

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-21**

### **PROCEDURAL HISTORY**

On February 24, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On February 28, 2022, 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 9, 2022 the District requested an extension of time to respond to the complaint. OSPI granted the extension to March 17 and 24, 2022.

On March 17 and 24, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on March 18 and 25, 2022. OSPI invited the Parent to reply.

On April 5, 2022, the Parent requested an extension of time to provide a reply to the District's response. OSPI granted the extension to April 14, 2022.

On April 13, 2022, the Parent requested an extension of time to provide a reply to the District's response. OSPI granted the extension in part to April 20, 2022.

On April 21, 2022, OSPI interviewed the Parent. The Parent requested an interview in lieu of a written reply. The Parent's advocate was also present for the interview.

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

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on February 25, 2021. 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 period.

### **ISSUE**

1. Did the District follow initial evaluation and eligibility procedures, including:
  - a. Completing an evaluation within 35 school days per WAC 392-172A-03005;
  - b. Determining eligibility as outlined in WAC 392-172A-03040;
  - c. Ensuring Parent input and participation in the evaluation; and,
  - d. Conducting a sufficiently comprehensive evaluation that addressed all areas of suspected disability?

## LEGAL STANDARDS

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 assess a student in all areas related to his 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 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. In conducting the evaluation, 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. 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.

Districts must also ensure that assessments and other evaluations are used for the purposes for which they are valid and reliable and are administered by trained and knowledgeable personnel. Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need, and must best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment accurately reflects the student's aptitude or achievement level rather than reflecting the student's impairment. 34 CFR §300.304(b); WAC 392-172A-03020(2). A student will not receive special education and related services unless he is qualified for those services under one or more of the eligibility criteria established by WAC 392-172A-01035.

Evaluation Timeline: Within thirty-five school days after consent has been received, a school district must assess a student in all areas related to his suspected disability. The timeline can be extended if agreed to by the parent and documented by the district, including specifying the reasons for extending the timeline. WAC 392-172A-03005.

Evaluation 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; how the student's disability affects his involvement and progress in the general education curriculum; 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.

An evaluation report interprets evaluation data to determine if a student is eligible for special education services, and if so, the student's needs. 34 CFR §300.305; WAC 392-172A-03035. The

report must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, the student's physical condition, the student's social and cultural background, and adaptive behavior. In completing the evaluation report, the school district must ensure that information from all of these sources is carefully considered. 34 CFR §300.305; WAC 392-172A-03040. The evaluation report must include documentation of the individual assessments of each professional member of the group who contributed to the report that indicates: the procedures and instruments that were used and the results obtained; any conclusions from observations of the student; and a statement of the apparent significance of the findings as related to the student's suspected disabilities and instructional program. 34 CFR §300.305; WAC 392-172A-03035.

Determination of Eligibility: Upon completion of the initial evaluation (assessments and other evaluation measures) a group of qualified professionals and the parent of the student determine whether the student is eligible for special education services and the educational needs of the student. A student must not be determined to be eligible for special education services if the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction. WAC 392-172A-03040.

Parent Participation: IDEA specifically provides that parents of children with disabilities have an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of a free appropriate public education (FAPE) to their child. Parents must be part of the groups that determine what additional data is needed as part of an evaluation of their child, their child's eligibility, and educational placement. 34 CFR §§300.304, 300.306(1), 300.501; WAC 392-172A-03020(2), WAC 392-172A-03040, WAC 392-172A-05000.

Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting the rights of students with disabilities. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the process. 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 9<sup>th</sup> 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).

## **FINDINGS OF FACT**

### **2020–2021 School Year**

1. At the start of the 2020–2021 school year, the Student attended a District elementary school and was not eligible for special education services. The Student attended school remotely. In December 2020, a 504 plan was developed and implemented for the Student.
2. In February 2021, the Parent obtained a private neuropsychological evaluation of the Student. The private evaluator conducted cognitive, academic, and behavior assessments: "Differential

Ability Scales, 2<sup>nd</sup> Edition" (DAS-II); "Woodcock-Johnson Test of Achievement, 4<sup>th</sup> Edition" (WJ-IV); "Behavior Rating Inventory of Executive Function, 2<sup>nd</sup> Edition" (BRIEF-2) parent questionnaire; "Child Behavior Checklist" (CBCL) parent questionnaire; and, "NICHQ Vanderbilt Assessment Scale", parent and teacher questionnaires. The evaluator also reviewed records and interviewed the Parent and the Student's current and previous year grade level teachers.

The private evaluation report noted the Student's cognitive and academic scores fell within average range, and while the Student had below average nonverbal reasoning ability, nothing indicated a learning disorder. The private evaluation report indicated that the Student had "deficits in virtually all areas of executive functioning," and had clinically significant scores in the areas of anxiety/depression, withdrawal/depression, and attention problems. The Student was also found to be in the "borderline clinical range" on somatic complaints, social problems, thought problems, and aggressive behavior. The Student's scores on affective problems and attention deficit/hyperactivity problems were in the clinically significant range as well.<sup>1</sup>

As part to the evaluation report, the Student's current teacher and previous teacher were noted as reporting the Student was shy, had difficulty initiating interactions, that new situations seemed hard, and that sometimes he had an emotional outburst when he gets an answer wrong. The previous teacher noted the Student was at grade level for reading and approaching grade level in math. Teacher scores did not indicate the Student met the criteria for ADHD or anxiety/depression.

The private evaluator diagnosed the Student with ADHD-inattentive type, mood disorder, and anxiety. The private evaluator stated that while the Student did not have a learning disability, the mental health concerns and ADHD were impacting his learning. The private evaluator also noted that the Student had behaviors that may be consistent with autism spectrum disorder and recommended further investigation, recommend the District evaluate the Student for special education, and recommended educational strategies.

3. On March 2, 2021, the Parent emailed the school psychologist to inform him of the Student's private evaluation, and in a separate email, provided the school psychologist with a letter from the private evaluator with the diagnoses.
4. On April 5, 2021, all elementary students in the District were given the option of returning to part-time in-person learning. The Parent elected to have the Student remain fully remote.
5. On May 3, 2021, the Parent met with District staff to discuss the data that had been collected and the team agreed to initiate an initial evaluation for special education services.

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<sup>1</sup> The evaluation report noted in the treatment history that the Student had been seen by clinics and physicians in 2020 and there were inconsistencies with respect to the attention deficit/hyperactivity disorder (ADHD) diagnosis: teacher scores did not meet the criteria for ADHD, Parent scores met the criteria, a doctor diagnosed the Student with ADHD, and a clinic diagnosed the Student with oppositional defiant disorder, ruling out ADHD and learning disorders.

6. On May 4, 2021, the District provided the Parent with prior written notice and the consent form for the evaluation. The school psychologist noted in his email to the Parent that an email response was sufficient for consent given the challenges presented by COVID-19.

The prior written notice, dated May 3, 2021, indicated that the consent form was provided to the Parent on May 4, 2021 and later that they amended the consent form "provided on 5/25 reflecting addition of Fine Motor based on parent request."

7. On May 6, 2021, the Parent emailed the school psychologist to ask for a meeting to discuss the evaluation with the special education team. She indicated that she wanted to "understand and discuss the evaluation areas with the team and know which assessments will be used for each proposed area of evaluation" before she signed consent. This meeting occurred on May 18, 2021.
8. On May 19, 2021, the Parent emailed the school psychologist and stated, "I am writing this email as my consent to move forward with [Student's] evaluation." The Parent also asked why the Student was not being evaluated in fine motor, adaptive/life skills, communication, listening comprehension, oral expression, and sensory concerns.

The school psychologist responded and stated, "thanks for replying with your consent." The school psychologist stated he would consult with the occupational therapist (OT) on sensory issues and would be in touch regarding scheduling the assessments for the evaluation.

9. On May 25, 2021, the Parent emailed the school psychologist and requested that fine motor and adaptive skills be added to the evaluation.

The school psychologist responded, noting adaptive would be addressed through social/behavior and that fine motor and sensory would be added. The school psychologist attached an updated consent form and updated May 3, 2021 prior written notice. The District's response contained two versions of the consent form; the second version had a typed note on the parent signature line: "Paper form not returned. Parent transported student for in-person evaluation on 6/10/21."

10. Also, on May 25, 2021, the school psychologist emailed the OT regarding including fine motor and sensory to the evaluation. In response, the OT sent the Student's teacher a "Sensory Processing Measure" to fill out.
11. On May 31, 2021, the District was closed for a holiday.
12. On June 1, 2021, the school psychologist emailed the Parent rating scales, a form for parent input, and information about bringing the Student in person for assessments on June 10, 2021.
13. On June 6, 2021, the Parent emailed the school psychologist and stated June 17, 2021 worked for her to meet to go over the evaluation. The Parent also asked if she could get a copy of the draft evaluation report by June 14, 2021.

14. The District noted in its response that the Parent did not sign and return the updated consent form but did subsequently bring the Student into school on June 10, 2021 for in-person assessments for the evaluation.
15. On June 16, 2021, the Parent received a copy of the draft evaluation report. The draft report included information that the Student had undergone several private evaluations since September 2020, including information from the February 2021 private evaluation and an evaluation from a primary care provider that diagnosed the Student with “depressive disorder with ‘rule outs’ for ADHD combined type and learning disorders.” The report noted the Student had been receiving private counseling.

The evaluation report included Parent input about the Student’s strengths and challenges (including interest and engagement, struggle with some math problems such as word problems, dislike of writing, challenges with reading and retaining concepts). Teacher input included that the Student was successful in meeting classroom expectations; “academically in the expected range” and his reading and math performance and progress were generally at grade level; in writing, he displayed “typical ability but low volume;” was more engaged than most remote students; and was confident with multiplication but “less confident with subtraction.” The report also contained the following, summarized:

- **Academic:** Reviewed private evaluation. Administered subtest from the Kaufman Tests of Educational Achievement-3<sup>rd</sup> Edition (KTEA-3) and Weschler Individual Achievement Tests-3<sup>rd</sup> Edition (WIAT-III). In math, the Student scored in the average to high average range. In reading, no teachers had concerns and the Student scored in the average to high average range. In writing, teachers shared concern about low input, but scored in the low average to average range and did not express concerns that the Student needed specially designed instruction.
- **Medical-Physical/Health:** The Parent reported the Student had diagnoses of ADHD, anxiety, and mood disorders.
- **Motor:** Parent provided input about challenges, including engaging in new activities, continuing difficult activities, understanding/following routines, using facial expressions/gestures/voice to express wants and needs, making and following through on a plan, and high levels of energy. The Student’s teachers expressed no concerns regarding functional fine/visual motor skills. The OT noted the Student used a functional grasp for writing, had typical speed, atypical letter formation, but handwriting was fluid. The OT noted the Student demonstrated good fine motor strength and coordination. The OT also conducted a “Sensory Processing Measure.” The Parent’s scores indicated “some problems” in social participation, vision, touch, body awareness, balance and motion, and planning and ideas. The teachers, while noting the limitations of the remote setting did not identify significant issues, although the Student occasionally mouths clothes or pencils, and rocks in his chair, and frequently fidgets. The OT did not recommend special education services but did provide recommendations for the Student’s 504 team to consider.
- **Social/Behavior:** The Parent identified many concerns including unpredictable mood, irritability, outburst/meltdowns, says he hates life, keeps to himself, and challenges with remote schooling. The Student’s teachers observed that the Student generally functioned well socially, was well liked, had a group of friends, and while at times appeared frustrated the Student never displayed any major behaviors or “blow ups.” The teachers reported the Student did as well in online learning as other students did. The Student’s current teacher identified that the Student did have trouble being assertive, was generally quiet—although did not attribute the quietness

to anxiety. The Student, in conversations and on rating scales, did not identify anything about school that made him nervous. Scores from the BASC-3 Student self-report indicated the Student's response fell within typical range and while teachers identified some concerns (anxiety, depression, attention, withdrawal, adaptability, and study skills), and overall, the clinical indexes fell within the typical range. However, the Parent's scores on the BASC-3 rated the Student in the at-risk range in several areas (anxiety, attention, withdrawal, adaptability, social skills, functional communication, activities of daily living) and clinically significant scores in hyperactivity and depression. Overall, based on the information from the Parent and teachers, the school psychologist did not find that the Student required specially designed instruction.

- **Study/Organization:** The Student's teachers did not report significant concerns regarding attention or hyperactivity, whereas the Parent reported significantly more issues with hyperactivity. Teachers indicated the Student's attention was okay, that he would need prompting during independent time, and was at times reluctant to show work and participate verbally. During the evaluation, the school psychologist noted the Student was engaged and persistent, displayed sustained focus on timed tasks up to five minutes, and while he needed stretch breaks after an hour, he quickly refocused on tasks independently.

Overall, the school psychologist found the Student displayed typical development in all primary cognitive and academic areas. The school psychologist noted the Parent had higher levels of concern about emotional reactivity and hyperactivity at home. The report noted, "neither the existing data, nor teacher reports reflect that [the concerns/challenges] are significantly impacting his educational performance" and that "while teacher responses...did result in some elevated areas, none of their response patterns met diagnostic criteria for clusters related to ADHD Probability, EBD Probability, or Functional Impairment based on school-based observations during in-person or remote learning." The evaluation did not find the Student met the eligibility criteria for an emotional behavior disability or other health impairment, explaining that the Student's needs "do not appear to rise to the level of requiring special education supports or Specially Designed Instruction to make adequate progress towards grade-level expectations." It was recommended the Student continue to receive 504 plan accommodations and be monitored once he returns to in-person instruction.

The school psychologist did caution that COVID-19 caused difficulty in assessing the Student's functioning "under normal circumstances" and indicated that the Student had not yet attended in-person school with his 504 plan in place.

16. The Parent alleged in her complaint that the Student's eligibility was "predetermined outside of our schedule meeting."
17. An evaluation meeting was scheduled for June 17, 2021. The morning of June 17, 2021, the Parent emailed the school psychologist, acknowledging receipt of the evaluation report. The Parent stated she had not had sufficient time to review the report and raised concerns regarding the accuracy of the evaluation given the remote setting. The Parent asked to reschedule the evaluation meeting to allow her and her advocate more time to review.

The school psychologist responded that they could reschedule the evaluation meeting and expressed that while he appreciated the Parent's "observations of the academic challenges

that [Student] has experienced," the Student's teachers "generally report that he is making adequate progress" and "while remote learning has been very difficult from your perspective, [teacher] reports that [Student] is one of her more engaged students during remote instruction."

18. On June 17, 2021, the OT emailed other OTs an update on the evaluation and the fact that they were rescheduling the meeting. The OT noted, "[Student] was determined to not be eligible for sped services."
19. The District, in its response to the complaint, acknowledged that a meeting to review the evaluation was not held within 35 school days. However, the District stated the initial evaluation report was completed and shared with the Parent on June 16, 2021, "well within the 35-school day timeframe" regardless of whether the date of consent was May 19 or June 10, 2021. The District acknowledged there was confusion over when the Parent provided consent.

The District noted the Parent cancelled the meeting, requested time to review the report, and raised concerns about the evaluation. The District stated the evaluation was not "in any way deficient," but to address the Parent's concerns, the team agreed to update the report.

The District noted that the school psychologist who conducted the Student's evaluation left the District at the end of the 2020–2021 school year and another school psychologist (psychologist 2) was assigned to finish the evaluation.

20. June 18, 2021 was last day of the District's 2020–2021 school year.

### **2021–2022 School Year**

21. The District's 2021–2022 school year began on September 1, 2021. The Student attended a District elementary school and returned to full time, in-person learning.
22. Between September 3 and 20, 2021, psychologist 2, the Parent, and the evaluation group members emailed numerous times to schedule the evaluation review meeting. According to an email sent by psychologist 2 on September 3, 2021, the plan for the meeting was to "review [Student's] evaluation from last Spring and develop a new 504 plan for him" and the Parent later responded she looked forward to reviewing the Student's evaluation and developing a new 504. The group agreed to meet on September 13, 2021.

Per the emails, the OT was not available but agreed to talk to the Parent separately about her report and recommendations given the rest of the team was available on September 13, 2021.

Subsequent emails indicated the Parent was concerned that the Student's teacher was not available for the full meeting on September 13 and there was discussion of rescheduling the meeting to September 21, 2021. After email discussion, the group kept the meeting on September 13, 2021.



23. On September 6, 2021, the District was closed for a holiday.
24. On September 13, 2021, an evaluation review meeting and 504 planning meeting was held. According to the Parent's complaint, at this meeting it was communicated to the Parent that: the new school psychologist wanted to review where the previous psychologist left off on the special education evaluation. I was informed that this meeting was not a special education team meeting nor was it called an eligibility meeting. During this meeting the school psychologist stated that my child doesn't meet the criteria to be eligible for special education services but they did not share what the eligibility criteria was. I requested an official eligibility meeting be scheduled...The September meeting was labeled as a 504 meeting but was initiated by the school team to make it the eligibility meeting. An eligibility meeting was then scheduled for 10/4/2021.

Based on emails between the Parent and school staff after the meeting, it appears the Parent wanted to add additional information about the Student's private services to the evaluation report and "see how [the Student] transitions to in person before making the eligibility decision." Based on the meetings, psychologist 2 and the evaluation group agreed to this plan and a follow up meeting was scheduled for October 4, 2021.

According to the District's response, the meeting invitation listed the purpose of the September 1 meeting as "evaluation review."

25. On September 20, 2021, the Parent provided releases of information so that psychologist 2 could communicate with the Student's outside providers.
26. On September 24, 2021, psychologist 2 emailed the Student's private speech, counseling, and occupational therapy providers. Psychologist 2 stated they were "completing an evaluation for possible special education" and that she was gathering information about "Areas of need, current assessments and progress notes."

The District noted in its response that the psychologist was "attempting to update the evaluation to include information related to in-person learning as well as respond to Parent's concerns" about the draft evaluation report. Ultimately, the OT and private counselor responded to psychologist 2. The private speech provider did not respond.

27. On October 2, 2021, psychologist 2 emailed the evaluation group a reminder about the meeting schedule for October 4, 2021 and provided an updated copy of the evaluation.

The District noted this updated version of the evaluation included information provided by the Student's private counselor and OT. The updates included that the Student received private occupational therapy, counseling, and speech language therapy outside of school. The Student's private counselor provided information that they were working on "learning emotional vocabulary" and developing strategies for "emotional regulation when frustrated at home." The private OT noted the Student was very active, fidgety, and engaged positively with therapy. The OT "has recommended a sequence of activities to be done before leaving for school in the morning in order to help support sensory and activity needs."

28. On October 3, 2021, the Student's teacher emailed psychologist 2, noting he did not see a need for "anything more than a 504" and that the Student was academically in the middle, nothing stood out behaviorally, and that while the Student "may get distracted a little more than other kids," it was nothing concerning. The teacher noted the Student does tend to shut down if redirected, generally was engaged in independent work, sometimes got frustrated, and used fidget tools during class.

29. On October 4, 2021, the Parent emailed and requested the meeting be rescheduled because she was sick and had not had time to review the updated evaluation report. The Parent also asked if psychologist 2 had observed the Student at school.

The psychologist responded that she had observed the Student and began attempting to reschedule the meeting. Many emails were exchanged, attempting to reschedule the meeting.

30. The District noted in its response that the goal was to convene a meeting by October 13, 2021, because that was the 35th school day based on a consent date of June 10, 2021.

31. Also, on October 4, 2021, psychologist 2 followed up with and received information from other staff that worked with the Student.

32. On October 7, 2021, the OT met with the Parent and reviewed the occupational therapy portion of the evaluation. Following this, the occupational therapist updated the report to include recommended accommodations based on their conversation.

33. On October 8, 2021, the District was closed.

34. On October 9, 2021, psychologist 2 emailed the private evaluator, stating, "We are trying to finish up his school-based evaluation and his mother asked that I call you for more information."

The private evaluator responded that she did not have much to add other than what was in her report, and in subsequent emails, indicated the Student would be assessed for autism spectrum disorder in November 2021.

35. On October 11, 2021, psychologist 2 emailed the Parent and evaluation group that she would have two meeting times—October 11 and 13—open, and that she would "lock the evaluation after that (on Wednesday the 13<sup>th</sup>)."  
If anyone disagreed, psychologist 2 noted "they can attach a written statement/explanation that they do not agree, and I will attach that to the evaluation in the system." The psychologist noted that "making a decision now does not mean that a different plan can't be developed in the future. A new evaluation can be requested."

The Parent responded that she was only available from 10 am to 12:30 pm and that she wanted to "ensure that all team members are available to attend and participate in the team discussion and decision." The Parent stated, "I'm an equal team member and I want to ensure my participation and input in this process is given equal value...I do not give permission for the team to meet for the eligibility meeting without me."

36. On October 12, 2021, psychologist 2 sent the Parent an extension agreement form. Psychologist 2 stated that if the Parent did not agree to extend the due date, she would meet with the Parent on October 13 at 11:30 am and see if other team members were available.

The Parent responded that she preferred the whole team meet. The Parent also asked about the due date, noting she had provided consent on May 19, 2021.

Psychologist 2 replied to the Parent regarding the consent date and explained that the previous school psychologist never received the consent form back, so the date the Parent brought the Student for the evaluation was used (June 10, 2021).

The District noted in its response that:

The confusion appears to stem from the fact that Parent requested additional evaluations, which would require a new consent form and new timelines. However, Parent did not return the updated consent form, though made it clear she wanted to proceed with the evaluation. When Parent told [psychologist 2] she consented on May 19, [psychologist 2], who was not aware of the history surrounding the consent, agreed to update the due date in the District's IEP system.

The Parent did not agree to the extension. The District stated, regardless "an evaluation report was completed by June 17. The subsequent updates were to address Parent concerns and did not change the ultimate decision that [Student] is not eligible for special education."

37. In her complaint, the Parent stated she was "open to considering an extension," but when the extension form was sent to her, the "the initial due date was not included on the form. I asked the school psychologist to add the correct date to the form which the team ended up not changing the form with the correct due date."

38. October 13, 2021 was 35 school days after the Parent provided consent on June 10, 2021.

39. The Parent, in her complaint, alleged that the Student's initial evaluation was not completed within 35 days and that although she has been provided draft evaluation reports, "we have not reviewed the draft evaluation report as a full team or made any eligibility decisions in a special education team meeting." The Parent further alleged that the District "closed out the evaluation and determined my child did not qualify for special education services outside of a special education team meeting without my input."

Although the Parent did note in her complaint that the school psychologist and principal have attempted to schedule an eligibility meeting, the "dates and times offered were either too short of notice for me to attend or during times I was not available."

The Parent stated in her complaint that her input into the evaluation was limited to email as "we did not hold a meeting as a special education team to review the completed evaluation and finalize the evaluation report." The Parent further stated in her complaint that the private evaluation report was not considered by the team.

40. On October 13, 2021, the Parent emailed psychologist 2 and members of the evaluation group with input on the draft evaluation report, including a request that information from the private evaluation report, including parent rating scales and information about executive functioning and emotional/behavioral functioning, be included in the District's evaluation report. The Parent also wanted more information from the teacher interviews included in the District's report.

Psychologist 2 responded, noting that the "school evaluation report tries to summarize all information-including a summary of [private evaluator's] information, parent information and school/teacher information," but the District's report does focus more on what happens at school. The psychologist noted the private evaluation would be attached in the District's system. Psychologist 2 stated she would try to come up with more times to meet as a group and would ask the Student's teacher to complete a behavior/executive functioning rating tool.

The Parent replied that it was her "understanding that the initial evaluation should be comprehensive and include all of the existing data about the student during the referral process and any additional assessments needed to determine whether a student is eligible for special education."

41. On October 20, 2021, the OT emailed psychologist 2, noting she had the Student's teacher fill out a sensory processing measure, per the Parent's request, and that she added the results to the evaluation report. The OT stated there were "no areas of significant sensory concerns from his report."
42. On October 21, 2021, psychologist 2 emailed the Parent and stated she would add additional information from the private evaluation to the District evaluation and proposed a meeting on October 26, 2021.
43. On October 22, 2021, the Parent called the District's special education department and was referred to a program specialist.
44. On October 25, 2021, psychologist 2 emailed the Parent and explained they needed to close the evaluation. The psychologist offered additional times to meet with the Parent, when the Parent and the Student's teacher were available, but noted the whole team may not be able to attend. Psychologist 2 also stated that if the Parent could not attend a meeting and disagreed with the evaluation, she would attach the Parent's disagreement to the evaluation and that they could initiate a new evaluation if needed. The psychologist noted she added the additional information the Parent provided and a questionnaire the teacher completed.

The Parent responded on October 26, 2021 and stated, "the team is not allowing me to participate in the special education process if you move forward with a meeting today without my consent."

Psychologist 2 replied that they would not meet that day and asked for times, including times that were not during instructional hours, when the Parent could meet.

45. On October 26, 2021, an evaluation meeting was scheduled but did not occur after the Parent indicated she could not attend.
46. Also, on October 26, 2021, psychologist 2 emailed the Parent and evaluation group the updated draft evaluation report. The District noted in its response and the draft report indicated the following was added to the evaluation report to address the Parent's concerns:
- **Motor:** The OT had the Student's teacher complete a sensory processing measure and psychologist 2 had the teacher complete the "BRIEF-2." The teacher's scores were all typical, expect in balance and motion, in which the teacher indicated "some problems." The Student's teacher did not find the Student exhibited significant sensory processing challenges in the school environment.
  - **Social/Behavior:** The teacher completed the BASC-3 and scored the Student in the "average" and "typical" range for ADHA, autism, EBD probability, and "typical" for functional impairment. Psychologist 2 observed the Student in the classroom noting, "he blended in with other students in the class and required no direct intervention other than occasional verbal prompting or reminders, like many other students in the classroom. [Student] listened to directions, appeared to be attending to the book being read aloud, turned and talked with his desk mate when directed as part of the whole group lesson, and transitioned to recess with no verbal prompting. He turned and talked briefly with neighboring classmates on a few occasions but was able to return to the lesson with 0-1 reminders from his teacher. [Student] did not raise his hand to offer insights into the reading but did answer when asked directly. He also did not ask for help during the writing task observed."
  - **Study/Organization:** The teacher completed the BRIEF-2 and noted no concerns regarding executive functioning skills and school and that the Student's scores fell within the average range compared to other students his age. Psychologist 2 observed the Student twice during instruction and during transitions, noting the Student was able to transition appropriately during direct, teacher-led instruction and between tasks and subjects and between spaces. Psychologist 2 noted the Student was "able to use available classroom structures and teacher/peer modeling to manage his learning behaviors in the school setting."

The scores from the BRIEF-2 indicated the Student "does not exhibit significant characteristics of executive dysfunction that are often seen in children diagnosed with ADHD" and the scores suggested that the Student "does not exhibit the cognitive rigidity and adherence to routine and sameness that is often seen in children diagnosed with ASD." Psychologist 2 included the following update to the eligibility decision:

FALL UPDATE: Teacher reports and direct observations during in-person school suggest that accommodations in his current (Fall 2021) 504 accommodation plan are appropriately supporting [Student's] needs...Individualized instruction is not required for access to instruction and positive functioning in school. If this changes, a new evaluation can be requested by his parent or teachers.

47. On November 3, 2021, psychologist 2 emailed the Parent and requested the Parent provide her availability for a meeting.
48. On November 4, 2021, the program specialist met with the Parent and her advocate. According to the program specialist's emailed notes, the Parent expressed her frustration with the evaluation process (substance of the evaluation and timeline). The Parent stated the school

team was not flexible enough with scheduling a meeting. The Parent stated her goal was to update the Student's 504 plan and complete the evaluation before the end of December.

49. On November 9, 10, and 19, 2021, the Parent and the Student's teacher emailed regarding how the Student was doing in class and accommodations the Student could and was accessing. The teacher did respond that the biggest issue he saw in class with the Student was distraction, but that the teacher had the Student use fidget tools, seating for focus, noise canceling headphones, and other accommodations.
50. On November 30, 2021, a care coordinator contacted the school to introduce herself as someone who would be working with the Student through the "Wraparound with Intensive Services" (WISe) program. The care coordinator requested a new evaluation be initiated because the June 2021 evaluation had not been reviewed and was completed by staff who no longer worked at the District. She stated, "after speaking with mom, we think it would be in the best interest of [Student] to retest with new school psychologist."

Psychologist 2 responded and suggested they all meet to develop a plan together, including what a new evaluation would look like given that the current evaluation included information from the fall of 2021. Psychologist 2 also proposed dates for a meeting.

51. On December 10, 2021, the Parent received a prior written notice and a finalized evaluation report via email. The evaluation report was largely the same as the June 2021 evaluation report, although it contained the updated information added in September and October 2021.

The prior written notice and contact attempt report indicated the District was closing the evaluation and listed the attempts made to meet, as follows:

- June 17, 2021 – confirmed then cancelled by the Parent on June 17. Draft evaluation sent via email.
- September 13, 2021 – met with full team, but the Parent wanted to wait to make formal eligibility decision and allow the Student time to adjust. Agreed to meet on October 4 for final eligibility decision.
- October 4, 2021 – meeting cancelled by the Parent due to illness.
- October 11, 2021 – meeting offered on October 11 and 13. The Parent not able to attend either and refused consent for the team to meet without her. Offered smaller meeting to review the evaluation without the full time as this was a time the Parent and advocate had offered to meet. The Parent did not accept because she preferred to meet with the full team.
- October 13, 2021 - meeting offered on October 11 and 13. The Parent not able to attend either and refused consent for the team to meet without her.
- October 26, 2021 – the Parent could not attend and refused consent for the team to meet without her.
- Emails sent after this, asking about times that would work for the Parent were not responded to.

The prior written notice also explained that, based on the available information, the Student was not eligible for special education services and the team was "closing the initial evaluation...started in May 2021." The notice indicated the evaluation determination was

"overdue" and "needs to be closed based on what information is currently available." The District recommended the Student continue to be supported through his 504 plan. The Parent was notified she could dissent to the evaluation and her dissent would be attached.

The evaluation report summary indicated the following team members were involved in the evaluation: Parent, third grade teacher, fourth grade teacher, assistant principal and 504 coordinator, OT, and school counselor. The summary noted, "A formal meeting was not held due to parent refusing to allow a formal meeting without her presence."

52. Regarding the evaluation, the Parent stated in her complaint and during an interview that she had the following concerns:

- Generally, the Parent stated she felt the District "cherry picked" information from private providers, including information that showed the Student did not need special education, but leaving out information that would have "qualified" the Student.
- In general, the Parent stated the evaluation used standardized tests and interviews but did not include any "data." For example, the Parent stated the evaluation did not include the Student's present levels, grades, work samples, data from remote learning, etc.
- District assessment used composite scores and did not include subtests. A behavior questionnaire was read to the Student, which could potentially invalidate the assessment.
- The Student receives private occupational therapy and speech, and that "Written reports from these providers were not included nor requested by the evaluation team despite their knowledge of the private interventions. Private providers were not invited to provide input and participate in the evaluation." The Parent acknowledged that an interview was done with the private OT but stated no written report was requested from the private providers.
- "The evaluation included teacher interviews, most of which occurred during remote learning. One teacher interview took place within the first 6 weeks of this school year and before the teacher knew [Student] well enough."
- "Teacher reports were inconsistent, which is where the private providers and parent input should have been given considerable weight especially during the pandemic. The school psychologist obtained different accounts from the teachers in comparison to what was obtained by outside providers. There was a significant discrepancy between findings by private providers who have known [Student] and regularly work with him and the school evaluator's findings."
- The Student is shy and withdrawn, and the Parent stated the Student may not show his challenges. The District did not sufficiently assess the Student's behavior needs.
- "Classroom observations were not thorough. Two observations were combined into one write up, brief summary omitting important detailed information. The summary does not differentiate between the two observations, and does not include the duration of each, what lessons or skills are being taught, how the student performed, why he was prompted and reminded, what was his posture etc."
- "I had to pay for private evaluations to be completed by [private evaluator] (2/11/2021, 2/18/2021 and 11/19/2021) and [another doctor] (12/16/2021 and 1/3/2022) after the school failed to create a comprehensive evaluation based on the 12/10/2021 report."

During the interview, the Parent and advocate clarified that the allegation about parent participation was primarily related to being able to participate in and schedule meetings.<sup>2</sup>

53. On December 11, 2021, the Parent emailed psychologist 2 and asked that the evaluation not be closed and that she be given until the following week to propose a meeting time.
54. The District was closed for winter break between December 20, 2021 and January 2, 2022.
55. Emails between District staff, the Parent, and her WISe contact from December 29, 2021 through January 7, 2022 continued to discuss scheduling a meeting. Ultimately, a meeting was scheduled for January 10, 2022.
56. On January 10, 2022, prior to the meeting, the Parent provided the District a copy of a report that diagnosed the Student with "Disruptive Mood Dysregulation Disorder" and social phobia.
57. Also, on January 10, 2022, the evaluation team met. The agenda for the meeting included, in part, discussing the Student's strengths and concerns and a review of the evaluation and eligibility. The Parent shared concerns and information from the new report. The District response and emailed meeting notes indicated the Student's father attended the meeting and shared that he did not see the same concerns as the Parent or agree with the new diagnoses.

Psychologist 2 reviewed the evaluation, noting that the Student appeared to be exhibiting behaviors at home that are not present at the school setting.

The team agreed to meet again on January 27, 2022 to review a new evaluation completed by the private evaluator and determine if they would reopen the evaluation.

58. On January 25, 2022, the Parent's advocate emailed that their feedback meeting with the private evaluator had been moved and requested that the District postpone its meeting. Subsequently, the January 27, 2022 meeting was canceled and rescheduled.
59. On February 17, 2022, the Parent emailed the District, resending a copy of the private evaluator's updated report and a new report from another clinic. The District noted the following about the private evaluator's new evaluation report:

In [private evaluator's] updated evaluation, she did collect more information from the school, including having [the Student's teacher] complete the Teacher Rating Form (TRF) and CONNERS 3-Short Form, and conducting interviews with [the Student's teacher] and [psychologist 2]. [Teacher's] ratings...were typical with the exception of adaptive functioning. The only area of potential concern...was aggression. In his interview, [teacher]

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<sup>2</sup> OSPI also notes that during the interview, the Parent shared information about recent behavior incidents, SBA test scores that the family just received, and mentioned that the Student had recently been diagnosed with autism spectrum disorder, social phobia, and underwent a speech evaluation. OSPI notes that the investigation of whether the evaluation was sufficient must utilize information that was known at the time of the evaluation—information like the social phobia diagnosis or recent behavior incidents were not available pieces of information at the time of the evaluation. However, OSPI notes this will all be valuable for the new evaluation the District has agreed to conduct.



described [Student] as quiet, and said he was doing well academically. [Student] was described as a talented writer and his expression is more animated. [Teacher] noted that [Student] has a hard time compromising during group work and gets frustrated when his desk partner's stuff touches his stuff.

The private evaluation report indicated the teacher reported the Student had challenges with distraction, used noise cancelling headphones, and used a wobble stool. The teacher also noted the Student was a confident and talented writer but struggled during unstructured times and had a hard time compromising during group work. The teacher also reported the Student was "setting goals for himself and is engaged in this, asking 'How did I do?' His goals have been participating, focused, being safe and responsible at recess, etc." The private evaluator conducted further assessments and utilized additional teacher/parent questionnaires, conducted several interviews, and reviewed records.

The private evaluator gave the Student a provisional diagnosis of autism, although noted that the Student's evaluation was a challenge given his different behavior and home and school.<sup>3</sup> The private evaluator recommended the Student received direct instruction in social skills and social problem solving, mental health support at school, as well as other accommodations/classroom strategies and recommendations for family and home.

60. On March 10, 2022, the Student's evaluation team met. According to the District, psychologist 2 suggested opening a reevaluation to consider the Student's autism diagnosis. The District stated the Parent requested another meeting to plan the evaluation. The Parent and District are scheduled to meet April 22, 2022 to discuss the evaluation.
61. Regarding the determination of eligibility, the District stated that the evaluation report met the requirements outlined in the special education regulations, noted the Student did not have a disability that met the eligibility criteria, and included detailed discussions of the assessments and data reviewed to support the conclusions. The District noted some data indicated the Student had difficulties, but the "difficulties were not significantly different than what other students his age experience" and that "he does not have needs that cannot be addressed through education in the general education classroom with the accommodations in his 504 plan."

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<sup>3</sup> The private evaluation noted the evaluator's reflection that this was one of the "most challenging I have conducted because it was difficult to get clear data on [Student]. His behavior at home and school are very different and there are widely varying ideas as to what is going on with [Student]." The evaluator noted she does see things through the lens of her discipline, and she is an expert on autism, but stated she was bothered by the initial interpretation that his behaviors were due to social anxiety and mood symptoms. The private evaluator felt those diagnoses did not "explain the complete lack of emotion on his face most of the time across all settings or his difficulties in perspective taking, lack of empathy, and social communication deficits, or his obsessive interest in sports facts, or his reduced interest in social interactions."

The District stated the Parent provided a significant amount of input through formal and informal measures, including questionnaires, rating scales for assessments, and the provision of other records. The District stated the evaluation was sufficiently comprehensive because:

The tests were selected to be appropriate for [the Student], were valid and reliable, and ensured he was evaluated in all areas of suspected disability, specifically reading, math, written language, social/behavior, cognitive, motor (including sensory processing) and study/organization skills. The evaluators considered significant input from Parent and [Student's] teacher. [School psychologist, psychologist 2, and OT], who are all trained and knowledgeable in their areas...administered standardized tests, tailored to assess [Student] in all areas of suspected disability. These tests are designed for the exact purposes for which they were used. No single score or criterion was used to determine [Student's] functioning, and multiple sources of data were considered. The evaluators considered the outside reports, which noted greater concerns than the school team saw at school. The private evaluations provided numerous recommendations for the school; however, the private evaluators did not have the benefit of having observed [Student] at school, which may explain the difference in evaluation conclusions regarding [Student] functioning...Overall, the information provided through the review of records, assessment tools, and parent, teacher, and private evaluator input help them determine that [Student] was not eligible for special education and related services.

## CONCLUSIONS

**Issue: Initial Evaluation and Eligibility Procedures** – The Parent alleged the District failed to follow initial evaluation and eligibility procedures with respect to several aspects of the Student's initial evaluation.

**Evaluation Timeline:** The Parent alleged the evaluation was not completed within 35 school days because the team, while it had provided her draft evaluations reports, did not hold an evaluation meeting to determine eligibility within 35 school days.

Within 35 school days after consent has been received, a school district must assess a student in all areas related to his suspected disability. Here, the Parent initially provided consent for the evaluation on May 19, 2021; however, additional components were added to the evaluation, which necessitated the Parent's consent. The Parent did not provide updated written consent but did make the Student available for in-person assessments on June 10, 2021. Therefore, the District considered June 10, 2021 the date of consent, making October 13, 2021 35 school days after consent was provided. Alternately, September 21, 2021 would have been 35 school days after the May 19, 2021 consent date. The District acknowledged a meeting to review the evaluation was not held within 35 school days, but stated the initial evaluation report was completed and shared with the Parent on June 16, 2021, "well within the 35-school day timeframe."

Here the question of whether the 35-school day timeline was met comes down to whether the evaluation and associated report was *actually complete* by the end of June 2021. The documentation in this complaint is somewhat contradictory. There is documentation that staff considered the evaluation and eligibility determination complete—for example, on June 17, 2021 the occupational therapist (OT) emailed other therapists and stated that while they were

rescheduling the meeting, the Student was determined to not be eligible for special education services. The District, in its response to the complaint, stated the evaluation was finished in June and that while the evaluation was not “in any way deficient,” the team agreed to update the report to address the Parent’s concerns and that the updates to the evaluation in fall 2021 did not change the eligibility decision. While true, it is important to note that this position benefits from hindsight. At the start of the 2021–2022 school year, the evaluation group did not know the eligibility determination would not change and it is possible that the additional information may have changed the decision.

Other documentation indicates District staff did *not* consider the evaluation complete, including emails wherein staff refer to the “*draft* evaluation report”, emails from the psychologist to the Student’s private providers to gather additional information as they were “*completing* an evaluation for possible special education,” and that psychologist 2 continued to gather additional information from the Student’s teachers and conducted observations of the Student in class (emphasis added). The evaluation report was updated in fall 2021, although it did not change the eligibility determination. Additionally, documentation and the interview with the Parent indicates the Parent did not understand the evaluation to be final until December 2021.

The documentation is clear that the version of the evaluation sent to the Parent on December 10, 2021 was considered the “final” version of the evaluation, and importantly, unlike the June 2021 draft, included a summary that the following team members were involved in the evaluation: Parent, third grade teacher, fourth grade teacher, assistant principal and 504 coordinator, OT, and school counselor. OSPI finds that because the evaluation report was updated and because a required component of the evaluation report is the date and signature of each professional member certifying that the report reflects his or her conclusion, it is fair to determine that the evaluation was not completed until the version of the report sent in December 2021—well outside 35 school days—regardless of the date of consent. However, OSPI notes that the IDEA places an affirmative duty on districts to include parents in the special education process and Supreme Court and 9<sup>th</sup> Circuit case law stress the importance of parent participation over strict adherence to timelines when a delay in meeting a timeline does not deny a student a FAPE. Here, the situation is similar to that in the *Doug C.* case in that the District here prioritized attempting to ensure Parent input and participation and addressing the Parent’s concerns, over the timeline. And, as the Student was not found eligible for special education services, there was no deprivation of educational benefit due to the delay.

Thus, while OSPI finds a violation with respect to the initial evaluation timeline, OSPI notes there has been no denial of FAPE. Given that the Student was not found eligible for special education and given that the team has already discussed opening a new initial evaluation to consider the Student’s provisional autism diagnosis, OSPI finds that no further corrective actions are necessary to address the timeline violation. OSPI does recommend the team consider how it can conduct an expedited evaluation given the amount of already existing information available between the District’s own assessments and the multiple private evaluations.

**Sufficiently Comprehensive Evaluation:** The Parent raised concerns with the sufficiency of the evaluation, including that the private evaluations were not appropriately considered; that written

information/reports from private occupational therapy, speech therapy, and counseling were not considered; that the teacher input was insufficient in part because the Student was not in-person or the teachers had not worked with him for very long; that teacher reports to the District psychologist were inconsistent with teacher accounts from the private evaluator; that classroom observations were insufficient; and that the Parent had to pay for private evaluations.

A school district must assess a student in all areas related to his 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 the student's special education and related services needs. 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, including information provided by the parent. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. Districts must also ensure that assessments and other evaluations are used for the purposes for which they are valid and reliable, and are administered by trained and knowledgeable personnel.

The evaluation report is the written record of the evaluation conducted by the district's group of qualified professionals. An evaluation report must at a minimum 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; if and how the student's disability affects his involvement and progress in the general education curriculum; the recommended special education and related services needed by the student, if applicable; 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. In completing the evaluation report, the school district must ensure that information from all of these sources is carefully considered.

On June 16, 2021, the Parent was provided a copy of the draft evaluation report. After reviewing the evaluation and all documentation in this complaint, OSPI finds it was comprehensive and assessed the Student in all areas of suspected disability. The evaluation incorporated information from the Student's February 2021 private evaluation, addressed strengths and challenges, included input from the Parent (informal Parent information, Parent shared medical information and private evaluation reports, and Parent rating scales on assessments), and included input from the Student's teachers. In addition to the assessments conducted in the private evaluation and reviewed by the District, the District conducted multiple additional academic assessments, occupational therapy assessments, sensory processing measures, and behavior assessments (including Student self-report and Parent rating scales). The Student was assessed in multiple areas, multiple different assessments and evaluative measures were used, and a variety of information was considered (formal assessments, rating scales, teacher input, Parent input, and Student self-reporting). The evaluation report contained the above required elements (excluding the signature of professional members and date, discussed above). The evaluation found that the

Student did not meet the eligibility criteria for an emotional behavior disability or other health impairment, and that while the Student had needs (and had a 504 plan), the Student's needs did not rise to the level of requiring specially designed instruction and thus, the Student was not eligible for special education services.<sup>4</sup>

The Parent raised concerns about the fact that the evaluation was conducted while the Student was still attending school in a remote model, and therefore his then current teacher had never worked with him in-person. And while the District also noted in the evaluation report that COVID-19 and the remote circumstances caused difficulty in assessing the Student, OSPI does not find this rendered the evaluation insufficient. The Student's teachers were still able to provide information, and given information from many different sources was considered, the evaluation, while impacted by the remote setting, was not invalid because the Student was remote.

Further, in response to the Parent's concerns, the District updated the evaluation in the fall 2021. The District reached out to and included information from the Student's private occupational therapy and counseling providers; after a meeting with the Parent, the District occupational therapist added information to the evaluation report; the Student's teacher provided updated information, completed another sensory processing measure, and completed rating scales for social/behavior and study/organization; the school psychologist observed the Student twice; and, at Parent request, the District added additional information from the February 2021 private evaluation. As OSPI finds the evaluation as completed in June 2021 sufficient, these updates and the additional information only add to the overall thoroughness of the evaluation.

Additionally, the updates addressed many of the other concerns the Parent had, including that the private evaluations and information were not considered or that information, as the Parent stated, "was cherry picked" from the private evaluations. OSPI notes that the District is not required to incorporate every word of a private evaluation into its own report; however, the documentation clearly indicates the private reports from a variety of private providers were considered. Both the District and private evaluations noted areas of concern; however, the overall determination of the evaluation group was that those areas of concerns did not rise to the level of needing specially designed instruction. Further, while it was only an additional six weeks or so, the updated report did give the Student's teacher a chance to start getting to know him. The Parent also stated the District evaluation differed from the private evaluation and the teacher accounts from the District were inconsistent with the teacher accounts from the private evaluator. However, OSPI notes that even the private evaluator stated her evaluation of the Student was challenging given his different behavior at home versus school. Upon review, while there are differences in the exact statements, OSPI does not find the teacher reports blatantly inconsistent—instead the teachers did note areas of concern to both the private evaluator and District psychologist; however, again, the overall determination of the evaluation group was that those areas of concerns did not rise to the level of needing specially designed instruction. It is possible both for a student to have different

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<sup>4</sup> The eligibility determination here is consistent with the special education regulations, which state that a student must not be determined to be eligible for special education services if the student does not otherwise meet the eligibility criteria, including presence of a disability, adverse educational impact, and need for specially designed instruction.

behaviors and needs in the school setting versus at home, and for a student to have needs (hence this Student had a 504 plan) but those needs do not require specially designed instruction.

Overall, OSPI finds no violation with respect to the sufficiency of the evaluation.

**Eligibility Determination:** The Parent alleged the Student's eligibility for special education services was predetermined outside of a formal eligibility meeting.

Upon completion of the initial evaluation, a group of qualified professionals and the parent of the student determine whether the student is eligible for special education services and the educational needs of the student. There is no regulatory requirement to have a specific "eligibility meeting;" instead, the regulations require the group of qualified professionals and parent of the student to determine whether the student is eligible for special education. In most cases, this is done through a meeting; and of course, if a meeting is held, the parent must be afforded the opportunity to participate.

Here, the fact that the eligibility decision was made outside of a meeting is not alone a violation and does not necessarily indicate predetermination. As discussed below, the Parent participated in the evaluation in other ways and her input was considered by the evaluation group. Further, the District made diligent efforts to schedule and hold a meeting with the Parent. The District rescheduled several meetings at the Parent's request in an effort to ensure the Parent's participation in the process. This included: a meeting scheduled for June 17, 2021 and canceled by the Parent; a meeting scheduled and held on September 13, 2021 and then the Parent requested another meeting as the Parent stated it was unclear the September 13 meeting was an "eligibility meeting;" a follow up meeting scheduled for October 4, 2021 and canceled by the Parent due to illness; attempts to reschedule for October 11, 12, and 13, 2021 but a meeting was not held as the Parent wanted to meet with the full evaluation group and stated she did not give the District permission to "meet for the eligibility meeting without me;" a meeting scheduled for October 26, 2021 and canceled when the Parent indicated she could not attend; and, further attempts to schedule a meeting after October 26 through January 2022 when a meeting was scheduled for January 10, 2022.

While the Parent expressed concern that the District was not flexible enough with scheduling, OSPI notes that there appear to have been challenges and scheduling limitations on both the Parent and District's side. As the Student is likely to be evaluated again, OSPI encourages all parties to be as flexible as possible with scheduling moving forward.

Overall, OSPI finds that given a meeting is not specifically required to determine eligibility, plus both the diligent attempts to schedule a meeting and District's attempts to ensure the Parent's participation, OSPI finds no violation with respect to the eligibility determination being made without a meeting.

**Parent Input:** The Parent alleged the Student's eligibility for special education services was determined without her input and that her input was limited to email. There is no regulatory requirement to have a specific "eligibility meeting;" instead, the regulations require the group of

qualified professionals and parent of the student to determine whether the student is eligible for special education. In most cases, this is done through a meeting; and, if a meeting is held, the parent must be afforded the opportunity to participate. Here, an eligibility meeting did not occur prior to the evaluation report being finalized. But, as discussed above, this is not a violation.

Additionally, in conducting the evaluation, the evaluation team must consider information provided by the parent. The parent is involved in determining whether the student is eligible for special education services and must have an opportunity to participate in meetings with respect to the identification and evaluation of their child, including being part of the groups that determine what additional data is needed as part of an evaluation of their child, their child's eligibility, and educational placement. Here, the Parent did participate and provide input into the evaluation. The Parent provided information about the Student's strengths and challenges in many areas; the Parent shared medical information, records and several private evaluation reports; the Parent spoke with District providers, such as the occupational therapist; and the Parent completed the parent rating scales and questionnaires for several areas, including motor, social/behavior, and study/organization. Importantly, both the District evaluators and private evaluator concur in some ways with the Parent's input and all shared reflections that the Student's behavior is different at home versus school. Additionally, as discussed above, the District updated the evaluation report in the fall of 2021 in direct response to the Parent's concerns and requests for additional information.

The Parent here disagrees with the outcome of the evaluation and the eligibility determination; however, disagreement does not necessarily mean that parent input was limited. The evaluation report itself and other documentation reviewed in this investigation (including numerous emails) reflects that the Parent's input was considered and incorporated into the evaluation. Overall, while OSPI encourages the practice of meeting to discuss the evaluation report, here even without a meeting, the Parent participated in the evaluation process. OSPI finds no violation.

### **CORRECTIVE ACTIONS**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

Dated this \_\_\_\_ day of April, 2022

Dr. Tania May  
Executive Director of 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.)