

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-41

PROCEDURAL HISTORY

On April 26, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) 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 Student's education.

On May 1, 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 May 3, 2018, OSPI received additional information from the Parent, alleging additional issues for investigation. OSPI reviewed the information and determined that the allegations were outside of the one-year period for investigation.

On May 4, 2018, OSPI notified the parties that the new issues raised by the Parent would not be a part of this investigation.

On May 23, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on May 24, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 6, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On June 22, 2018, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District requesting the same. On June 25, 2018, OSPI received the requested information from the District. OSPI forwarded this information to the Parent on June 26, 2018.

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

OVERVIEW

At the beginning of the 2017-2018 school year, the Student began attending a District elementary school and was in the fourth grade. On October 17, 2017, the Student's evaluation group met to discuss whether the Parent wanted to continue pursuing an independent educational evaluation (IEE) or if she preferred to have the District initiate a new evaluation of the Student. 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 the Student and the Parent provided consent on October 24, 2017. The District then completed assessments and reviewed existing data, and provided the Parent with a draft of the evaluation report in late November. The evaluation group was

scheduled to hold a meeting on December 5, 2017, to review the results of the evaluation and determine whether the Student was eligible for special education, but the Parent canceled the meeting. The District then attempted to schedule another meeting prior to December 15, 2017 when the evaluation was due, but the Parent did not agree to attend a meeting. On December 13, 2017, the District mailed the Parent a letter, stating that the Student was eligible for special education services in the areas of written expression and math calculation under the eligibility category of specific learning disability, but that the District would continue to try to meet with the Parent to allow the Parent to provide input. The District then attempted to set up a meeting with the Parent to discuss the evaluation results, but the Parent did not agree to meet until April 17, 2018. The Parent withdrew the Student from the District on March 30, 2018, and enrolled him in a private school.

The Parent alleged that the District failed to follow proper evaluation procedures in the fall of 2017. Specifically, the Parent alleged that the District conducted testing of the Student without first obtaining the Parent's consent. The Parent also alleged that the draft evaluation report improperly omitted information the Parent had provided to the District from outside examiners. The Parent further alleged that the District should have begun development and implementation of an individualized education program (IEP) earlier than it had. The Parent also alleged that the District did not consider her input in the evaluation process to a sufficient degree. The District denied the allegations.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on April 28, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUE

1. Did the District follow procedures for reevaluating the Student in October 2017, including obtaining informed consent from the Parent?

LEGAL STANDARDS

Review of Existing Data: As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. If the student's IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be eligible for special education services, and/or to determine the student's educational needs, the school district must notify the parents of that determination, the reasons for the determination, and the parents' right to request an assessment to determine whether the student continues to be eligible for

special education and/or determine the student's educational needs. 34 CFR §300.305; WAC 392-172A-03025. The evaluation group's review does not need to be conducted through a meeting but if a meeting is held, parents must be provided with notice and afforded an opportunity to participate. 34 CFR §§300.305(b) and 300.501(b); WACs 392-172A-03025(3) and 392-172A-05000(2).

Consent for Initial Evaluation: A district is required to obtain informed parental consent before conducting an initial evaluation of a student suspected of needing special education services. 34 CFR §300.300(a); WAC 392-172A-03000(1). Consent means that the parent: has been fully informed of all information relevant to the activity for which consent is sought in his or her native language, or other mode of communication; understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and understands that the granting of consent is voluntary and may be revoked at any time. 34 CFR §300.9; WAC 392-172A-01040(1). The District must make reasonable efforts to obtain parental consent and keep a record of its attempts. 34 CFR §300.300(a)(1)(iii); WAC 392-172A-03000(1)(c).

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must provide prior written notice to the parents of a student, in accordance with WAC 392-172A-05010, which describes any evaluation procedures the district proposes to conduct. A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not they are commonly linked to the disability category in which the student has been classified. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304; WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040. "There is no provision in the IDEA that gives a parent the right to dictate the specific areas that the public agency must assess as part of the comprehensive evaluation." *Letter to Unnerstall*, 68 IDELR 22 (Apr. 25, 2016). A district does not have to use tests reserved for specific medical diagnoses in order to comply with the IDEA's requirement that an evaluation be sufficiently comprehensive to assess a student in all suspected areas of need. In other words, the label assigned to a particular assessment is less important than the skill areas it evaluates. *See Avila v. Spokane School*, 71 IDELR 181 (9th Cir. 2018) (Wherein the court held that a district had properly evaluated a student for dyslexia and dysgraphia when it gave that student tests that "broadly assessed [the student] for reading fluency and fine motor skills aimed at detecting writing inefficiencies," even though the district had not utilized tests specifically designed to diagnose dyslexia and dysgraphia).

The evaluation must comply with the IDEA's procedural requirements. A group that includes qualified professionals selected by the district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, in order to determine if the student is eligible for special education and the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities. 34 CFR §300.304(b); WAC 392-172A-03020(2). A student will not receive special education and related services unless he or she is qualified for those services under one or more of the eligibility criteria established by WAC 392-172A-01035.

District Procedures for Specific Learning Disabilities: In addition to the evaluation procedures for determining whether students are eligible for special education, school districts must follow additional procedures for identifying whether a student has a specific learning disability. Each school district shall develop procedures for the identification of students with specific learning disabilities which may include the use of: (1) A severe discrepancy between intellectual ability and achievement; or (2) A process based on the student's response to scientific, research-based intervention; or (3) A combination of both within a school district, provided that the evaluation process used is the same for all students within the selected grades or buildings within the school district and is in accordance with district procedures. WAC 392-172A-03045.

Additional Members of the Evaluation Group: The determination of whether the student is eligible for special education services in the specific learning disability category shall be made by the student's parent and a group of qualified professionals which must include: (1) The student's general education classroom teacher; or (2) If the student does not have a general education classroom teacher, a general education classroom teacher qualified to teach a student of his or her age; or (3) For a student of less than school age, an individual qualified to teach a student of his or her age; and (4) At least one individual qualified to conduct individual diagnostic examinations of students, such as school psychologist, speech language pathologist, or remedial reading teacher. WAC 392-172A-03050.

Specific Learning Disability-Determination: The group described in WAC 392-172A-03050 may determine that a student has a specific learning disability if: (1) The student does not achieve adequately for the student's age or meet the state's grade level standards when provided with learning experiences and instruction appropriate for the student's age in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving. (2) The student does not make sufficient progress to meet age or state grade level standards in one or more of the areas identified in subsection (1) of this section when using a process based on the student's response to scientific, research-based intervention or the group finds that the student has a severe discrepancy between achievement and intellectual ability in one or more of the areas identified in subsection (1) of this section; and (b) When considering eligibility under (a) of this subsection, the group may also consider whether the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age,

state grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, and through review of existing data. (3) The group determines that its findings under subsection (2) of this section are not primarily the result of: a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency. (4) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider: data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel; and data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents. WAC 392-172A-03055.

Use of Discrepancy Tables for Determining Severe Discrepancy: If the school district uses a severe discrepancy model, it will use the OSPI's published discrepancy tables for the purpose of determining a severe discrepancy between intellectual ability and academic achievement. The tables are developed on the basis of a regressed standard score discrepancy method that includes: the reliability coefficient of the intellectual ability test; the reliability coefficient of the academic achievement test; and an appropriate correlation between the intellectual ability and the academic achievement tests. The regressed standard score discrepancy method is applied at a criterion level of 1.55. WAC 392-172A-03065

Method for Documenting Severe Discrepancy: (1) For the purposes of applying the severe discrepancy tables, the following scores shall be used: a total or full scale intellectual ability score; an academic achievement test score which can be converted into a standard score with a mean of one hundred and a standard deviation of fifteen; and a severe discrepancy between the student's intellectual ability and academic achievement in one or more of the areas addressed in WAC 392-172A-03055(1) shall be determined by applying the regressed standard score discrepancy method to the obtained intellectual ability and achievement test scores using the tables referenced above. Where the evaluation results do not appear to accurately represent the student's intellectual ability or where the discrepancy between the student's intellectual ability and academic achievement does not appear to be accurate upon application of the discrepancy tables, the evaluation group, described in WAC 392-172A-03050, may apply professional judgment in order to determine the presence of a specific learning disability. Data obtained from formal assessments, reviewing of existing data, assessments of student progress, observation of the student, and information gathered from all other evaluation processes for students being identified for a specific learning disability must be used when applying professional judgment to determine if a severe discrepancy exists. When applying professional judgment, the group shall document in a written narrative an explanation as to why the student has a severe discrepancy, including a description of all data used to make the determination through the use of professional judgment. WAC 392-172A-03070.

Observation of Students Suspected of Having a Specific Learning Disability: School districts must ensure that a student who is suspected of having a specific learning disability is observed in the

student's learning environment, including the general education classroom setting, to document the student's academic performance and behavior in the areas of difficulty. The evaluation group must: use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or have at least one member of the evaluation group conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and parental consent is obtained. In the case of a student of less than school age or out of school, a group member must observe the student in a learning environment appropriate for that student. WAC 392-172A-03075.

Specific Documentation for the Eligibility Determination of Students Suspected of Having Specific Learning Disabilities: In addition to the requirements for evaluation reports under WAC 392-172A-03035, for a student suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of: whether the student has a specific learning disability; the basis for making the determination, including an assurance that the determination has been made in accordance with WAC 392-172A-03040; the relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning; any educationally relevant medical findings; whether: (i) The student does not achieve adequately for the student's age or meet state grade level standards in one or more of the areas described in WAC 392-172A-03055(1); and (ii)(A) The student does not make sufficient progress to meet age or state grade level standards when using a process based on the student's response to scientific research-based interventions consistent with WAC 392-172A-03060; or (B) The student meets eligibility through a severe discrepancy model consistent with WAC 392-172A-03070; and (C) If used as part of the eligibility determination under (A) or (B) of this subsection, a discussion of the student's pattern of strengths and weaknesses in performance, achievement or both, relative to age, state grade level standards, or intellectual development. The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and if the student has participated in a process that assesses the student's response to scientific, research-based intervention: (i) The instructional strategies used and the student-centered data collected in accordance with the district's response to intervention procedures; and (ii) The documentation that the student's parents were notified about: (A) State and school district policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; (B) Strategies for increasing the student's rate of learning; and (C) The parents' right to request an evaluation. Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions. WAC 392-172A-03080.

Evaluation/Reevaluation Report: An evaluation report must be sufficient in scope to develop the student's IEP, and at a minimum should include: a statement of whether the student has a disability that meets the eligibility criteria under IDEA; a discussion of the assessments and review of data that supports the evaluation group's conclusions regarding eligibility, including any

additional information required under WAC 392-172A-03080 for students with specific learning disabilities; how the student's disability affects his or her involvement and progress in the general education curriculum, or for preschool children, in appropriate activities; the recommended special education and related services needed by the student; other information needed to develop the IEP; and, the date and signature of each professional member certifying that the report reflects his or her conclusion, or, a statement representing the professional member's conclusion if he or she disagrees with the report's conclusions. 34 CFR §300.305; WAC 392-172A-03035.

Parent Participation in Meetings: The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student. Each school district must provide notice consistent with WAC 392-172A-03100 (1) and (3) to ensure that parents of students eligible for special education have the opportunity to participate in meetings described in (a) of this subsection. A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. WAC 392-172A-05001. A school district must ensure that one or both of the parents of a student eligible for special education are afforded the opportunity to participate in meetings, including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend. The notification must indicate the purpose, time, and location of the meeting and who will be in attendance. WAC 392-172A-03100 (1) and (3). When a public agency is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP...the Supreme Court and the 9th Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit. *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance

in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. 34 CFR 300.503; WAC 392-172A-05010.

Prior written notice is any "written notice that meets the requirements of" WAC 392-172A-05010. In other words, prior written notice is not a form document; even if a document is not titled, "Prior Written Notice," if it meets the requirements of WAC 392-172A-05010, it can serve as prior written notice.

FINDINGS OF FACT

Background Facts

2016-2017 School Year

1. At the beginning of the 2016-2017 school year, the Student attended a District elementary school and was not eligible to receive special education services.
2. The Parent withdrew the Student from the District elementary school in November of 2016.
3. On or about January 27, 2017, a private evaluator conducted a neuropsychological evaluation of the Student. The private evaluation included the following assessments: Achenbach Child Behavior Checklist, Adaptive Behavior Assessment System, Beery-Buktenica Developmental Tests of Visual-Motor Integration, Behavior Rating Inventory of Executive Functions, Center for Epidemiological Studies Depression Scale for Children, Differential Ability Scales, Delis-Kaplan Executive Function System, Developmental Neuropsychological Assessment, Screen for Child Anxiety Related Disorders, Short Sensory Profile, Test of Everyday Attention for Children, Test of Problem Solving, Wechsler Intelligence Scale for Children, and Woodcock Johnson (WJ) Tests of Achievement.

The neuropsychological evaluation report noted that the Student:

demonstrated well-integrated deductive visual reasoning abilities and fluid analysis skills to produce scores that registered at or above the expected level for his age across tasks that required him to analyze the orientation of lines in relation to a target, construct patterns with blocks to match a visual image as quickly as possible, identify geometric

figures with rotational qualities in a visual array, draw geometric figures of increasing complexity...and identify shape combinations to match a provided example.

The neuropsychological evaluation report also noted that the Student: demonstrated appropriate proficiency with spatial analysis and mental rotation. [The Student] produced scores that commensurately registered at the expected level for his age across tasks that required him to identify a visual image that fit accurately in a larger matrix, identify number sequences within a pattern based on previous examples, select visual images within rows that shared conceptual commonalities, and identify combinations of shapes that were equal based.

Additionally, the neuropsychological evaluation included the following: [The Student] produced scores that registered at the expected level for his age across tasks that required him to read aloud words of increasing complexity, phonetically pronounce non-word segments, identify the appropriate word for cloze (i.e., fill the blank) format sentences of increasing complexity, and read passages of increasing complexity aloud...In contrast, he produced a below average score on the reading fluency subtest of the WJ, which required him to quickly assess the validity of simple sentences within a time limit.

The neuropsychological report stated that based on the results of the evaluation, the Student was diagnosed with the following: Attention Deficit Hyperactivity Disorder (ADHD), Anxiety Disorder, Developmental Motor Coordination Disorder, Specific Learning Disorder with Impairment in Reading, Specific Learning Disorder with Impairment in Writing [Dysgraphia], and Specific Learning Disorder with Impairment in Mathematics.

4. The Student was referred for an initial special education evaluation on February 14, 2017.¹
5. In April 2017, the District completed an initial evaluation of the Student and his evaluation group determined that he was not eligible for special education. The initial evaluation included assessments in the areas of:
 - Medical-Physical (observations from family members and diagnoses from private doctor)
 - General Education Teacher Report
 - Behavior (results from the Behavior Rating Inventory of Executive Function questionnaire, administered by a private doctor)
 - Cognitive (results from the Differential Ability Scales—Second Edition, administered by a private doctor)
 - Academic (results from the Woodcock-Johnson Tests of Achievement—Fourth Edition and the Kaufmann Test of Educational Achievement, Third Edition—both administered by private doctors)
 - Communication (results from the Oral and Written Language Scales—2nd Edition and the Clinical Evaluation of Language Fundamentals—4th Edition, administered by a speech language pathologist)

¹ This information is taken from the decision in SECC 18-20, which concerned the same Student.

- Motor (results from the Bruininks-Oseretsky Test of Motor Proficiency, administered by an occupational therapist)
6. The Parent then requested that the District pay for an independent educational evaluation (IEE) of the Student, because she disagreed with the District's eligibility determination. The District agreed to pay for an IEE.
 7. Based on the documentation in this complaint, the Parent reenrolled the Student in the District elementary school in May of 2017.
 8. On May 24, 2017, the Student's evaluation group, including the Parent, met to discuss revising the Student's evaluation to include assessments in the area of social/emotional and to conduct an observation, because there were concerns regarding the Student'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 the Student's evaluation group would reconvene when the IEE was completed.²

Summer 2017

9. On June 20, 2017, the school nurse emailed the Parent a copy of a proposed Section 504 plan for the Student from April 2017. Based on the documentation, the Parent did not agree with the proposed plan.
10. In August of 2017, the Parent had a private evaluator administer the Wechsler Individual Achievement Test 3rd Edition (WIAT-III) to the Student.

2017-2018 School Year

11. The District's 2017-2018 school year started on September 6, 2017.
12. At the beginning of the 2017-2018 school year, the Student began attending a District elementary school and was in the fourth grade.
13. On September 7, 2017, the Parent was given a "Summary of Treatment Report" by the Student's private speech and hearing specialist. The Parent subsequently provided this document to the District.
14. On September 28, 2017, the Parent emailed the Student's fourth grade general education teacher, stating that the Student had dyslexia.

² This information is taken from the decision in SECC 18-20, which concerned the same Student.

15. On October 17, 2017, the Parent emailed the Student's fourth grade teacher, stating that she had spoken with District personnel about the Student "possibly being dyslexic."
16. Also on October 17, 2017, the Student's evaluation group met to discuss whether the Parent wanted to continue pursuing an IEE or if she preferred to have a District assessment initiated. At the meeting, the Parent shared with the District "their experiences [that] summer in talking with private providers." 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 the Student.
17. During the October 17, 2017 meeting, the Parent did not disclose that the Student had taken the WIAT-III in August of 2017, because she "didn't anticipate [the District] doing a standardized test."
18. Also on October 17, 2017, the District issued a prior written notice, proposing to discontinue the IEE process. The prior written notice included the following statement: "The evaluation team is going to initiate a district evaluation. We are going to consider additional academic testing focused on fluency, math skill development, rate of learning and potential dyslexia. Parents report that the student has a diagnosis of anxiety, and the team will consider this in the evaluation as well." The notice also stated that the Parent had provided the District with the Student's "work samples," as well as a letter from the Student's private doctor.
19. Also on October 17, 2017, the Parent emailed the school psychologist, emphasizing that she wanted the Student to be evaluated for dyslexia. In a later email on October 17, 2017, the Parent stated that she had found the answers to her dyslexia concerns in the prior written notice dated October 17, 2017.
20. Also on October 17, 2017, the District provided the Parent with a consent form for the Student's evaluation. The consent form stated that the District recommended that the Student be assessed in the following areas: medical-physical, general education, academic, social/emotional, and observation.
21. The documentation in this complaint included a document entitled, "Evaluation Instruments." Based on the documentation in this complaint, this appears to be part of the consent form provided to the Parent on October 17, 2017. This document lists different assessments available for specific areas. For example, under 'Cognitive Tests,' the following are listed: Wechsler Adult Intelligence Scale – Third Edition (WAIS III), Wechsler Intelligence Scale for Children – Fourth Edition (WISC – IV), Leiter International Performance Scale – Revised [Visualization & Reasoning Batter], Developmental Assessment of Young Children [Cognitive Subtest], Differential Ability Scales – 2nd Edition (Early Years), Differential Ability Scales – Second Edition (DAS – II), and Stanford Binet Intelligence Scales 5th Edition (SB – 5). From the record, it is not clear if, and/or when, the Parent received the "Evaluation Instruments" document. The "Evaluation Instruments" document does not include any markings indicating that certain assessments had been selected for the Student. The "Evaluation Instruments" document includes the following two tests: Test of Visual Perceptual Skills 3rd Edition and Language Processing Test, Revised (LPT-R).

22. On October 18, 2017, the Parent asked the school psychologist why the “social-emotional” box on the consent form had been checked. The school psychologist stated that it was checked to account “for the information that you provided to the district about [Student’s] anxiety.” The school psychologist continued, “As a team, I thought you did not want us to complete any additional assessments regarding [anxiety], it would be merely a record review. Let me know if you have changed your mind.” The Parent responded, stating that she “had not changed [her] mind.”

23. Also on October 18, 2017, the school psychologist sent the Parent a second email, stating:

I believe we discussed completing another achievement test (academic) to help us determine rate of learning, since we will now have 3 data points Winter 2017, Spring 2017, and Fall of 2017. We did not mark ‘cognitive,’ or specifically reading, math, writing cognitive—focusing on one particular area due to [Student] has been given a full WISC-V earlier this year, which cannot be given again within a year time line, as your outside practitioner mentioned.

On October 20, 2017, the school psychologist emailed the director of secondary special education (secondary director), stating “I know we had mentioned at [Student] looking into Dyslexia Screeners. I did not know if you had any specific suggestions. I have been looking at this screener and I wanted to see what you thought?” The secondary director replied, “I would hold off on ordering any screeners rights now. This is part of a bigger conversation happening in our district and I don’t want to put our school psychs into the mix right yet.”

24. On October 24, 2017, the Parent signed consent for the District to conduct a new initial evaluation of the Student. On the consent form, the Parent “suggest[ed] the following areas...be considered in assessing [her] child: (1) spelling; and (2) written expression.”

25. On October 24, 2017, the District issued a prior written notice, proposing to initiate an evaluation of the Student. The notice stated “Based upon team meeting, the team would like to gather additional data to help determine if [the Student] is eligible and in need of special education.” The notice also contained the following statement: “A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows: historical academic records, previous assessments, curriculum based measures, feedback for [*sic*] parents and teacher.” The notice also contained the following statement:

Any other factors that are relevant to the action: [Student] might miss some time with his general education peers to complete additional assessments. In addition, due to a recent comprehensive assessment being completed with [*sic*] the last calendar year, additional standardized testing may not be required a part of this initial evaluation to determine eligibility.

26. On October 24, 2017, Parent agreed to meet with the District on December 5, 2017, to discuss the Student’s eligibility for special education and related services.

27. On October 30, 2017, the District conducted an observation of the Student in his math class. According to the observation notes, the Student was able to understand and respond appropriately to the teacher’s directives.

28. On October 31, 2017, the Parent emailed the school psychologist, explaining that “we have a family history of dyslexia.” The school psychologist responded, stating, “I will make sure to place in the report there is a family history [of dyslexia].” The school psychologist further stated:

In [the January 2017 neuropsychologist’s] report (page 11) where the diagnoses are listed, it does not mention specifically dyslexia. As a team we are fine moving forward without a formal diagnosis of Dyslexia from an outside provider. I just thought you mentioned you had something stating [Student] is an individual that has Dyslexia...Please know also, I am not a medical professional and I cannot diagnose Dyslexia. We can only explain characteristics/tendencies of Dyslexia within our evaluation based upon our assessments.

The Parent replied that the Student had been diagnosed with anxiety by a neuropsychologist, and that the Student was currently receiving treatment for anxiety from a mental health counselor.

29. On November 2, 2017, the school psychologist emailed the Parent, stating that if the Student’s private SLP had “a medical diagnosis of dyslexia and/or if there is any report to go along with that diagnosis, that would be helpful.” The psychologist stated, “as a team, we are looking to gather a full picture of [Student] so whatever information you are willing to provide would be extremely helpful in putting together our evaluation.”

30. On November 9, 2017, the Parent emailed the school psychologist and again highlighted the Student’s anxiety issues—pointing to a specific portion of the neuropsychologist’s report where the anxiety issues were discussed. The Parent also confirmed that she had “dropped off some [speech language pathologist] reports.” On November 13, 2017, the school psychologist responded, stating, “I will pass [this] along to the team regarding [the Student].”

31. Throughout November 2017, the Parent and the District coordinated with one another to ensure the evaluation report reflected accurate information concerning the Student’s vision and hearing.

32. On or about November 13, 2017, the school psychologist administered the WIAT-III to the Student. As described in the District’s documentation, the WIAT-III “is an individually administered clinical instrument designed to measure the achievement of students who are in grades prekindergarten through 12, or ages 4 years, 0 months through 19 years, 11 months. The WIAT III consists of 16 subtests used to evaluate listening, speaking, reading, writing, and mathematics skills.” The District’s documentation also lists all 16 subtests of the WIAT-III and explains the grading scheme for the test. As detailed in the draft evaluation report, the Student did not take the writing portion of the WIAT-III on November 13, 2017, “because he was adamant that he had already completed these subtests with another practitioner.” The results of the WIAT-III showed that the Student had: an average score in ‘Oral Language,’ an average score in ‘Total Reading,’ an average score in ‘Basic Reading,’ an average score in Reading Comprehension and Fluency,’ an average score in ‘Mathematics,’ and an average score in ‘Math Fluency.’

33. On or about November 14, 2017, the school nurse emailed the Parent to obtain information for the “Medical-Physical” portion of the Student’s evaluation. The school nurse asked, “Has anything health wise changed as far as sleeping or eating habits? She included that [Student] is currently not on any medications, and is receiving OT, speech therapy, and counseling once a week. Is that all still relevant?” The Parent responded, stating, “Everything is the same except [Student] is not currently receiving OT services.”
34. On November 14, 2017, the Parent emailed the school psychologist, stating, “[Student] called from school today crying over testing. The whole reason we didn’t go get him tested was anxiety. I wanted you to look at spelling and writing academically. What testing is being done? We would have opted for an IEE if more testing was to be done.”
35. According to the Parent’s complaint, it was her understanding that the evaluation team would look at “dyslexia (language based learning disorder) and its related literacy impacts (writing and spelling), a rapid naming test, and they said they would use curriculum based measures and previous testing to look at math.” The Parent did not expect that the District would conduct standardized testing as part of its evaluation of the Student.
36. Also on November 14, 2017, in response to the Parent’s questions concerning the evaluation process, the school psychologist emailed the Parent, stating, “We agreed...to complete a records review over all the data provided but specifically gather additional data in general education (curriculum based measures—[Student’s] academic work compared to his same age peers) Observation (me observing him in the classroom setting), and Academics (completing another achievement test).”
37. On November 15, 2017, the Parent emailed the school psychologist, stating, “Also as far as achievement testing, how would that even be a reflection on how he is performing in a general educating setting?” In response, the school psychologist explained to the Parent that “Per the PWN (prior written notice) the team agreed that we would preform [sic] a rate of learning, due to the extensive testing [Student] has already been exposed too. We agreed as a team to accomplish this by completing an additional achievement test.”
38. On November 16, 2017, the Parent emailed the school psychologist, stating that the Student was having difficulty understanding his math teacher. In particular, the Parent relayed, “[Student’s] been saying that his teacher sounds like “Peanuts” the cartoon ‘waa waa waa’ during math. He isn’t saying this to be rude but as a literal explanation of what it’s like for him.” In response to this email, on November 17, 2017, the school psychologist stated, “The team agrees that [Student] demonstrates the characteristics of a student with ADHD as [the January 2017 neuropsychologist’s] report suggested.” According to the Parent’s complaint, the Parent felt that this reply was not responsive to her concerns, which the Parent viewed as being related to the Student’s potential challenges with auditory processing.
39. On November 17, 2017, the Parent emailed the school psychologist, “Could he be having a hard time integrating verbal and visual information?” The Parent then sent a second email, asking, “Or something with auditory processing?”

40. On or about November 17, 2017, the District utilized the Social Skills Improvement System (SSIS) in evaluating the Student. According to the District's documentation, the SSIS: Is an integrated system designed to facilitate the identification and classification of prosocial and problem behaviors and to aid in the design of intervention plans. The SSIS Rating Scales proved [sic] a broad assessment of a student's social behaviors, behaviors that can affect teacher-student relations, peer acceptance, and academic performance. The SIS Rating Scales have three forms, Teacher Form, Parent Form, and Self-Report form. The teacher form summarizes student performance across three domains; Social Skills, Problem Behaviors, and Academic Competence. The Parent Form and Self-Report Form summarize student performance across two domains; Social Skills and Problem Behaviors.

The documentation in this complaint shows that only the Teacher Form was utilized in the Student's evaluation.

41. On November 19, 2017, the Parent emailed the school psychologist, stating, "I'm sorry I felt blindsided by more testing. I thought they would look at how he is doing academically in class not give him more tests." The Parent later sent a second email, stating, "I have a PWN for 10/17...[it] states that the plan is to use the following to see if [Student] is eligible for services: historical academic records, previous assessments, curriculum based measures, feedback from parents. We were not aware of any tests being done other than a rapid naming test and dyslexia."

42. On November 20, 2017, the Parent again emailed the school psychologist, stating: We did not agree to more testing...we expressed that we did not want to put [Student] through more testing unnecessarily because of test anxiety. It was clearly stated at the Initial [sic] meeting that we would continue with [the independent educational evaluation] if the district needed more testing...The district told us they would look at previous records and curriculum measures. The district said more testing was not necessary [sic]. It lacks logic to do more testing when the reason for taking this route is that he's already had extensive testing and it causes anxiety."

In response, the school psychologist stated, "[A]s a team, we agreed that we would just review data already collected concerning the characteristics of dyslexia, due to your concern about [Student's] test anxiety that you expressed through your emails during the week of 13-17th of November." In response, the Parent ordered the school psychologist to "not do anymore testing on my child without my knowledge or consent."

43. On November 21, 2017, the Parent emailed the school psychologist, stating: Since we are doing more testing, I would like to add cognitive as an area of concern. I don't see how we can look at academics and measure his ability to perform in the general education setting without having an accurate understanding of his cognitive ability. I would like to know what the plan is for that testing and exactly what tests will be performed.

Later that same day, the Parent emailed the school psychologist “If you want cognitive testing fine, don’t consider it a request. We are giving you the option.”

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

45. On November 27, 2017, the Student’s fourth grade teacher observed the Student in his classroom as part of the Student’s evaluation. According to the fourth grade teacher’s observation notes, the Student was able to “participate...appropriately in class” and “follow...classroom rules.”

46. On November 28, 2017, the District provided the Parent with a draft copy of the Student’s evaluation report via email. The November 2017 evaluation report included information regarding the following areas:

- Medical-Physical (observation from the Parent and diagnoses from private doctors)
- General Education Teacher Report (curriculum-based measures and observations related to math, reading, and spelling, gathered throughout the fall of 2017)
- Social/Emotional (results from the SSIS and Adaptive Behavioral Assessment System (ABAS-3)³)
- Behavior (results from the Behavior Rating Inventory of Executive Function (BRIEF)⁴, administered on or about January 27, 2017, by the neuropsychologist)
- Cognitive (results from the Differential Ability Scales-Second Edition (DAS-II)⁵, administered on or January 27, 2017, by the neuropsychologist)
- Academic (results from the WIAT-III, the Woodcock-Johnson Tests of Achievement – Fourth Edition (WJ-IV ACH)⁶, and the Kaufmann Test of Educational Achievement – Third Edition (KTEA-3)⁷)⁸
- Student Observation (data from an October 30, 2017, visit to the Student’s general education math class, which includes the following: “[Student] was only on task when teacher was within close proximity of [Student].”)

³ The ABAS-3 is a “comprehensive assessment of personal and social sufficiency for students aged 5-21 years in school and structured care settings.”

⁴ The BRIEF is “designed to provide a better understanding of a child’s self-control and problem-solving skills by measuring eight aspects of executive functioning.”

⁵ The DAS-II “is an individually administered clinical instrument designed for assessing the cognitive abilities of children and adolescents from ages 2 years 6 months through 17 years 11 months.”

⁶ The WJ-IV AHC is “designed to assess a variety of academic skills including word reading and comprehension...and written expression.”

⁷ The KTEA-3 is “an individually administered test designed to assess a variety of academic skills including word reading, reading comprehension and fluency...and written expression.”

⁸ The WJ-IV AHC was administered by the neuropsychologist on or about January 27, 2017. The KTEA-3 was administered on April 5, 2017.

The November 2017 evaluation report also includes “a summary chart of the [WIAT-III] assessment scores.”

47. Based on the documentation in this complaint, sometime between mid-November and early December of 2017, the Parent first informed the District that a private evaluator had given the Student the WIAT-III in August of 2017. The Parent did not provide a copy of the August 2017 assessment results at that time.
48. On December 1, 2017, the school nurse administered a vision and hearing screening for the Student, and no issues were found.
49. On December 3, 2017, the Parent emailed the District, saying, “[December 5] will not work for us. We have a schedule conflict and this appointment was scheduled months ago.”⁹
50. Also on December 5, 2017, the Parent emailed the school psychologist, providing the following feedback on the draft evaluation report: “I would like to clarify that [Student’s private doctor] did not diagnose general anxiety disorder as stated in the evaluation draft. He assessed [Student] for ADHD. He reviewed [the neuropsychologist’s] report and that is where the general anxiety diagnosis came from.” In response, the District “updated that sentence to reflect this more detailed information.”
51. On December 5, 2017, the school psychologist emailed the Parent, “I am attaching a prior written notice, explaining that the team would like to meet with you, because we are considering [eligibility under the category of specific learning disability] for [the Student] and all members of the team [require] a chance to review the report.” The attached prior written notice proposed to reschedule an evaluation feedback meeting. The notice stated that:
Team attempted to meet to review [the Student’s] evaluation report, that was sent to parents on November 28th for review. Parent was unable to attend the schedule[d] time on December 5th 2017. Due to the team considering specific learning disability for eligibility for special education, the parents need to be present. Team has requested another meeting time for Thursday, December 7th at 9:30 am.
52. On December 7, 2017, the District issued a prior written notice, which stated:
Team has made multiple attempts via phone and email to arrange meeting to discuss [Student’s] evaluation report. In addition parent had requested to view previous assessment[s] protocols to help in understanding [the Student’s] strengths and weaknesses. Parent will attend a meeting on December 7 at 10:45 am, to review evaluation report...and look at previous assessments.

The notice also stated that “based upon the state regulation, the team would like to have the evaluation summary reviewed by all members of the team by December 15, 2017.”

53. Based on the documentation in this complaint, an eligibility meeting did not occur on December 7, 2017. The District then issued another prior written notice, which stated that

⁹ The District reminded the Parent of this scheduled meeting on at least two occasions prior to December 5, 2017.

the Parent came to review protocols from previous evaluations, and that the Parent requested not to review the evaluation report because the Student's father was not present. The notice also stated that the parents would communicate with the team when they wanted to review the evaluation report. "Parent[s] report that they have provided a schedule for availability. Monday – Wednesday after 4:15."

54. According to the Parent's complaint, the District contacted her on the morning of December 7, 2017 to say that a meeting had been scheduled that day, and that this was not enough notice for the Student's father to take time off work.
55. From December 7-13, 2017, the District offered three potential dates to meet with the Parent to review the draft evaluation report before winter break. The Parent, though, was unable to attend any of the proposed meeting times.
56. On December 13, 2017, the District mailed the Parent a letter, stating that "[Student] is eligible for special education services in the areas of written expression and math calculation (retrieval of mathematical facts and the application of) under the eligibility category of...SLD." The December 13, 2017 letter also stated the following: "[T]he IEP team will begin drafting a proposed initial IEP for your review as part of this process, however, no action will take place in regards to special education services until you are able to participate fulling in reviewing the evaluation report with members of the evaluation team."
57. The District was on break December 18, 2017 through January 1, 2018.
58. On December 19, 2017, the Student was administered roughly 16 audiology-related tests by a private audiologist. According to the private audiology report, with the following two exceptions, all test results were within the normal or expected range: (a) "The Dichotic Digits test was below normal for the right ear and normal in the left;" and (b) "The Dichotic Sentence Identification test was below normal in the left ear, and normal in the right." The "testing revealed an auditory processing disorder in the form of auditory integration deficit." The resulting audiology report was provided to the District on January 2, 2018.
59. On December 26, 2017, the Parent emailed the school nurse, asking if it was still possible to add medical diagnoses to the evaluation. The Parent stated that the Student had a central auditory processing disorder. The school nurse responded, "I can add the diagnosis if the Physician [*sic*] provides it in writing."
60. On December 31, 2017, the Parent emailed the school psychologist, inquiring why the WIAT-III was chosen over other available assessments, who chose the WIAT-III and why, and whether she had previously received all pertinent records concerning the Student. The Parent also stated that she had never "asked for testing to stop," as was described in the draft evaluation report, and that this needed to be corrected.
61. On January 2, 2018, the Parent emailed the assistant director of elementary special instruction (elementary assistant director), stating that she was frustrated the Student had

not been evaluated for dyslexia. The Parent explained that the Student's dyslexia made the Student's "reading accuracy and comprehension...flawed because of his [in]ability to decode." The Parent also stated that "dyslexia affects all academic areas." The Parent further stated:

- "I plan on writing a dissenting opinion so I do not see the need for a facilitated meeting."¹⁰
- "Information from the speech pathologist and pediatric neuropsychologist is omitted."

62. On January 2, 2018, the Parent dropped off the Student's private auditory evaluation report with the school nurse. According to the Parent's complaint, the Parent intended that the private auditory evaluation report be used in the District's evaluation of the Student.
63. On January 3, 2018, the elementary assistant director emailed the Parent, stating, "I feel strongly that we should [meet], so that we can discuss the evaluation and evaluation process in depth with the whole team present."
64. On January 5, 2018, the Parent emailed the assistant superintendent, stating, "I would...like to make sure this is not the [evaluation] feedback meeting as my husband should have a right to go to that."
65. On January 6, 2018, the assistant superintendent emailed the Parent, stating, "I understand. [sic] The meeting would be to answer questions and provide clarity regarding concerns that you have."
66. On January 8, 2018, the District proposed that a "facilitated meeting for the evaluation, followed immediately by an IEP meeting" take place on January 16, 2018.
67. A meeting took place on or about January 10, 2018, to go over the Parent's general questions and concerns.
68. On January 11, 2018, the Parent emailed the assistant superintendent, requesting clarification on the special education eligibility process. Later that same day, the District's assistant superintendent for special services (assistant superintendent) emailed the Parent a summary of the special education eligibility process, outlining that in order to be eligible, "the student has to have a disability (first prong) which results in an adverse educational impact (second prong) which necessitates the need for special education...as outlined in the IEP (third prong)."
69. On January 11 and January 12, 2018, the Parent and the elementary assistant director exchanged multiple emails regarding the Parent's request to see the Student's testing protocols. The elementary assistant director stated 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 Parent expressed that she wanted to have copies of the testing protocols.

¹⁰ The parties to this complaint referred to the District's proposal for a joint evaluation review meeting and IEP development meeting as a "facilitated meeting."

The elementary assistant director provided information that the District did not provide copies of a student's test protocols due to test publisher and related copyright restrictions.

70. On January 16, 2018, the Parent emailed the assistant superintendent, confirming that she had canceled the facilitated meeting scheduled for that day, noting, "I did postpone it. I do plan to reschedule when I have access to all of [Student's] testing records and data."
71. On January 16, 2018, the Parent emailed the assistant superintendent, stating, "[The Student's] pediatric neuropsychologist stated [Student] has had a SLD in reading fluency. His speech pathologist has stated he has a specific reading disorder. I am wondering why this is not being acknowledged?" In this same email, the Parent again expressed her frustration that dyslexia was not examined as part of the Student's evaluation. Later that afternoon, the assistant superintendent responded, "I recall we talked about some of these things when we met...last week, but I gather you are still not clear on a number of factors surrounding the evaluation process. All of the points you raise below would be great ones to bring up at the evaluation meeting when all members of the evaluation group are present."
72. On January 17, 2018 and January 19, 2018, the District's attorney and the Parent exchanged several emails regarding the Parent's request for copies of the Student's test protocols.¹¹
73. 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 the Student 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.
74. 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 [the Student's] education record and testing to read and learn about [the Student's] current condition without distraction."¹²
75. On February 2, 2018, the District issued a prior written notice, refusing to provide the Parent with copies of the Student's testing protocols. The notice indicated that the District was

¹¹ This information is taken from the decision in SECC 18-20, which concerned the same Student.

¹² This information is taken from the decision in SECC 18-20, which concerned the same Student.

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 [the Student'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 the Student's test protocols, she could contact the elementary assistant director.

76. On February 6, 2018, the Parent emailed the District special education department office coordinator regarding her requests for records. In relevant part, 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."
77. On February 7-12, 2018, the Parent exchanged emails with the District staff regarding questions she had about the Student's evaluation and access to his testing from the spring of 2017. District staff offered to meet with the Parent on February 16, 2018, to clarify and answer the Parent's questions, but the Parent declined to meet, stating that she preferred an email response to her questions.
78. The District was on break February 19-23, 2018.
79. On February 23, 2018, the Parent filed SECC 18-20, alleging that the District failed to follow procedures for responding to her request for the Student's educational records, by either not responding to her requests or not providing her copies of all requested records.
80. On March 26, 2018, the Parent emailed the assistant superintendent, stating, "I do not see where these regulations say that the parents will have to attend an evaluation meeting before the district will draft an IEP." In response, the assistant superintendent stated that WACs 392-172A-03040 and WAC 392-172A-03050 required the evaluation group, which includes the Parent, to meet when eligibility under the category of specific learning disability was being considered.
81. The Parent withdrew the Student from the District on March 30, 2018. (The Student currently attends a private school).
82. On or about April 4, 2018, the Parent requested to waive the evaluation feedback meeting. In a prior written notice, dated April 4, 2018, the District rejected this option, stating, "Because the eligibility category being considered is [SLD], parent participation in the evaluation is required, and the team cannot meet without the parent. The evaluation informs

the IEP, so the evaluation process must be completed prior to developing an IEP.” According to the District’s response to this complaint, it was the District’s understanding that since the Student was being considered for eligibility under the category of specific learning disability, before an IEP could be developed and implemented, the Parent needed to meet with the other members of the evaluation group and “sign” the report.

83. On April 17, 2018, the evaluation feedback meeting occurred. The following people were present at this meeting: parents, school psychologist, school principal, and the Student’s former fourth grade general education teacher. During the meeting, the Parent was provided with a revised draft evaluation report. The Parent did not sign the April 2018 evaluation report and stated that she would be providing a dissenting opinion. In her reply to the District’s response, the Parent stated, “I did not want to sign the document as I was not given meaningful participation as a ‘team member’ and I was conflicted on how to answer whether it reflected my opinion.” The following individuals signed the April 2018 draft evaluation report: school psychologist, general education teacher, and District representative.

84. With a few exceptions, the November 2017 draft evaluation report and the April 2018 evaluation summary are identical. However, the April 2018 evaluation report contained the following components that were not present in the November 2017 draft evaluation report:

- Complete vision and hearing information (added on December 1, 2017).
- A scanned copy of a single page from the January 2017 neuropsychological evaluation of Student.
- An evaluation summary.
- A Learning Disability Addendum documenting that the Student had a severe discrepancy in the areas of written expression and math calculation.
- A reference to Page 11 of a report by the private neuropsychologist in the “Medical-Physical Findings: Health and Developmental History” section.

85. The following are excerpts from the April 2018 evaluation report:

- “The team agrees not to complete the academic probes into characteristics of dyslexia.”
- “The findings of this evaluation are not primarily due to a lack of instruction in reading, math, or limited English proficiency.”
- “Consideration of Test Bias: This evaluation was administered with the understanding of test limitations which may result in bias because of cultural, economic, environmental or behavioral factors. However, such limitations have been considered and determined not to be a significant factor in current eligibility determination.”
- “There does not appear to be any environmental factor’s impacting [Student’s] performance.”

86. The April 2018 draft evaluation report contains the following statement of eligibility: “[Student] meets eligibility as a student with a Specific Learning Disability in the areas of Math Calculation and Written Expression.” It also discusses the WIAT-III and KTEA test results that supported this finding. The evaluation report also stated that the Student’s disability “adversely impact[ed] his ability to progress in the general education curriculum.” The April 2018 evaluation report recommended specially designed instruction in the areas of written language and math. In the area of writing, the evaluation report recommended the

instruction “to develop and strengthen...planning, revising, and editing.” In the area of math, the evaluation recommended instruction to “work towards using multiplication and division within 100 to solve word problems in situations involving equal groups, arrays, and measurement quantities.” The April 2018 draft evaluation report incorporates the cognitive assessments conducted by the neuropsychologist on January 27, 2017.

87. On April 19, 2018, the Parent met with the District assistant superintendent for special services to review testing protocols.
88. On April 28, 2018, the Parent requested an IEE.
89. On May 14, 2018, the District approved the Parent’s request for an IEE, and provided the Parent with a letter explaining the IEE process, an authorization form for release of records, a prior written notice concerning the decision, and the Procedural Safeguards Notice.
90. As of May 23, 2018, the District had not received copies of the Student’s WIAT-III test results from August 2017, despite requesting these from the Parent.
91. As of May 23, 2018, the District had not received the Parent’s dissenting opinion to the April 2018 draft evaluation report.

CONCLUSIONS

Consent for Evaluation: The Parent alleged that the District did not inform her that it was going to conduct the WIAT-III test as part of its evaluation of the Student, and therefore, she was not able to provide informed consent for the evaluation.

A district is required to obtain informed parental consent before conducting an initial evaluation of a student. Consent means that the parent: has been fully informed of all information relevant to the activity for which consent is sought; understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and understands that the granting of consent is voluntary and may be revoked at any time. Additionally, a district must provide prior written notice to the parents that describes any evaluation procedures the district proposes to conduct.

Here, the District’s October 17, 2017 prior written notice stated that the District might conduct additional academic testing: “We are going to consider additional academic testing focused on fluency, math skill development, rate of learning and potential dyslexia.” The consent form, also given to the Parent on October 17, 2017, stated that the Student will be assessed in various areas, including academics, but it did not detail what, if any, tests will actually be administered to the Student. A document entitled, “Evaluation Instruments,” may have been provided to the Parent with the consent form. This document lists different evaluations available to test for various academic and developmental abilities. However, it did not include any markings indicating that certain assessments had been selected for the Student. Additionally, it did not contain descriptions of the various evaluation instruments. Ultimately, the District utilized two

evaluation procedures as part of its assessment of the Student—the Weschler Individual Achievement Test 3rd Edition (WIAT-III) and the Social Skills Improvement System (SSIS).

In sum, while the October 17, 2017 prior written notice stated that the District might conduct additional assessments during its evaluation of the Student, it did not describe those assessments. The District failed to following procedures for obtaining informed consent.

Timeliness of Evaluation Process and Necessity of Evaluation Meeting — The Parent alleged that the District did not complete the Student’s evaluation within required timelines.

A school district must fully evaluate the student and arrive at a decision regarding eligibility within thirty-five (35) school days after the date written consent has been provided to the district by the parent. The determination of whether the student is eligible for special education services in the specific learning disability category must be made by the student's parent and a group of qualified professionals, which must include: the student's general education classroom teacher and at least one individual qualified to conduct individual diagnostic examinations of students, such as school psychologist, speech language pathologist, or remedial reading teacher. When a district is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case, parental participation and a meeting timeline, courts have stressed that the vital importance of parental participation in meetings takes precedence.

In this case, the Parent signed consent for the District to conduct a new evaluation of the Student on October 24, 2017. Based on the District’s 2017-2018 calendar, December 15, 2017 is thirty-five school days after October 24, 2017.

Also on October 24, 2017, the Parent agreed to attend an evaluation feedback/eligibility meeting on December 5, 2017. The District reminded the Parent of this scheduled meeting on at least two occasions prior to December 5, 2017. On December 3, 2017, the Parent emailed the District, stating, “[December 5] will not work for us. We have a schedule conflict and this appointment was scheduled months ago.” On December 5, 2017, the District and the Parent attempted to reschedule the evaluation review meeting for December 7, 2017. The Parent, along with the Student’s father, however, could not attend at this time either. From December 7, 2017 through December 13, 2017, the District offered three potential times to meet with the Parent before winter break, which began the week of Monday, December 18, 2017. The Parent was unable to attend any of the proposed meeting times. On December 13, 2017, in an attempt to meet the thirty-five day timeline, the District mailed the Parent a letter, stating that “[Student] is eligible for special education services in the areas of written expression and math calculation (retrieval of mathematical facts and the application of) under the eligibility category of...SLD”, but that it would continue to work with the Parent to schedule a meeting in order to allow for parent participation. The District then attempted on multiple occasions to schedule a meeting with the Parent over the course of the next few months, but the Parent would not agree to attend a meeting until April 17, 2018. While the District ultimately did not determine whether the Student was eligible for special education within thirty-five school days of receiving the Parent’s consent, the District has substantiated that it made good faith efforts to meet with the Parent to allow for

parent participation as required when determining whether a student has a specific learning disability.

Procedures for Conducting an Evaluation –

Utilizes Variety of Assessment Tools and Strategies — An evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about a student, including information provided by the parent. Additionally, evaluation materials should not be limited to merely those that are designed to provide a single general intelligence quotient. The documentation in this complaint supports the conclusion that the District used a variety of assessment tools and strategies. For example, the draft evaluations utilized the following assessment tools: observational data, curriculum-based data, the WIAT-III, the SSIS, and review of existing data, which included the results of the ABAS-3, the BRIEF, the DAS-II, the WJ-IV ACH, and the KTEA-3.

Sufficiently Comprehensive — The Parent alleged that the District should have administered a dyslexia-specific test to the Student. An evaluation must be sufficiently comprehensive to cover all areas of suspected disability. However, there is no provision in the IDEA that gives a parent the right to dictate the specific areas that the public agency must assess as part of the comprehensive evaluation. A school district is only required to conduct a particular assessment if it is needed to ascertain whether the child has a disability and the child’s educational needs. Further, a district does not have to use tests reserved for specific medical diagnoses in order to comply with the IDEA’s requirement that an evaluation be sufficiently comprehensive to assess a student in all suspected areas of need. The label assigned to a particular assessment is less important than the skill areas it evaluates. A student can be properly evaluated for dyslexia and dysgraphia when a student is broadly assessed for reading fluency and fine motor skills aimed at detecting writing inefficiencies, even though a district has not utilized tests specifically designed to diagnose dyslexia and dysgraphia.

The documentation in this complaint shows that the Student’s evaluation included information and several assessments that helped demonstrate the Student’s reading and writing abilities—the core skill sets impacted by dyslexia:¹³

- The reading portion of the WIAT-III.
 - Administered on or about November 13, 2017 by the school psychologist.
- Curriculum based measures and observations related to reading and spelling.
 - Gathered throughout the fall of 2017 by Student’s general education teacher.
- The WJ-IV AHC, which is “designed to assess a variety of academic skills including word reading and comprehension...and written expression.”
 - Administered on January 27, 2017 by a private neuropsychologist.

¹³ The International Dyslexia Association defines dyslexia as “a specific learning disability...characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities.” Similarly, the Yale Center for Dyslexia and Creativity states, “People with dyslexia have trouble matching the letters they see on the page with the sounds those letters and combinations of letters make. Dyslexic children...struggle to read fluently [and] spell words correctly.”

- The KTEA-3, which is “an individually administered test designed to assess a variety of academic skills including word reading, reading comprehension and fluency...and written expression.”
 - Administered on April 5, 2017 by an outside medical professional.
- Summary of treatment by a speech and hearing specialist.
 - Recorded on September 7, 2017.

In sum, the evaluation of the Student was sufficiently comprehensive to cover the characteristics of dyslexia. Additionally, it is noted that the Parent did not provide the District with documentation that the Student had been diagnosed with dyslexia, but instead that he had been diagnosed with a specific learning disorder with impairment in reading, writing [Dysgraphia], and mathematics, and that the District asked that the Parent provide any information she had regarding a dyslexia diagnosis so the District could consider it as part of the Student’s evaluation.

Duty to Assess Specific Areas — The Parent also suggests that the Student should have been given an assessment to determine whether the Student was able to properly synthesize auditory and visual information.

The IDEA requires a student to be assessed in all areas of suspected disability. The duty to assess is triggered when a district possesses direct knowledge that a student may have a disability. The duty to assess is also triggered when a parent shares their “informed suspicion”—usually based on the report of an independently-obtained outside evaluator—with a district.

The documentation in this complaint does not show that the District had clear knowledge that the Student had a suspected disability in the area of auditory and visual processing when it began conducting the Student’s evaluation in the fall of 2017, as the documentation does not show that the Parent raised these concerns in September or October 2017, and did not note these concerns on the consent form as she did other concerns about spelling and writing. While the Parent did later inform the District that the Student had trouble understanding his math teacher and suggested the Student could be having a hard time integrating verbal and visual information, this also was not clear information that the Student had an auditory or visual processing disorder. Additionally, there was other information that suggested that the Student’s auditory and visual processing were within normal limits. For example, multiple classroom observations did not report that the Student was having an issue with either visual or auditory processing. Similarly, the District administered a vision and hearing screen for the Student on December 1, 2017, and no issues were found. Perhaps most importantly, though, the January 2017 neuropsychological examination of the Student noted that the Student “demonstrated well-integrated deductive visual reasoning abilities and fluid analysis skills to produce scores that registered at or above the expected level for his age across tasks that required him to analyze the orientation of lines in relation to a target, construct patterns with blocks to match a visual image as quickly as possible, identify geometric figures with rotational qualities in a visual array, draw geometric figures of increasing complexity...and identify shape combinations to match a provided example.” The neuropsychological evaluation also noted that the Student “demonstrated appropriate proficiency with spatial analysis and mental rotation. [Student] produced scores that commensurately registered at the expected level for his age across tasks that required him to identify a visual image that fit accurately in a larger matrix, identify number sequences within a

pattern based on previous examples, select visual images within rows that shared conceptual commonalities, and identify combinations of shapes that were equal based.” Based on the information the District had available before and while it was conducting the Student’s evaluation, the District has substantiated that it followed procedures for conducting the Student’s fall 2017 evaluation in all areas of suspected disability. However, once the Parent provided the District with information from the Student’s December 2017 audiology report, the District should have considered whether the Student needed to be assessed in this area. The District will review the Student’s December 2017 audiology report before the beginning of the 2018-2019 school year, and determine if the Student needs to be further evaluated in this area.

Contents of Evaluation Report — An evaluation report must contain: (a) a statement of eligibility; (b) a discussion of the assessments that support the eligibility determination; (c) a statement of “how the student’s disability affects the student’s involvement and progress in the general education curriculum;” (d) the recommended special education and related services needed by the student; (e) other information needed to develop the IEP; and, (f) the date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion, or a separate statement if the evaluation report does not reflect his or her conclusion.

The Student’s April 2018 evaluation report contained the following statement of eligibility: “[Student] meets eligibility as a student with a Specific Learning Disability in the areas of Math Calculation and Written Expression.” It also discussed the WIAT-III and KTEA test results that supported said finding. The evaluation report also stated that this disability “adversely impact[s] his ability to progress in the general education curriculum.” The evaluation report also presents recommended special education services. For example, in the areas of writing, the evaluation recommended the Student receive specially designed instruction “to develop and strengthen...planning, revising, and editing.” In the area of math, the evaluation recommended the Student receive SDI to “work towards using multiplication and division within 100 to solve word problems in situations involving equal groups, arrays, and measurement quantities.” The following individuals signed the draft evaluation: school psychologist, general education teacher, and District representative.

Based on the documentation in this complaint, the evaluation report meets the requirements of WAC 392-172A-03035.

CORRECTIVE ACTIONS

By or before **August 10, 2018, September 10, 2018, and October 2, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Before the beginning of the 2018-2019 school year, the District will review the Student’s December 2017 audiology report, determine if the Student needs to be further evaluated in this area, and issue a prior written notice regarding its decision.

By **September 10, 2018**, the District will submit: 1) a copy of any meeting invitation; 2) a copy of any related prior written notices; and, 3) any other related documentation.

DISTRICT SPECIFIC:

By **September 30, 2018**, the District will ensure that the following personnel at the Student's elementary school receive written guidance regarding the requirements of WAC 392-172A-03000 (Consent), WAC 392-172A-03025 (Review of Existing Data), and WAC 392-172A-05010 (Prior Notice & Contents): special education administrators, the principal, and certified staff, including educational staff associates (ESAs). The guidance will include examples.

By **August 10, 2018**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by August 24, 2018.

By **October 2, 2018**, the District will submit documentation that all required staff received the guidance. This will include a roster of the following personnel at the Student's elementary school: special education administrators, the principal, and certified staff, including educational staff associates (ESAs). (This roster will allow OSPI to verify that all required staff received the guidance.)

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 June, 2018.

Glenna 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.)