “the record of that.”

10. On May 24, 2017, Student A's evaluation group, including the Parent, met to discuss revising Student A's evaluation to include assessments in the area of social/emotional and to conduct an observation, because there were concerns regarding Student A's social/emotional skills that were not previously considered. The evaluation group agreed to conduct the additional assessments. The District then sought the Parent's consent for the additional assessments and also asked that the Parent sign a "request for initial evaluation extension". The Parent did not agree to provide consent for the additional assessments, but instead indicated that she wanted to proceed with the IEE. The District then agreed to proceed with the IEE and that Student A's evaluation team would reconvene when the IEE was completed.
11. On June 20, 2017, the school nurse emailed the Parent a copy of a proposed Section 504 plan for Student A from April 2017. Based on the documentation in this complaint, the Parent did not agree with the proposed plan.
12. The District's 2016-2017 school year ended on June 22, 2017.

Summer 2017

13. Based on the documentation in this complaint, Student B's evaluation group met on August 31, 2017, to review the results of her initial evaluation and determined that she was eligible for special education under the category of specific learning disability.

2017-2018 School Year

14. The District's 2017-2018 school year began on September 6, 2017.
15. On September 21, 2017, Student B's individualized education program (IEP) team met to develop Student B's initial IEP. The Parent did not sign consent for the initial provision of special education services at that time.
16. On September 28, 2017, the Parent requested that additional annual goals be added to Student B's proposed IEP and that other goals be revised. The District agreed to make changes and provided the Parent with an updated draft of the proposed IEP on October 9, 2017.
17. On October 17, 2017, Student B's IEP team met to further discuss the proposed initial IEP. At the meeting, the IEP team made additional changes to the proposed IEP. Following the meeting, the IEP case manager updated one of the reading goals and then provided the Parent with an updated draft of the proposed IEP on October 20, 2017. The Parent then requested that additional changes be made to the proposed IEP and District staff made additional changes.
18. Also on October 17, 2017, Student A's evaluation group met to discuss whether the Parent wanted to continue to pursue an IEE or if the Parent wanted the District to conduct another

evaluation. The Parent indicated that she was not interested in continuing the IEE process at that time. The District proposed to initiate a new evaluation of Student A.¹

19. According to the information provided by the Parent, at the October 17 meeting, she was shown a three page fax from the Student's private neuropsychologist, which was referenced in the school nurse's report from March 2017, and not previously provided to the Parent.²
20. On October 21, 2017, the Parent emailed a District school psychologist, asking to get a copy of all forms she had signed for Student A's "providers". The Parent stated that she had requested "a set of records" after Student A was initially determined not eligible for special education, but the "forms" the staff had "the other day",³ the Parent had not seen before. The Parent stated that she wanted to know what records of Student A's the District had access to, and that it appeared that they had placed her "signature in other places." The Parent asked how she should go about getting a complete copy of Student A's records, so she would know what inaccuracies the records might contain and what information might need to be corrected or updated before an evaluation. The Parent said she had previously asked the District for all of Student A's records, but did not get them.
21. On October 23, 2017, District staff and the Parent exchanged multiple emails. The emails are summarized below:
 - The school psychologist responded to the Parent's October 21, 2017 email, stating that she (school psychologist) could review Student A's prior evaluation paperwork and provide the Parent copies. The psychologist asked if the Parent was specifically looking for medical release forms related to Student A, or if the Parent wanted Student A's entire record. The psychologist stated that for Student A's current evaluation, the Parent had not signed any medical release or the prior written notice of evaluation⁴. The psychologist asked that the Parent let her know if she still wanted to proceed with the evaluation.
 - The Parent replied that she wanted Student A's "entire file and all medical releases she had signed". The Parent also stated that she wanted to move forward with the new evaluation of Student A.
 - The school psychologist forwarded the Parent's email to the District special education records specialist (records specialist) and the office manager at the elementary school (elementary office manager).
 - The records specialist responded and attached the following documents for Student A using a secure file transfer program:
 - Referral (Also called Guidance Team Record) – 2/14/17

¹ The information in finding of fact no. 18 is based on the information stated in the District's October 17, 2017 and October 24, 2017 prior written notices.

² The Parent signed permission on February 14, 2017 for the District to obtain information from the neuropsychologist.

³ The Parent's reference to "the other day" is likely in reference to the meeting on October 17, 2017.

⁴ It is assumed the school psychologist was referring to the consent form for evaluation.

- Initial Evaluation Report – 4/18/17
 - Private Psychologist Report – 4/21/17
 - Private Occupational Therapy Report – 4/21/17
 - Parent Dissenting Opinion – 4/24/17
 - Prior Written Notice – 4/25/17
 - Evaluation Report Addendum – 4/25/17
 - Prior Written Notice – 5/1/17
 - Prior Written Notice, Evaluation Extension Consent, and Release of Information – 5/24/17
 - Prior Written Notice – 5/24/17
 - Signature Pages
 - Authorization for Release of Records – 3/15/17 and 5/15/17
 - Referral Documentation – 10/17/17
 - Prior Written Notice – 10/17/17
- Later that day, the elementary office manager emailed the Parent, stating that as she understood it, Student A’s special education file did not contain all the information the Parent was looking for. The office manager stated that the school nurse had checked the Student’s medical file and found additional records: a certificate of immunization, health registration form, and other forms related to Student A’s Section 504 plan that was “proposed/drafted but never agreed to or implemented” in the spring of 2017. The other forms included a release of medical information. The office manager stated that she hoped these documents included all the information the Parent needed and that the Parent could pick up all the documents in the school office.
 - The Parent responded that this was a missing piece to the puzzle.

22. According to information provided by the Parent in this complaint, on October 23, 2017, the Parent received a copy of Student A’s medical file kept by the school nurse, but the copy only contained one page of the three page fax from Student A’s neuropsychologist.

23. Based on the documentation in this complaint, on October 24, 2017, the Parent signed consent for the District to conduct a new evaluation of Student A.

24. From October 31, 2017 through November 13, 2017, the Parent and school psychologist exchanged emails regarding what information the District had previously obtained from Student A’s private evaluators and what information was still needed. They also discussed whether the Parent needed to sign new release of information forms so the District could exchange information with the private providers. During the email exchanges, on November 2, 2017, the Parent requested to see the writing samples Student A provided for the Clinical Evaluation of Language Fundamentals (CLEF) assessment completed as part of his April 2017 evaluation.

25. On November 14 and November 20, 2017, the school psychologist and the Parent exchanged emails regarding the Parent’s request to see the writing samples from the CLEF. The emails are summarized below:

- November 14 – The school psychologist stated that she had spoken to someone at the District office, and that unfortunately due to the CLEF materials being copyrighted, the District was unable to provide the Parent with a copy. The psychologist stated that another option would be for a

District speech language pathologist (SLP) to review the CLEF with the Parent in person and answer any questions the Parent had. The school psychologist stated that she had included the SLP⁵ who worked at the elementary school on the email, so she understood the Parent's concerns, and had also provided the SLP with a copy of Student A's report from his private SLP.

- November 14 – The Parent asked if she could look at all testing done with Student A “during that time.”
- November 14 – The school psychologist stated that she would need to speak with the elementary SLP to see what her availability was. The psychologist asked what the Parent wanted to discover from the report that the Parent had not already discussed in her “formal letter”⁶ and during the evaluation feedback meetings in April 2017 and October 2017. The psychologist stated that if the Parent could explain what she was trying to determine from the testing protocols, this would allow District staff to better assist the Parent. The psychologist also stated that Student A's current evaluation was an initial evaluation, looking at his growth of learning through his three previous evaluations by the District and private evaluators over the last year. The psychologist said the previous April evaluation report was merely additional data points for the evaluation group to review while conducting the current evaluation.
- November 20 – The school psychologist stated that in regard to the Parent reviewing the assessments from the April 2017 evaluation, a time would need to be set up with the psychologist and the SLP to review the data with the Parent in person, and that they could work on determining a date at an upcoming November 28, 2017 meeting.⁷
- November 20 – The Parent responded, stating that she wanted to know why she could not see Student A's previous testing, and who did not want her to see it and why.

26. On November 16, 2017, Student B's IEP team again met to discuss the proposed initial IEP. The IEP team agreed to revise one of the writing goals and add additional accommodations. The IEP team also discussed providing training for staff regarding guided language acquisition. Later, after a phone call on November 21, an additional accommodation was added.

27. The District was on break November 23-24, 2017.

28. On November 28, 2017, the school psychologist emailed the Parent, thanking the Parent for speaking with her on November 27, 2017. The school psychologist stated that she would be sending out a copy of Student A's evaluation report for the family to review prior to the scheduled December 5, 2017 evaluation meeting. The school psychologist also stated that

⁵ The SLP who worked at the elementary school during the 2017-2018 school year is not the same SLP that worked at the elementary school during the 2016-2017 school year.

⁶ Based on the documentation in this complaint, the formal letter is likely in reference to the Parent's April 24, 2017 letter of dissent regarding Student A's April 2017 District evaluation.

⁷ According to the Parent's reply to this complaint, an evaluation feedback meeting was supposed to occur on November 28, 2017, but was then canceled by the District.

she had included a summary chart of the achievement assessment scores and those scores in graph form, and that all this information would be discussed at the December 5 meeting.⁸

29. On November 30, 2017, the District provided the Parent with an updated proposed initial IEP for Student B. The Parent signed consent for the initial provision of special education on December 15, 2017.
30. On December 2, 2017, the Parent emailed the District special education records specialist, stating that she had asked to look at Student A's previous testing records a few times and had been "denied/delayed" access. The Parent stated that she had asked why the records were being withheld and by whom, but no one had provided an answer. The Parent asked who was restricting her access to Student A's records, as she wanted the information for when she contacted the "attorney general". In response, the records specialist spoke with the District assistant director of elementary special education (elementary assistant director) and the assistant director agreed to speak with the Parent.
31. On December 3, 2017, the Parent responded, stating that she wanted to see Student A's reading fluency and written expression test done in the spring of 2017, and asked who she should contact about this.
32. On December 4, 2017, the elementary assistant director emailed the Parent, stating that she wanted to schedule a phone conference or meeting with the Parent to "talk through" all of the Parent's concerns and questions. The elementary assistant director asked if conferencing the next day would work. In response, the Parent provided a list of concerns and questions she had regarding Student A and Student B's educational records. In regard to accessing Student A's records, the Parent asked who was responsible for delaying and denying access to seeing Student A's testing from the April 2017 evaluation.
33. On December 5, 2017, the Parent spoke with elementary assistant director, via phone, regarding the Parent's concerns. According to the District's response to this complaint, during the phone conversation, the elementary assistant director informed the Parent that the Parent "absolutely ha[d] the right to view any and all testing/test protocols" and directed the Parent to schedule an appointment with the school psychologist.
34. The documentation and information provided in this complaint included conflicting information about a meeting on December 7, 2017. According to the District's December 5 and December 7, 2017 prior written notices, the District proposed holding the evaluation feedback meeting on December 7 to review Student A's evaluation report, which was provided to the Parent on November 28, 2017. The December 7, 2017 prior written notice also stated that Student A's prior testing was to be reviewed at the meeting.
35. According to the information provided by the Parent, the school psychologist contacted her on the morning of December 7, 2017 to set up a time to review Student A's spring 2017

⁸ The December 5, 2017 meeting did not occur, as the Parent was unable to attend a meeting on that date.

testing with the Parent, and the Parent agreed but also stated that she only had twenty minutes to meet due to having to transport her children. Also according to the Parent, at the December 7 meeting, the school psychologist spend most of the twenty minutes wanting to review the results of the fall 2017 evaluation, and did not leave the Parent much time to review the spring 2017 testing. The Parent was reportedly told that she could not be allowed to write down what Student A had written on the test, because it was copyrighted. The Parent also stated in her reply to this complaint, that while reviewing the spring 2017 testing, she noticed that the District had completed Rapid Name Testing, but has since been told by the District that this testing does not exist.

36. Later on December 7, 2017, the Parent emailed the school psychologist, asking to schedule a time to sit down and look at Student B's "testing". The school psychologist replied the next day, stating that a meeting would need to be scheduled after the District's winter break, due to scheduling conflicts during the next week (December 11-15). The school psychologist asked if the Parent was still available on December 11 to review Student A's evaluation report.⁹
37. On December 14, 2017, the District proposed holding a facilitated initial evaluation feedback meeting for Student A. The meeting would be facilitated by the state's third-party mediation contractor.
38. The District was on break December 18, 2017 through January 1, 2018.
39. On January 5, 2018, the Parent agreed, via phone, to hold a facilitated initial evaluation feedback meeting and also requested that prior to the facilitated meeting, the District hold an informal meeting with the Parent to discuss her questions about Student A's evaluation initiated in October 2017 and the evaluation process. The District agreed to hold the informal meeting.
40. On January 10, 2018, based on the Parent's request, the District held an informal meeting with the Parent to discuss questions she had regarding Student A's fall 2017 evaluation. The school psychologist, elementary assistant director, and the District assistant superintendent for special services (assistant superintendent) attended the meeting. At the meeting, the District proposed to hold the facilitated feedback meeting on January 16, 2018, and the Parent agreed.
41. On January 11, 2018, the school psychologist emailed the Parent regarding the Parent's request to review Student B's testing. The school psychologist stated that she was almost certain that the Parent had taken a copy Student B's "paperwork" home with her on December 7, 2017, but would provide the Parent with another copy. The school psychologist also stated that she was "more than willing to sit down" with the Parent to review Student B's initial evaluation protocols, and asked that the Parent let her know when she would like to do so.

⁹ Based on the information provided in this complaint, a meeting did not occur on December 11, 2017.

42. On January 11 and January 12, 2018, the Parent and the elementary assistant director exchanged emails regarding the Parent's request to see Student A's testing protocols. The emails are summarized below:

- January 11 – The Parent stated that she wanted to see/have a copy of Student A's testing data, and stated that she had asked the school psychologist for a copy, but had not received a reply. The Parent asked how to make a formal request for the testing data. The Parent stated that another parent had told her she needed to contact the attorney general, and the Parent asked if this was a District policy. The Parent asked what the barrier was to her accessing Student A's testing, and why the District had more of a right to the information than she did.
- January 11 – The elementary assistant director responded that the test protocols could be viewed at the school, and that the Parent could make an appointment with the school psychologist to view them. The elementary assistant director asked if there was something other than the test protocols that the Parent was looking for.
- January 11 – The Parent replied “yes, but that would be after the evaluation feedback meeting” on Tuesday, January 16, 2018, and she wanted “to have it before the evaluation feedback meeting”. The Parent stated that she had Student A's full history and a more complete understanding of him than anyone “in the room”, and that she was a visual learner and needed to make informed decisions. The Parent stated that she understood she had a “right to that data” and any information the District had about Student A. The Parent said that federal and state law gave her access to protected health information and “anything” the District held regarding Student A. The Parent stated that she should be able to get the test data, which referred to raw and scaled scores, “client/patient responses to test questions or stimuli and psychologists' notes and recordings concerning client/patient statements and behavior during an examination.” The Parent said that she wanted to look at the information other people were using to make decisions for Student A. Additionally, the Parent stated that for her it had a little to do with transparency as well, and it was not that she was necessarily looking for something. The Parent said, “honestly the fact that it makes you guys uncomfortable makes me more curious” and that she was guessing other parents became less trusting because of transparency issues. The Parent also said, “we can wait on the evaluation feedback while I contact the attorney general or find a lawyer to help me navigate this?”
- Friday, January 12 – The elementary assistant director responded that she was going to do her best to explain this as clearly as she could and reassure the Parent. The assistant director stated that the Parent could “absolutely view any and all test protocols” the District had by making an appointment with the school psychologist, and that if the Parent wanted to view the protocols prior to the January 16 feedback meeting, the review would need to be that day (January 12), 2018).¹⁰ The assistant director indicated that otherwise, the January 16 meeting would need to be rescheduled. Additionally, the assistant director stated that if there were records other than the testing protocols that the Parent was requesting, the District could make copies of any records and provide those to the Parent, and that depending on the volume of the records the Parent wanted, the assistant director might be able to pull together some of the records that day (January 12). The assistant director stated that she hoped this information was clear and answered the Parent's questions, and stated that she had copied the school psychologist on the email in case the Parent wanted to schedule a time to meet with her.

¹⁰ The District would be on break Monday, January 15, 2018, in observance of a holiday.

- January 12 – The Parent replied with a link to a website with information about education laws regarding student records.
- January 12 – The elementary assistant director responded that she was not sure why the Parent was sending the link. The assistant director stated that the Parent could schedule a time with the school psychologist to “view any and all test protocols” the District had, and this had always been the case. The assistant director stated that she knew the Parent had been in one time already, and asked if there were protocols she still wished to see.
- January 12 – The Parent replied that she had been told she could not copy anything from the tests, and there was limited access. The Parent stated that she had “a hard time processing in short periods of time”. The Parent also stated that she had been told she could not write what was on the testing, so she wanted copies. The Parent said that she would contact the meeting facilitator to let them know that the January 16 evaluation meeting needed to be pushed back while she figured out how to get copies of the testing protocols.
- January 12 – The elementary assistant director responded, thanking the Parent for explaining further, and suggested that the Parent and the school psychologist use the time already scheduled for the evaluation meeting to meet to review the testing protocols. The assistant director stated that the District was not allowed to make copies of the testing protocols for the Parent, or allow the Parent to copy down what is in the test. The assistant director stated that she wondered what else the District could do to help support the Parent processing the information in the test protocols. Additionally, the assistant director stated that she would let the rest of the evaluation group know that that the January 16 meeting would be postponed, and asked that the Parent let her know when she was ready to proceed with scheduling the evaluation meeting.
- January 12 – The Parent replied, asking if the elementary assistant director could help her “understand who or what does not allow [the District] to make copies” of the testing protocols for the Parent. The Parent stated that this would help her understand what or where the problem lay with her request and what direction she might need to go to resolve it. The Parent stated that she was not asking for a copy of the test, and that she was having a hard time understanding how medical providers had “to give that information”, but schools could restrict access to it.
- January 12 – The elementary assistant director responded that she may have misunderstood what the Parent wanted copies of, asking if the Parent wanted copies of the test protocols. The assistant director stated that the District could not make copies of the test protocols because it was against the policy of the test publisher and the copyrights.
- January 12 – The Parent replied that “I looked it up, but I think I do want a copy of the test protocol.” The Parent also included a link to an article about test protocols on a blogging website about special education law. The Parent stated that the article explained “it like” the other website she had sent a link to earlier that day, “but more how it might transfer to other states and federally.” The Parent stated that she may need a lawyer to answer if it would apply to Washington State, and suggested that maybe the assistant director could ask the District’s attorney.
- January 12 – The elementary assistant director responded that she was including the assistant superintendent on the email, so “perhaps” she could help to further explain. The assistant director then stated that she would try again to explain. The assistant director explained that the District was required to make all records available to the Parent and that the District had made

the testing protocol available to the Parent. The assistant director asked that the Parent schedule an appointment with the school psychologist to review the test protocols, but stated that the District could not make copies of the test protocols, due to publisher and copyright requirements.

- January 12 – The Parent replied, directing her email to the assistant superintendent and copying the elementary assistant director. The Parent stated that she was wondering if there was some misinformation “out there” about parents getting copies of testing protocols, as it did not appear that copyright laws applied to her request. The Parent asked if this was a District policy, and if this was something that needed to be taken to the school board. Alternatively, the Parent asked if this was something that needed to be done legally because of state law.

43. Also on January 12, 2018, the school psychologist emailed the Parent, stating that she was willing to meet with the Parent on January 16, 2018 to review Student A and Student B’s testing protocols if that worked for the Parent’s schedule. According to the District’s response to this complaint, the Parent did not respond to the school psychologist’s offer to review Student B’s testing.

44. The District was on break on Monday, January 15, 2018.

45. On January 16, 2018, the District assistant superintendent responded the Parent’s last January 12, 2018 email, stating that in an effort to provide the Parent with the best information she could, the assistant superintendent had asked the District’s attorney to write a letter to the Parent, addressing access to testing protocols. The assistant superintendent stated that the Parent should get the letter in the mail in the next few days.

46. On January 17, 2018 and January 19, 2018, the District’s attorney and the Parent exchanged several emails. The emails are summarized below.

- January 17 – The District’s attorney emailed the Parent and attached a letter. The letter stated that as previously explained by the elementary assistant director, the District did not provide copies of a student’s test protocols due to test publisher and related copyright restrictions. The letter explained that information the Parent provided about a legal case from another state, was not applicable because it was not binding in Washington State, and was distinguishable from the current issue as the District could point to specific copyright and other proprietary concerns raised by the publishers of tests the District used. The letter cited to information from a guidance letter from the U.S. Office of Special Education Program (OSEP) regarding testing protocols and copyright requirements. Additionally, the letter explained that under the Family Educational Rights and Privacy Act (FERPA) and the Individuals with Disabilities Education Act (IDEA), the District had already offered to allow the Parent to review Student A’s testing protocols, and that the law did not require the District to do anything further. The letter stated that the school psychologist remained available to review Student A’s testing protocols with the Parent and address any questions the Parent had about the documentation. The letter also stated that if the Parent needed additional time to complete her review, the Parent could request additional time with the school psychologist or another qualified staff member.
- January 17 – The Parent responded that she had spoken with a staff member at OSPI and that the OSPI staff member had stated that she could tell the District she had a disability and “rerequest” a copy of the testing protocol as an accommodation. The Parent stated that the OSPI staff member would get back to her with some information about “guidelines”, and that at a minimum,

without the staff member researching it, the District could blackout whatever the District felt was copyrighted, but Student A's answers would not be.

- January 17 – The District's attorney responded that even if the Parent had a disability, the District had proposed a reasonable and effective accommodation to review Student A's unredacted testing protocols directly with the Parent and have a qualified professional answer any questions or concerns the Parent might have about both the test questions and Student A's answers. The attorney stated that the District would require additional information from a qualified professional to support the conclusion that the Parent required a different accommodation.
- January 17 – The Parent replied, asking what information the District would need from a qualified professional, and asked that the District define qualified, so that she could meet the District's requirements for accommodation to access Student A's educational records.
- January 19 – The District's attorney responded that the District believed the Parent had already been provided reasonable access to Student A's education records. The attorney stated that if the Parent disagreed with the District's position based on OSPI's statement to the Parent, the District was asking that OSPI provide the Parent and the District with a written document explaining how and why the District's position was incorrect. The attorney also stated that if the Parent disagreed with the District's position based upon her own disability-based limitations, then the District was asking that the Parent's medical provider provide a written explanation of why the District's proposed accommodation of having someone meet with the Parent and explain Student A's testing protocols was insufficient to meet the Parent's needs. The attorney stated that the written explanation did not need to identify the Parent's specific disability, but should provide sufficient information for the District to determine any reasonable and necessary accommodations or modifications to its copying practices. Additionally, the attorney stated that the Parent could also identify a provider qualified to administer school-aged standardized educational assessments, such as a psychologist, and the District could provide that person with a copy of the test protocols, as this did not raise copyright or test publisher concerns.
- January 19 – Later that day, the Parent forwarded the District attorney an email from OSPI, stating information from state regulations related to access to educational records and information regarding guidance from OSEP and the federal office overseeing FERPA.

47. Also on January 19, 2018, the District issued a prior written notice regarding the District's attempt to hold a facilitated evaluation feedback meeting. The notice stated that the Parent had canceled the facilitated meeting by email on January 12, and had contacted the meeting facilitator to cancel. The notice also stated that the Parent had requested copies of all test protocols for Student A prior to attending the evaluation feedback meeting, and that the District was unable to make copies of protocols, but had made test protocols available to the Parent for review. The notice stated that the Parent had met with the school psychologist on one occasion to review the protocols and could schedule more time to review the protocols. Additionally, the notice stated that the District wanted to meet with the Parent to provide initial evaluation feedback, and that the Parent had stated that she did not feel ready to meet until she had a full understanding of the test protocols. The notice said that the Parent would need to contact the elementary assistant director or the school psychologist when she was ready to schedule the evaluation feedback meeting.

48. On January 22, 2018, the Parent provided the District with a request for public records. The request indicated that the Parent wanted copies of “all records” referencing Student A, Student A’s father, and the Parent between September 1, 2017 through January 23, 2018. The Parent specified that she wanted copies of “all records and e-mails” referencing Student A, Student A’s father, and the Parent, which were authored by the following staff members:

- Elementary school office manager
- Elementary school principal
- Elementary school secretary 1
- Elementary school secretary 2
- General education teacher (2016-2017 school year)
- General education teacher (2017-2018 school year)
- Occupational therapist
- School nurse (2016-2017 school year)
- School nurse (2017-2018 school year)
- School psychologist (2016-2017 school year)
- School psychologist (2017-2018 school year)
- Speech language pathologist (2016-2017 school year)

The Parent also requested copies of all emails referencing Student A, Student A’s father, and the Parent, which were authored by the following staff members and other personnel from September 1, 2016 through January 23, 2018:

- Elementary assistant director
- Elementary director
- Assistant superintendent
- District special education office coordinator
- District student services specialist

49. On January 24, 2018, the District executive director of human resources sent the Parent a letter in response to her January 22, 2018 public records request. The letter stated that the District had reviewed the Parent’s request and determined that the records the Parent was seeking were protected by the Family Educational Rights and Privacy Act (FERPA) and exempt from the Washington Public Records Act. However, the records were available to the Parent as Student A’s parent, and would be provided to the Parent along with Student A’s other educational records. The letter also stated that the Parent’s request had been forwarded to the District’s special education department, which would be responding to the Parent’s request “in its entirety”.

50. On January 31, 2018, the Parent provided the District with a copy of a letter from her medical provider, which stated that “with a history of a learning disability, [the Parent] needs to have a copy of [Student A’s] education record and testing to read and learn about [Student A’s] current condition without distraction.”

51. On February 2, 2018, the District issued a prior written notice, refusing to provide the Parent with copies of Student A’s testing protocols. The notice indicated that the District was refusing to provide the Parent copies of the testing protocols because the January 31, 2018

letter from the Parent's medical provider did "not identify any reason the District's proposed accommodation is insufficient to meet the parent's individual needs." The notice stated that the District's offer to have the school psychologist meet with the Parent to review all test protocols could meet the Parent's individual needs. The notice also stated that "alternatively, the parent may also identify a provider qualified to administer school-aged standardized educational assessments, such a psychologist, and request that the District provide that individual a copy of [Student A's] test protocols. The provision of copies between qualified providers does not raise copyright or test publisher concerns for the District." The notice further stated that the Parent could contact the school psychologist to schedule a time to review the test protocols, or if the Parent identified a qualified provider and would like to request that the District provide the qualified provider with a copy of Student A's test protocols, she could contact the elementary assistant director.

52. On February 6, 2018, the Parent emailed the District special education department office coordinator, stating that she made a public records request on January 22, 2018, which was forwarded to the office coordinator. The Parent stated that she was having a difficult time getting all of Student A's records and "thought this might be more thorough". The Parent indicated that she did not receive all of Student A's records when the District responded to her May 17, 2017 and October 23, 2017 records requests. The Parent stated that she was waiting on receiving the records so that she could be informed and "supply any document or information for a facilitated evaluation meeting and an IEP meeting following that." The Parent stated that she had "to present what information [she] may want to present" to the meeting facilitator prior to the meeting. Additionally, the Parent stated that she could not come prepared without fully understanding the process, why Student A did not qualify for special education during the 2016-2017 school year, and why the areas of concern listed this school year were not included in the current evaluation draft. The Parent asked when she could expect the requested records. The next day, the office coordinator confirmed that she had received the January 22 records request and stated that she was currently working with the staff mentioned in the Parent's request to gather all of the records. The office coordinator stated that the District was required to fulfill the Parent's request within forty-five days and that the District would be in touch as soon as everything was ready for the Parent to pick up.

53. On February 7-12, 2018, the Parent exchanged emails with the District staff regarding questions she had about Student A's fall 2017 evaluation and access to his testing from the spring of 2017. The emails are summarized below:

- February 7 – The Parent emailed the school psychologist, stating that she had summarized all of her unanswered questions from the last couple months, and hoped to get answers while she waited to receive Student A's educational records. The Parent then listed several questions regarding Student A's most recent fall 2017 evaluation. In regard to Student A's records, the Parent stated/asked the following:
 - The Parent wanted more information about Student A's testing completed in April 2017, and asked if there was a "scoring assistant report" for the CLEF test, and if so, to receive a copy of it.
 - The Parent asked if she could have a copy of Student A's Wechsler Individual Achievement Test (WIAT), or if it was copyrighted.

- The Parent asked why a sheet with Student A's written answers and not test questions from the Kaufman Test of Educational Achievement (KTEA) would be copyrighted.
- The Parent stated that she was trying to figure out which of Student A's educational records the District considered copyrighted.
- The Parent asked which two subtests she viewed on December 7, 2017 with the school psychologist and stated that one was a writing sample. The Parent asked whether these were from the CLEF or the KTEA.
- The Parent stated that she "had asked on 11/2, 11/6, 11/14" and that on November 14, the school psychologist stated she needed to check on the SLP's availability.
- The Parent stated that she "had asked on again on 11/20 who didn't want me seeing [Student A's] previous testing and why" but she did not receive an answer.
- The Parent stated that she had asked again on December 2, 2017, and asked if the school psychologist was "responsible for this in anyway".
- The Parent stated that the District would not give her copies of Student A's testing records even though she had given the District two of the three things the District's lawyer had stated would give the Parent access.
- The Parent stated that when she met with the school psychologist on December 7, the Parent could not write down what Student A had written for test answers. The Parent stated that she had been told she could not have copies and that she could not process the information as it had been offered.
- The Parent asked what additional information the school psychologist could provide her "within in writing" about Student A's test results.
- The Parent asked for a list of Student A's scores on all the subtests of "these tests".
- February 7 – The school psychologist responded and copied the assistant superintendent and the elementary assistant director. The school psychologist stated that she, along with the assistant superintendent and the elementary assistant director, wanted to meet with the Parent in person to clarify and answer the Parent's questions. The school psychologist asked if the Parent was available to meet on February 16, 2018.
- February 7 – The Parent replied that she worked on February 16 and could not attend the meeting. The Parent stated that she was very busy and would just prefer an email response.
- February 8 – The Parent sent a follow-up email, asking that the school psychologist please email responses to the Parent's questions, and stated that she did not have anything to add or ask other than what was in her original email. The Parent indicated that she was busy with work and taking her children to appointments. The Parent said that she was just wanting information and that she had already asked most of her questions in person and had been unable to get answers. The Parent stated that maybe someone having to write answers would help make sure she got answers to her questions.
- February 9 – The school psychologist responded that she understood the Parent was very busy, and that as a team, staff would be in touch with the Parent regarding her questions.
- February 10 – The assistant superintendent replied that she was requesting a meeting with the Parent and her husband and "select members from the school team" to hopefully provide answers to all of the Parent's questions. The assistant superintendent stated that the staff could meet after the school day ended if this worked for the Parent and would schedule however much time was needed. The assistant superintendent expressed that what seemed "to happen is that questions may get answered via email but then new questions get generated or answers are

misinterpreted”, and that the Parent’s February 7 questions revealed that there are still misunderstandings from previous communications. The assistant superintendent expressed that the number and frequency of the Parent’s inquiries were taking a toll on staff, and that she sincerely wanted to get the Parent the information she needed so the Parent could have adequate knowledge to make the best decisions possible. The assistant superintendent stated that face-to-face meetings seemed to be the best mechanism to accomplish this and wanted both parents to attend. Additionally, the assistant superintendent stated that she understood that the Parent needed time to process information and would like to have information in writing to assist her with that effort. The assistant superintendent stated that at the meeting, District staff could write down what the Parent needed to make sure the Parent had the information for future reference. The assistant superintendent also stated that the Parent could bring anyone she wanted to the meeting, and that her administrative assistant would reach out to the Parent the following week to see about getting a meeting set up.

- February 10 – The Parent responded that she looked forward to meeting with the assistant superintendent, but still wanted a copy of Student A’s educational records before they met.
- February 12 – The assistant superintendent replied, asking that the Parent clarify which educational records she was referring to.
- February 12 – The Parent responded, indicating that she was referring to the records the special education department office coordinator was collecting in regard to the Parent’s January 22, 2018 records requests and all educational testing records. The Parent stated that she did not want the test questions or the booklets, but wanted Student A’s testing records. The Parent stated that the District could redact whatever content on Student A’s answer sheets that it felt was copyrighted. The Parent stated that she wanted the scores for all subtests as well.

54. The District was on break February 19-23, 2018.

55. On February 20, 2018, the assistant superintendent emailed the Parent in response to the Parent’s February 12 email, stating that she would follow up with the special education department office coordinator to see where the coordinator was on having the records ready.

56. On February 22, 2018, the Parent emailed the assistant superintendent with concerns and questions about Student B’s educational program. In regard to records, the Parent asked for a copy of the testing or placement data for “Reading Mastery” records for Student B. In response, the assistant superintendent stated that the District hoped to have the records the Parent requested on January 22 ready for the Parent the following week. The assistant superintendent stated that it had been quite a process given the volume of email messages that needed to be included, and that the District was adhering to the forty-five day timeline allowed for this process. Additionally, the assistant superintendent stated that she believed the most efficient way to provide the Parent answers regarding Student B’s educational program was to meet in person and go over them one by one with the people directly involved. The assistant superintendent wanted to schedule a meeting after the Parent had received the records she requested.

57. On February 23, 2018, the Parent filed this complaint. In the complaint, the Parent asked that she be provided a copy of “any and all educational records” relating to Student B.

58. On March 5, 2018, the District special education department office coordinator emailed the Parent and stated that the records the Parent had requested on January 22, 2018 were ready to be picked up at the special education office.
59. According to the District's response to this complaint, on March 13, 2018, the District provided the Parent with Student B's records, which the Parent had requested on February 24, 2018.¹¹ According to the District, the records included:
- Emails dated 9/1/16-2/24/18 that were not captured in the previous request regarding Student A.
 - Initial evaluation dated 8/31/17, including the following attachments:
 - Consent for initial evaluation
 - Signature page
 - Parent report
 - BASC 3 Score report
 - Assessment revision dated 12/5/17 with private psychologist report
 - Initial IEP dated 12/15/17, including the following attachments:
 - Signature page
 - Prior written notices from 9/21/17, 10/9/17, 10/17/17, and 12/15/17
 - Prior written notice dated 1/31/18
 - Elementary assistant director's special education file
 - Elementary director's special education file
 - Cumulative file – including attend records
 - Nurse file
 - OT/PT file
 - School psychologist's file
 - Teacher's file

CONCLUSIONS

The Parent alleged in her complaint that the District failed to provide her with access to Student A and Student B's records in response to her records requests. The Parent also alleged in her reply to the District's response to this complaint that she was not provided prior written notices in response to some of her requests regarding Student A's and Student B's educational programs. The issue in this complaint (SECC 18-20) is limited to whether the Parent was provided access to existing records, and does not extend to whether the District should have created records, such as a prior written notice. If the Parent believes that the District failed to follow procedures for responding to her requests regarding Student A and Student B's educational programs, then she can exercise her dispute resolution options offered under the IDEA and state regulations. Further, the Parent also raised issues regarding records which she believes have been fabricated, contain misleading information, and/or were modified. The Parent has the right to request that

¹¹ The documentation in this complaint does not include a February 24, 2018 request for Student B's educational records. The District and the Parent may consider the Parent's February 23, 2018 citizen complaint request to have been a records request.

any records she believes are inaccurate to be amended following the procedures under WAC 392-172A-05215.

Districts must permit parents to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an IEP, hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or FAPE to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made.

The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent to inspect and review records. The term “education records” does not include records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person.

Student A:

May 17, 2017 Records Request – The documentation in this complaint shows that on May 17, 2017, the Parent requested “any and all records” for Student A, and that on May 18, 2017, the District provided copies of some of Student A’s records. As stated above, a district must permit parents to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district, and the district must respond in no more than forty-five (45) calendar days after the request has been made. Here, the documentation in this complaint substantiates that the District failed to provide the Parent with Student A’s records which were maintained by the school nurse, but instead provided the Parent with these records in October 2017, once it discovered the error. This was more than forty-five calendar days of her May 17, 2017 request. According to the Parent, the District also did not provide copies of the Parent’s authorization for release of records and the guidance team record, but instead provided these records in October 2017. Additionally, the Parent alleged that she did not receive all correspondences between the Parent and school staff, and staff notes and emails. Not all records created by school/district personnel are considered educational records, and are therefore not required to be provided to parents. This would be true of notes created by school staff for their own personal purposes. Additionally, given that the District does not maintain all emails regarding a student, in a student’s cumulative record, it is likely that the failure to provide the Parent with all emails, was an oversight. In her complaint, the Parent alleged that due to the District’s failure to provide records, she was not able to make informed decisions, give informed consent, or meaningfully participate in meetings, and that she was not able to “access remedies”. The documentation and the information provided in this complaint do not support the Parent’s contention, as the Parent was already in possession of several of the documents the District failed to provide, such as prior correspondences between herself and district staff and a copy of the proposed Section 504 plan for the Student, which was kept in his school medical

record, and the Parent had previously viewed other documents, such as the authorization for release of records, which she had signed. Additionally, the Parent has provided no information to show that a lack of access to emails between staff members, impacted her participation rights under the IDEA and state regulations. Further, a parent can access any of the dispute resolution options provided under the IDEA and state regulations, at any time. There is no requirement that a parent provide documentation in order to do so.

October 2017 Records Request – In October 2017, the Parent requested Student A’s “entire file”, and the District promptly responded by providing records shortly thereafter. The Parent alleges that she did not receive copies of: staff notes or emails, correspondences between herself and District staff, copies of testing the Student completed for admission to the District’s highly capable program, documentation regarding initiating a Section 504 plan for Student A, and phone logs and meeting notes (with the exception of those from the elementary assistant director). If the District has not already done so, it will provide the Parent with either access to or copies of any of these records, which are in existence and meet the definition of an educational record. The District is not required to provide the Parent with copies of documents it has already provided.

November 2, 2017 Request to Review Testing – On November 2, 2017, the Parent requested to review Student B’s CLEF assessment and then expanded her request on November 14, to include all testing. In response, the District provided the Parent access on December 7, 2017, within forty-five calendar days of the request. Additionally, the District offered on multiple occasions to schedule additional times for the Parent to access and review the testing, when the Parent raised concerns that she did not have enough time on December 7, to review and process the documentation. While the Parent was upset that the District did not provide copies of the testing protocols as she requested, the IDEA and state regulations do not require the District to provide copies of records, but instead require that the District provide access to records. The District has substantiated that it followed procedures for responding to the Parent’s request to review Student A’s testing protocols.

January 22, 2018 Records Request – On January 22, 2018, the Parent requested all records referencing Student A, herself, and her husband, which included requests for staff emails. The District provided the Parent with copies of the requested records on March 5, 2018. However, according to the Parent’s reply to the District’s response to this complaint, the District did not provide the Parent with all requested emails. The District will work with the Parent to ensure she receives any additional emails she has not already received.

Student B:

May 17, 2017 Records Request – According to the Parent’s reply to this complaint, the District failed to fully respond to her May 17, 2017 request for Student B’s records because the records provided did not include information about Student B’s participation in a District learning assistance program (LAP) or “IRR’s”. The documentation in this complaint does not show that the Parent made a request for Student B’s records on May 17, 2017, but that the Parent instead made a request for Student A’s records. It is possible the Parent is referencing her earlier May

2017 request for Student B's records, which the District responded to on May 15, 2017. According to the District, the elementary school provided the Parent with a copy of Student B's cumulative file maintained by the school office. It is unclear from the documentation in this complaint if the District regularly maintains information about a student's participation in LAP or "IRR's" as part of a student's cumulative file. If this documentation is not regularly kept in a cumulative file, this may explain the oversight in not providing the Parent with this documentation. If the District has not already done so, it will provide the Parent access to all documentation regarding Student B's participation in LAP and "IRR".

December 8, 2017 Request to Review Testing – On December 8, 2017, the Parent requested to review Student B's testing results. The District school psychologist responded on December 9, 2017, stating that a meeting could be held after the District's winter break (December 18, 2017 – January 1, 2018). On January 11, 2018, the school psychologist emailed the Parent, asking that the Parent let her know when she would like to review Student B's testing protocols. The school psychologist then sent a follow up email, proposing to meet on January 16, 2018, to review the protocols. Based on the documentation and information provided in this complaint, the Parent did not respond to the school psychologist's January 11 or 12 emails. The District has substantiated that it followed procedures for responding to the Parent's December 8, 2017 request to review Student B's testing protocols. The Parent has the right to schedule an appointment to view the testing protocols during school business hours if she elects.

February 24, 2018 Records Request – The documentation in this complaint does not include a February 24, 2018 request for Student B's educational records. However, the District and the Parent both reference a February 24, 2018 records request and it is possible the parties consider the Parent's February 23, 2018 citizen complaint, which asked for access to copies of Student B's records, to have been a records request. In its response to this complaint, the District provided a list of records that were provided to the Parent on March 13, 2018, in response to her February 24, 2018 records request. In her reply to the District's response, the Parent states that she was not provided with Student B's records regarding participation in LAP and "IRR". As stated above, if the District has not already provided the Parent access to these records, it must do so. The Parent also stated that she did not receive documentation related to staff training regarding dyslexia, as well as all emails authored by District staff in regard to Student B. If it has not already done so, the District will provide the Parent access to these records. It is noted, however, that the District is not required to provide the Parent with multiple copies of documents it has already provided.

CORRECTIVE ACTIONS

By or before **May 21, 2018, June 1, 2018, and June 18, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **June 1, 2018**, the District will provide OSPI with documentation that it has either provided the Parent with copies of any records or access to any records for Student A and Student B, which it has not already provided. The District will review the Parent's reply to the District's response to

this complaint and correspond with the Parent to determine any records the Parent has not received copies of, or access to. The District is not required to modify or create any records as part of this corrective action.

DISTRICT SPECIFIC:

The District will develop written procedures addressing records requests to ensure that all requested records are provided to parents and/or adult students. The procedures will address coordination between school building office staff responsible for records, school nurses, the District special education office, and other District offices that maintain records, in order to ensure parents' request for records are responded to in its entirety. By **May 21, 2018**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by June 4, 2018 and provide additional dates for review, if needed. By **June 18, 2018**, the District will provide OSPI with documentation showing that the records procedures have been provided to all staff responsible for responding to records requests. This will include a roster of all staff members who are responsible for records requests, 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 April, 2018

Glenna L. 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.)