

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-31

PROCEDURAL HISTORY

On April 22, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the [REDACTED] 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 April 23, 2019, 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 April 25, 2019, OSPI received additional information from the Parent and a request to add additional issues to the complaint. On April 30, 2019, OSPI forwarded this information to the District and declined to add additional issues to the complaint.

On May 6, 2019, the District requested additional time to respond to the complaint. On May 7, 2019, OSPI granted this request.

On May 10, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on May 13, 2019.

On May 13, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on May 14, 2019.

On May 23, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on May 24, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 3, 2019, the OSPI investigator interviewed the Parent via telephone.

On June 3, 2019, the Parent requested additional time to respond to the complaint. On June 4, 2019, OSPI granted this request.

On June 4 and 6, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on June 7, 2019.

On June 7 and 10, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on June 11, 2019.

On June 12, 2019, OSPI requested that the District provide additional information, and the District provided the requested information on June 14, 2019. OSPI forwarded the information to the Parent on the same day.

On June 12, 2019, OSPI requested that the Parent provide additional information, and the Parent provided the requested information on June 14, 2019. OSPI forwarded the information to the District on the same day.

On June 13, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on June 14, 2019.

On June 17, 2019, the Parent requested additional time to respond to the complaint. On June 18, 2019, OSPI granted this request and the Parent was given until July 19, 2019 to respond. As this presented an exceptional circumstance, the 60-day decision deadline was extended to August 2, 2019, as permitted by WAC 392-172A-05030.

On July 2, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on July 3, 2019.

On July 11, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on the same day.

On July 17, 2019, the Parent requested additional time to respond to the complaint. On July 18, 2019, OSPI granted this request and the Parent was given until July 28, 2019 to respond.

On July 20, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on July 22, 2019.

On July 28 and 29, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on July 29, 2019.

OSPI considered all of the 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 April 23, 2018. 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.

Additionally, in her complaint and throughout the course of the investigation, the Parent raised additional allegations, including: allegations about advanced learning and the District's highly capable programs, allegations that the District should have provided the Student with a Section 504 plan, allegations about the District denying accommodations under the Americans with Disabilities Act (ADA), and allegations of discrimination. OSPI Special Education Division does not have authority to address these allegations through the special education citizen complaint process as these issues are not potential violations of the IDEA. References to these concerns are included to add context where necessary. OSPI did not investigate these issues and makes no

conclusion regarding these allegations. The Parent was provided information about available routes to have the non-IDEA concerns addressed.

Finally, throughout the investigation, the Parent submitted information and emails, which contained additional, new allegations—for example, that the District denied the Student access to summer school and allegations related to District staff conduct at a special education parent teacher association meeting. As these allegations were raised after the complaint was filed and are outside of the scope of the requirements of the IDEA and state special education regulations, this decision will not address any of the Parent’s new or additional allegations. The issues under investigation in this special education citizen complaint are listed below.

ISSUES

1. Did the District follow referral and initial evaluation procedures following the Parent’s referral for a special education evaluation on May 1, 2018?
2. Did the District follow procedures for developing the Student’s initial individualized education program (IEP)?
3. Did the District follow procedures for issuing prior written notices that contained all the elements required in WAC 392-172A-05010?

LEGAL STANDARDS

Child Find: School districts must conduct child find activities calculated to locate, evaluate, and identify all students who are in need of special education and related services, regardless of the severity of their disability. Child find activities shall extend to students residing within the school district boundaries whether or not they are enrolled in the public school system; except that students attending nonprofit private elementary or secondary schools located within the school district boundaries shall be located, identified and evaluated consistent with WAC 392-172A-04005. Child find activities must also be calculated to reach students who are homeless, wards of the state, highly mobile students with disabilities, such as homeless and migrant students and students who are suspected of being a student with a disability and in need of special education, even though they are advancing from grade to grade. WAC 392-172A-02040. A district’s obligation to evaluate a student, either through its child find or referral processes, is triggered when the district has reason to suspect a disability and reason to suspect that special education services may be needed to address that disability. 34 CFR §300.111; WAC 392-172A-02040; *Dep’t of Educ., State of Haw. v. Cari Rae S.* 35 IDELR 90 (U.S. District Ct HI, 2001) (quoting *Corpus Christi Indep. Sch. Dist.* 31 IDELR 41 (SEA TX 1999)); *Kanongata’a v. Washington Interscholastic Activities Ass’n*, 46 IDELR 8 (W.D. Wash. 2006).

To accomplish this, each district must implement policies and procedures that describe the methods it will use to conduct child find activities. Child find activities must be calculated to reach students that have disabilities and need special education services regardless of the severity of their disability. 34 CFR §300.111(a); WAC 392-172A-02040(1). The identification of children who have disabilities should be a cooperative and consultative process. *Pasatiempo v. Aizawa*, 103 F.3d 796 (9th Cir. 1996).

Referral: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. 34 CFR §300.301; WAC 392-172A-03005(1). A referral may be implied when a parent informs a school that a child may have special needs. *In the Matter of the Lake Washington School District*, 57 IDELR 27, OSPI Cause No. 2011-SE-0020X (WA SEA 2011). When a student suspected of having a disability is brought to the attention of school personnel, the district must document that referral. It must provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether the student is a good candidate for evaluation. It must review the referral, and it must collect and examine existing school, medical, and other records. The district must determine within 25 school days after receipt of the referral whether it will evaluate the student. The district must provide the parent with written notice of its decision. 34 CFR §300.301; WAC 392-172A-03005.

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 service needs, whether or not they are commonly linked to the disability category in which the student has been classified. 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. 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.” *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). 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.

Evaluation/Reevaluation Standards: The evaluation must comply with the IDEA’s procedural requirements and complete the evaluation within thirty-five school days from receipt of consent.

In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so the content of the student's individualized education program (IEP), including information related to enabling the student to be involved in and progress in the general education curriculum. No single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. Additionally, districts must ensure that the assessments and evaluation materials they use are selected and administered so as not to be discriminatory on a racial or cultural basis. Assessments must be provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so. 34 CFR §300.304; WAC 392-172A-03020.

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 and in accordance with any instructions provided by the producer of the assessment. 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. If necessary as a part of a complete assessment, a district may obtain at its expense a medical statement or assessment indicating any additional factors that affect the student's educational performance. Students should be comprehensively assessed in all areas of suspected disability, and districts must use assessment tools and strategies that provide information that directly assists those determining the student's educational needs. 34 CFR §300.304; WAC 392-172A-03020.

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; 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. 34 CFR §300.306; WAC 392-172A-03040(3). 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. If the evaluation results in a determination that the student is eligible for special education and appropriate related services, the district must then conduct an IEP meeting to develop an appropriate IEP. A district must provide a copy of the evaluation report and documentation of determination of eligibility to the parents, and at no cost to the parents. 34 CFR §300.306; WAC 392-172A-03040.

Eligibility Under IDEA: A student eligible for special education means a student who has been evaluated and determined to need special education because he or she has a disability in one of the following eligibility categories: intellectual disability, a hearing impairment, a speech or language impairment, a visual impairment, an emotional behavioral disability, an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or, for students aged three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations. 34 CFR §300.8(a)(1); WAC 392-172A-01035. A student must not be determined to be eligible for special education services if the determinant factor is: 1) lack of appropriate instruction in reading, based upon the state's grade level standards; 2) lack of appropriate instruction in math; or, 3) limited English proficiency. WAC 392-172A-03040. A child with a disability may seek to qualify for special education benefits under more than one eligibility category. *E.M. by E.M. and E.M. v. Pajaro Valley Unified Sch. Dist.*, 114 LRP 31486 (9th Cir. 2014). A student's eligibility category does not determine services. *In the Matter of Issaquah School District*, 103 LRP 27273, OSPI Cause No. 2002-SE-0030 (WA SEA 2002).

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.

Consent for Initial Provision of Services: A school district that is responsible for making free appropriate public education (FAPE) available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student. The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student. If the parent of a student fails to respond to a request for or refuses to consent to the initial provision of special education and related services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student. If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district: Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent; and is not required to convene an IEP team meeting or develop an IEP. 34 CFR §300.300(b)(3); WAC 392-172A-03000(2)(d). Parental consent is for the initial provision of special education and related services generally, not for a particular service or services. Individuals with Disabilities Education Act (IDEA), 73 Fed. Reg. 73,007, 73,011 (December 1, 2008) (comment to 34 CFR § 300.300).

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 a FAPE to the student. 34 CFR §300.501(b); WAC 392-172A-05000(2)(a). 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 and scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the

purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. The school district must give the parent a copy of the student's IEP at no cost to the parent. 34 CFR § 300.322; WAC 392-172A-03100.

A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. 34 CFR § 300.322; WAC 392-172A-03100.

Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting disabled students' rights and providing each disabled student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the IEP process. Most importantly, a meeting may only be conducted without a parent if, "the public agency is unable to convince the parents they should attend." 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).

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. IDEA, 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing,

reviewing, and revising IEPs. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote." If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Act (IDEA), 64 Fed. Reg. 12473-74 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

Initial IEP: For an initial IEP, a school district must ensure that: (a) the school district holds a meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and (b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP. 34 CFR §300.323; WAC 392-172A-03105.

FINDINGS OF FACT

Background: 2017-2018 School Year

1. At the start of the District's 2017-2018 school year, the Student was a six-year-old kindergartner receiving home school instruction. The Student was not eligible for special education.
2. According to the District's response to the Parent's complaint, on March 23, 2018, the Parent visited one of the District's alternative learning experience (ALE) programs that provides onsite class instruction to homeschool families through a teacher/parent partnership. The Parent met with the ALE principal and registrar to discuss the school and the Student's potential enrollment in the District. According to the District, the principal believed the Parent's focus was on determining whether the school could meet the Student's "advanced learning needs."
3. On March 23, 2018, the ALE office specialist emailed the ALE counselor regarding the Student. The email stated the Student had been homeschooled and he "still does have some issues with understanding classroom etiquette i.e. 'keep your hands to yourself.' Mom would like to attend a couple classes with him to be sure he understands. (info from mom)."
4. According to additional information provided by the Parent during this investigation and the Parent's reply to the District's response to this complaint, the Parent stated she believed the March 23, 2018 email was the first time "it was mentioned that [Student] might have a suspected Disability" because the email mentioned the "impulse control issues [Student] was having and continues to have as a result of his Autism diagnoses." In her reply, the Parent stated this email is evidence the ALE staff were "aware of the Student's history with Sensory Processing Disorder (SPD)" and that the Student had received occupational therapy.

There was no evidence that the Student had been diagnosed with Autism at this time, or that Autism was discussed during the March 23, 2018 visit to the ALE. In her reply, the Parent did state that at this time, the Student had not yet been diagnosed with any of his current diagnosis; although, the Parent emphasized that this did not mean “that the [S]tudent did not have impairments.”

5. On March 25, 2018, the Parent emailed the ALE principal and stated the Student’s “academic prowess doesn’t match his social or emotional maturity” and noted they received feedback from another program that “[program didn’t] have staff to deal with a 6 year old who has never had to sit in a classroom but who would be in class with kids 2-4 years his senior.” The Parent also stated, “We had talked about testing, and I think we might hold off a year until he’s reading more solidly. He’s prone to anxiety, and I don’t want to push him too hard while he’s ‘blind’ to reading what’s going on around him and in front of him; in a year’s time, I think testing would be far more accurate. So let’s see what we can do without testing to land him in the correct grade for now.”¹
6. On March 26, 2018, the principal emailed the counselor regarding some information shared by the Parent about another program the Student tried to get into. The principal stated, “ultimately [Student] was denied admission because 1) they didn’t offer SPED services and 2) the school didn’t believe it would not provide him the rigor that the family was requesting.”²
7. Upon enrollment in the District, the Parent and the ALE counselor developed the Student’s written student learning plan (WSLP). The Student’s plan included a kindergarten/first grade level math class and a second/third grade level math class. The District explained that the Parent selected both classes “in an effort to find an appropriate math placement” for the Student. The WSLP also included a description of the curriculum for English language arts, science, social studies, and physical education (PE) that the Parent was providing independently.
8. On April 16, 2018, the Student officially enrolled in the District and attended his first day at the ALE. According to the District, the Student’s District enrollment paperwork did not indicate any disability or health concerns.
9. On April 18, 2018, the Student attended the second/third grade math class.
10. The ALE principal emailed the Parent the same day regarding grade level and stated he would check in the following week to see how the Student was doing with the second/third grade math class as the Parent had “determined that [the Student] already knew [the K-1 math class] content.” The principal also stated, “I would strongly suggest completing an application to

¹ Based on the email communications, it appears at this point, the Parent and the ALE principal were discussing testing for grade placement and highly capable programming.

² This email was provided by the Parent pursuant to a public record/FERPA request she made to the District, and was not included in the District’s response to this complaint, although all emails relevant to the alleged issues had been requested.

Advanced Learning (AL) to determine if [the Student] qualifies for AL opportunities. This testing, which would happen early next school year, would determine if Spectrum...or Highly Capable Cohort would be required to support his needs.”³ The principal also stated that he wanted to offer the Student “STAR 360 Reading and Math tests,” which provided a “snapshot of ability that comes with an instructional plan based on the results. The results are only for our use and not reported to the district or the State.”

Timeline for Investigation Began on April 23, 2018

11. On April 23, 2018, the Parent emailed the principal with additional concerns and questions about the issue to the Student’s grade level. The Parent also stated, “I want to wait until next year’s HCC testing because he’s not reading yet, among other reasons...” However, the Parent stated, “we would...be interested in your math assessment test for him.”
12. Between April 23 and 26, 2018, the Parent and ALE principal exchanged additional emails about advanced learning and grade level. According to the District’s response, the principal did not believe the concerns the Parent raised were an indication the Parent was referring the Student for special education services or that he required such supports.
13. On April 23, 2018, the Student took a STAR 360 math test, with accommodations, and scored “that of an average second grader.”
14. At the suggestion of the principal, the Student attended the second/third grade level math class on April 30 and May 2, 2018.
15. On May 1, 2018, the Parent emailed the ALE counselor and stated, “I’d very much appreciate your advice about how to get started setting up and [sic] [individualized education program] IEP for [Student] under the category of ‘Other Health Impairment?’ We’ve just gotten a formal diagnosis...”

According to additional information provided by the Parent, the ALE math teacher suggested to the Parent that she talk to the counselor and ask for an IEP. The Parent stated she then “went home and read how an IEP might be able to help support him. *I had never heard of an IEP until this time that it was recommended by [math teacher.]*”

16. On May 2, 2018, according to the District’s response, the Parent met with one of the ALE’s counselors and shared a “parent conference team summary,” dated May 1, 2018, from a private evaluation of the Student, which provided updated information about the Student, including “diagnoses/impressions” and stated if the Student “continues to participate in the public schools, it was recommended that his parents seek out supports for [the Student] in the classroom...[and that] he may qualify for an individualized education program (IEP) under

³ Spectrum is advanced instruction for students generally performing one year above in math and reading. Highly Capable Cohort (HCC) is advanced instruction for students generally performing two years above in math and reading.

the category of Other Health Impairment...[or] a 504 plan in order to provide accommodations to support him in the classroom.”

The diagnoses/impressions stated the Student did not have an autism spectrum disorder, had an unspecified attention-deficit/hyperactivity disorder (ADHD), unspecified anxiety disorder, and sensory processing differences. The report also included recommended strategies and accommodations. The report also recommended the Student “participate in behavior therapy that targets his symptoms related to a diagnosis of ADHD” and that the Student would benefit from occupational therapy.

17. Later on May 2, 2018, the ALE counselor emailed two District staff persons⁴ and stated the Parent “is wanting to pursue an IEP...Since she is asking for one already do I need to send her directly to you or have her complete some referral forms first (that is my inclination). I did ask her to bring the diagnosis...So, I say we cancel [multi-tiered system of support] MTSS and get our other work done.”

One of the District staff persons responded and stated she would “send a notice to parent documenting referral and it gives the District 25-school days to determine if an evaluation is needed.”

18. According to the Parent’s complaint, when she provided the ALE counselor with information about the Student’s diagnoses and the private evaluation report, this was her request for an initial special education evaluation. Additionally, according to additional information provided by the Parent in response to a question from OSPI regarding whether she turned in MTSS paperwork, the Parent stated she gave the ALE counselor the MTSS paperwork at the same time she provided them with the May 1, 2018 report.
19. On May 3, 2018, the ALE counselor emailed the Parent a form to start the MTSS referral process. The email stated the process “includes finding ways to offer specific supports for our students.” The counselor also stated she would consult with the principal and the other counselor about class offerings because “it doesn’t sound like Math 2-3 is a good fit.”
20. According to the District, the MTSS referral process is “used as a first step by schools to determine what supports a student may need. The input form sought information about [the Student’s] strengths, areas of challenge, health history, and developmental history.” The form specifically asked whether there were “any physical or mental health concerns that may affect how your child learns” and asked whether the Student had “specific disabilities that may affect his learning (e.g., behavioral disturbance, [attention deficit disorder] ADD/ADHD, inattention, learning disorders, slow learning, temper tantrums, etc.).”

The District stated the Parent did not return the MTSS form to the District.

⁴ This email was provided by the Parent pursuant to a public record request she made to the District, and was not included in the District’s response. These two individuals were not listed on the staff list the District provided, but based on the email addresses are District staff.

21. On May 5, 2018, the Parent emailed the counselor and the principal that she would be unenrolling the Student.
22. On May 6, 2018, the ALE counselor emailed the staff person she had been communicating with about a referral for the Student and stated, "take this guy off your work list."
23. On May 7, 2018, the Parent officially unenrolled the Student from the District.
24. The District's last day of the 2017-2018 school year was June 22, 2018.

2018-2019 School Year

25. At the start of the District's 2018-2019 school year, the Student was a seven-year-old first grader receiving home school instruction.
26. The District's first day of school was September 5, 2018.
27. On November 11, 2018, the Parent emailed the District's 504 coordinator and stated the Student's therapist "thinks [the Student] would benefit from going to school" and inquired about supports for the Student. The Parent stated the Student had "behavioral issues due to ADHD, [sensory processing disorder] SPD, and anxiety" and that the Student had attempted math classes at the ALE, "but it did not work out well for him, due to all the visual and auditory noise." The Parent stated that the ALE's math classes were not a good match and stated the Student "might need an aid when he starts school to help be successful and not disruptive." The Parent stated she knew the Student needed support, but she "want[ed] him taking classes and not in an isolated class for kids with special needs, at least for most of the subjects they study" and that the Student "isn't yet reading, so I know he'll need extra help with that. He might have a learning disability or some kind of visual discrimination issue in this area; he's behind kids his age." The Parent stated the Student would need "both a 504 and an IEP" and asked whether the Student would need to go to his assigned school, [neighborhood school], or could go to a "different school that would better scaffold him...a school that's better equipped for his needs?"
28. On November 15, 2018, the 504 coordinator emailed the Parent to schedule a meeting to discuss her concerns. The Parent responded with her availability and stated she was "trying to get to the bottom of what might be causing [the Student's] symptoms" and wanted to visit the neighborhood school "to understand whether it would be a good fit for [the Student] given his sensory processing disorder and issues with echo and too much 'visual noise' too."
29. According to the District, it was the 504 coordinator's understanding that the Parent was "interested in having a preliminary meeting to gather information about enrollment, [neighborhood school], and possible supports for the Student, including discussing the differences between 504 supports and special education services...[The coordinator] did not understand the Parent had made a referral for an initial special education evaluation."

30. On November 18, 2018, the Parent emailed the 504 coordinator, continuing their conversation about scheduling a meeting. The Parent asked, "is this a formal meeting to enroll [the Student] and start working through a 504 or IEP?" In a subsequent email, the Parent requested she be allowed to record all meetings.
31. From November 19-23, 2018, there was no school for elementary students due to parent-teacher conferences and Thanksgiving break.
32. On November 21, 2018, the Parent emailed the 504 coordinator and stated she was looking forward to the meeting and "talking more about my request for an evaluation of [the Student] for Special Education Placement."
33. According to the District, the communications in late November 2018 suggested the Parent wanted the Student to have an IEP as opposed to 504 supports and accommodations.
34. On November 27, 2018, the Parent emailed the 504 coordinator and asked what the "purpose and goal" of the meeting was. The Parent stated, "I want to be sure to get you all supporting documentation you might need too so we can all work together to get every accommodation in place for [the Student] before he starts with [District.]" The Parent indicated she had outside evaluations she would share with the District, which showed the Student was diagnosed with "bipolar, severe ADHD, sensory processing disorder, anxiety, and giftedness." The Parent also stated the Student might have a learning disability, because he was "behind in reading and writing...and/or a visual perception issue." The Parent stated the Student was "gifted in math, auditory processing, and oral communication." The Parent stated the Student's private "occupational therapist [(OT)] and behavioral therapist insist on seeing all consent forms and the subsequent IEP before I sign anything. They also will be at the IEP meeting(s)." Further, the Parent stated she did not want "team [Student]" to be "adversarial in any way. But I do need you to know how much support and adoration my snowflake has, and I need [District] to recognize what this very-dedicated team has already discovered and uncovered about [the Student]." The Parent stated she was his "homeschool teacher and will advocate for him from both a parent's and educator's perspective." Finally, the Parent stated she would need to record "this meeting and all future meetings," needed "someone to take notes and provide me with copies," and needed "all print outs, contracts, material, etc. [48-hours] in advance of any meeting so I can review it first."
35. On November 29, 2018, internal emails between District staff discussed setting up a meeting with the Parent and included the following, in part:
 - 504 coordinator emailed neighborhood school head teacher, assistant principal, a District student support services supervisor (supervisor 1), and a District a program specialist and stated, "I have also added [program specialist] and [supervisor 1] from SPED so they are aware of this incoming student."
 - Assistant principal emailed the principal and stated, based on other emails, "it sounds like the mother might be interpreting this meeting as an IEP meeting but I'm not sure we are at that point yet...it sounds like some clarification is needed and likely somebody from Sped at the district..."

- 504 coordinator emailed the principal, program specialist, and supervisor 1 and stated, “Mom stated in 1st email that she wanted a 504 plan which is why I was contacted, it was not until I started this process that I found out that they are also requesting SPED” and that “it is my understanding that the SPED process cannot start until the student is enrolled.” The coordinator further stated the plan was to start with a 504 “so there are some accommodations in place as the student starts school, then once enrollment is confirmed and the SPED referral is made they can take over the process. If the student does not qualify for SPED then we are already set up with a 504 plan.”
- Principal emailed and clarified that supervisor 1 stated “Mom can in fact request an evaluation before enrolling” and that she was going to email the Parent to let her know that, and confirm a meeting time and date.

36. On November 30, 2018, the principal of the Student’s neighborhood school emailed the Parent to introduce herself, the assistant principal, head teacher, supervisor 1, and the program specialist. The principal stated that from her perspective, the purpose of the meeting was “to begin to get to know each other, and to better understand [the Student] and how we can support him in a potential upcoming transition in schooling.” The principal explained the Student would have to be evaluated in order to have an IEP and asked the Parent to confirm that she was requesting a special education evaluation.

37. The Parent responded and stated she had first requested a special education evaluation on November 11, 2018. The Parent stated that she now understood the Student “can’t have both a 504 and IEP,” that the Student would also need a functional behavioral assessment (FBA) and a behavioral intervention plan (BIP).

38. On November 30 and on December 1, 2018, supervisor 1 sent the Parent’s referral to the District’s private school evaluation team—because the Student was not yet enrolled in the District—and documented a referral date of November 12, 2018 in its system.⁵ On December 1, 2018, supervisor 1 also emailed the Parent and notified her that he had sent the Parent’s referral to the private school team as “they would be reviewing your request for an evaluation” because “[the Student] is currently being home schooled.”

39. On December 5, 2018, the principal emailed the Parent information about both the 504 and special education evaluation processes, including an attached “Parent Consent for Evaluation Form [special education], 504 Parent and Student Rights Information [and consent for 504 evaluation], [and] Private School Referral Packet.”

The Parent responded and stated the Student had “received a formal autism diagnosis” and stated she would bring the information to the December 6, 2018 meeting. The Parent also stated the Student,

⁵ According to the District, November 11, 2018 (when the Parent requested a special education evaluation) was a non-school day. Therefore, November 12, 2018 is when the District recorded receipt of the Parent’s November 11 email. Although, the District noted November 12, 2018 was also a non-school day. Regardless, 25 school days from either November 11 or November 12, 2018 was January 7, 2019, so this did not change the referral timeline.

has a huge support team of professionals. Please note that his therapist and OT will review everything before I sign or agree to it. They will also attend his IEP meeting, and the therapist would like to speak to each of his teachers before he starts school. He is absolutely my snowflake. He is a very challenging child who can have unpredictability explosive behavioral issues, but he's also very engaging and humorous and empathetic. He is not your stereotypical kid with autism. He's verbally gifted.

The Parent also stated she was the Student's "case manager. I am also his mother and his teacher. I know my child very well."

40. Prior to the meeting scheduled for December 6, 2018, several District staff (principal, 504 coordinator, program specialist, supervisor 1, and private school evaluation team member) exchanged emails regarding the meeting. The emails are summarized, in part, as follows:

- Principal emailed and stated it would be "extremely helpful" to have someone from the special education team here to help us navigate the steps.
- Principal emailed and stated her understanding was that the Parent "is under the impression that she submitted a request for an evaluation on 11/11/18, and is expecting that evaluation to be completed before her son enrolls in [District] in order to have the supports in place for her son from his first day of enrollment." The principal stated she had asked for clarification from the special education team, but had not heard back. The principal stated, "Just to name it explicitly – I am concerned that only [504 coordinator] and I will be at the meeting tomorrow...and that [504 coordinator] and I will not be able to answer the family's questions."
- Supervisor 1 responded: "If the parent does not enroll they would request an evaluation through private school. If the parent enrolls the student this would then fall the building team at their neighborhood school. I have reservations involving the regional special education team for a student that is not eligible for services nor enrolled in the district. This is the reason a representative from 504 is attending until eligibility is established."
- 504 coordinator responded to the principal's emails and stated, "That is why we are doing the 504 plan first, evaluation can take place on Thursday and once they enroll then the accommodations can be put into place that will provide supports until a SPED eval is done."
- Supervisor 1 stated in an email to the principal, "I believe [504 coordinator] should be able to direct the questions to the appropriate channels for process. If for some reason there is something that comes up, I could be on the phone for a bit."
- The private school team member noted that consent for a special education evaluation had not yet been signed and that "the consent form isn't offered to the parent until the team decides to evaluate." She stated, "it sounds like this student is a good candidate for an evaluation, but a decision has not yet been made...if we consider November 11th to be the referral date...the decision is due by January 7th."

41. On December 6, 2018, the Parent emailed the principal and returned a "modified 504 consent form⁶" because as she stated, "I just realized that the consent form you attached was consent for an evaluation pursuant to section 504. Was this in error? [The Student] will need an IEP." The Parent stated, "If there's a more proper form for consent to evaluate for special education,

⁶ On this consent form, the Parent crossed out "Section 504" and wrote in that she consented to an evaluation for "special education placement."

can you please send that along before tomorrow's meeting instead of this 504-5 form?" The Parent also expressed concern and asked questions regarding the timeline for the evaluation.

42. The Parent did not return the "Special Education Referral and Intake Forms" that were attached to the District's December 5, 2018 email.
43. Also, on December 6, 2018, the Parent provided the District with information and letters from the Student's outside providers (psychiatric and behavioral, autism center, counseling, children's hospital), which included the following information, in part:
- Support for the prior diagnosis of ADHD;
 - Noted "severe social-emotional and behavioral difficulties;"
 - Noted the Student's initial transition to school may be difficult;
 - Student meets criteria for autism spectrum disorder (ASD) and "co-occurring conditions including ADHD Combined presentation, Unspecified Anxiety Disorder, and Unspecified Disruptive Impulse Control Disorder;"
 - Student does not have an intellectual disability and has advanced verbal skills, though he has speech articulation difficulties;
 - Information about "activities of daily living," education, social participation, sensory processing, and adaptive behavior;
 - Recommendations for occupational therapy; and,
 - Information about hospitalizations for mental health evaluation in September, October, and November 2018.⁷

A private provider "strongly support[ed] his transition to [the District], and recommend[ed] a thorough evaluation by the school to determine his eligibility for special education services (an IEP)...a behavioral intervention plan (BIP)...[and] a program that provides frequent positive attention for appropriate behavior (in social and academic domains)." Another provider recommended the Student be evaluated for "academic skills, working memory and processing speed, speech articulation and social communication skills, social/behavior/emotion functioning, executive functioning, fine/gross motor, sensory, and other skills relevant" and that the Student would benefit from services from a multi-disciplinary team including "Education, Special Education, Gifted Education, Paraeducator, Speech/Language/SLP, Occupational Therapy, School Counselor, School Psychologist, and Autism/Behavior Specialist."

44. On December 6, 2018, the principal replied to the Parent and stated, "I am not an expert in the processes for evaluation for Special Education for students who are not currently enrolled in [District], but I am definitely trying to understand better what we need to do to make sure supports are in place for [Student] on his first day of school." The principal clarified that two separate forms had been attached to the previous email—one for 504 and the private school special education referral packet. The principal stated, "It is my understanding that if you are hoping to have the evaluation completed before [the Student's] first day of school, you would

⁷ One hospitalization resulted in an eight day stay in the hospital. The discharge summary noted the following under "reason for hospitalization:" the Student is a "6-year-old boy with a past psychiatric history of ADHD who presented with worsening aggression and elopement in the setting of task demands."

go through the Private School Evaluation Team through the packet attached yesterday," but "if you choose to have [the Student] enrolled in [District] while the evaluation is underway, it can be more effective to go through the school-based team." The principal stated they would want to discuss and clarify with the team during that day's meeting.

45. On December 6, 2018, the Parent met with the principal and 504 coordinator to visit the Student's neighborhood school and discuss the Student's needs. According to the District, the Parent indicated she intended to enroll the Student in January 2019, but that she did not want to enroll him until "appropriate supports were in place through an IEP." The District explained the Student's "enrollment status would determine whether he would be evaluated through the District's private school team or by the school-based psychologist, who would be part of [the Student's] team moving forward." The District informed the Parent that the expected date of completion for the evaluation was in March 2019.⁸ The District explained the Student could enroll in the District immediately and receive supports through a 504 plan while the evaluation was being conducted.
46. According to the documentation provided in this complaint, the Student was enrolled in the District on December 6, 2018 and his enrollment paperwork stated: "awaiting assignment" under "School."
47. On December 7, 2018, the principal emailed the school psychologist based at the Student's neighborhood school to provide her information about the Student and the special education evaluation that they had discussed in emails and at the meeting on December 6, 2018. The principal also emailed the Parent and psychologist to introduce them to each other.
48. Shortly thereafter, the school psychologist resigned her position (effective January 2019).
49. Also, on December 7, 2018, the principal emailed other members of the neighborhood school team information about the Student, stating, "I am writing to you with a student evaluation situation that is different than our typical evaluation process...all of this is to say, we have a new student to evaluate and to create an IEP for!"
50. Later, on December 7, 2018, the principal emailed the program specialist and stated the meeting went well, "mom decided to enroll [Student], so [504 coordinator] made that happen right then and there, and we are now doing the evaluation through the [neighborhood school] team."
51. On December 10, 2018, the District's psychologist team lead (lead psychologist) emailed supervisor 1, the program specialist, a District special education director, the principal, and the school psychologist the following:

⁸ The District's response explained that the expected date of completion for the evaluation was based on the November 11, 2018 referral, assumption that a decision to evaluate would occur by January 7, 2019 (twenty-five school days), and an assumption that the Parent would provide consent immediately.

I've had a chance to review the documents attached. Based on this, I believe a team could decide to conduct an evaluation. Given the documents, an interpretation could be made that there is a suspicion of a disabling condition. However, without access to the student and time to see how he functions in the educational setting I'm not sure how the building based team could make an informed edibility determination.

52. On December 14, 2018, supervisor 1 emailed the Parent and notified her the lead psychologist would now be part of the team (due to staffing changes). The supervisor suggested scheduling a meeting on December 20, 2018 to discuss "what are the areas of the team would want assessed. Also, if [the Student] is not attending school how/where testing and observations can be conducted and limitations to assessment if he is not in a classroom setting especially in the area of social emotional."
53. Also, on December 14, 2018, the Parent replied that she was available for a meeting on December 20, 2018, stated the Student just underwent cognitive testing and that she would have the final report this month, but "the psychologist there and at [hospital] both wrote letters for the purpose of helping to inform what assessments they believe would be helpful for [the Student]" and that the Student has "had a lot of cognitive testing, but never academic testing. I'd prefer not to put him through any tests again where we have data points from the past year." The Parent stated the Student has "a regular therapist, two psychologists and an OT who can all help you understand where he is for social/emotional development."
54. On December 18, 2018, the Parent emailed the program specialist, principal, and supervisor 1, to confirm the meeting scheduled for December 20. The Parent stated the Student's therapist would be attending the meeting and reiterated she would record the meeting and requested "a copy any notes being taken too," and "please send me any handouts, consent forms, or anything else I will receive during the meeting at least 24 hours in advance."
55. On December 19, 2018, supervisor 1 called the Parent and left a voicemail, explaining that the lead psychologist would not attend the meeting if it was recorded and asked if the Parent would "reconsider recording." Supervisor 1 followed up the voicemail with an email and stated, "at the conclusion of the meeting we will generate a [prior written notice] with the team decisions on if we will be evaluating or not."

According to the District's response, it "acknowledges that its communication could have been clearer, the intent of [supervisor 1's] communications was... to see if there was a different solution that would address all parties' concerns."

56. On December 20, 2018, the Parent emailed one of the District's directors of special education (director), raised concerns about supervisor 1's communications, and requested that he be removed "from working with [her] or [her] family." The Parent stated supervisor 1's voicemail was "essentially making me choose between having a psychologist attend in person or...to record the meeting" and characterized this as an "ultimatum." The Parent stated she felt supervisor 1 was attempting to intimidate her or limit her parental participation and stated,

"this is evidenced in the follow-up email message where he intentionally omits the psychologist's refusal to attend in person if I record the meeting."

The director responded and attempted to schedule a phone call to address the Parent's concerns. The Parent declined to discuss her concerns via phone and asked the director to email her. The director then emailed the Parent and explained that "the psychologist isn't comfortable being recorded in any meeting – this isn't specific to your meeting, so please understand that – if he were there he would be opting not to speak." The director stated that supervisor 1 intended to attend the meeting later that afternoon and apologized "if you feel he was trying to intimidate you – he has been very clear about supporting the needs of your child when we have talked through your case, which we did before he emailed you." The director noted "the timeline is coming to an end for the evaluation determination" and asked if the Parent was comfortable meeting with supervisor 1, and if not, asked for "suggested next steps."

57. The Parent responded to the director's email and stated she would be at the meeting, did not feel comfortable meeting with supervisor 1, and requested that the District "reassign our son's case to a more suitable staff member." The Parent stated, "if a meeting is necessary to make a decision whether our son will be evaluated for special education placement, it is important that we hold the meeting and not allow further delay in the process."

The director replied and stated that "reconfiguring the team in time for the meeting was proving to be a challenge" and asked the Parent to call her.

58. According to the District's response, later on December 20, 2018, the Parent arrived to meet with supervisor 1, the principal, and the assistant principal. According to the District, the Parent "declined to meet with [supervisor 1]—the special education representative—and as such, the meeting did not take place." The District stated in its response that "as no District staff were knowledgeable of the Student and all information being considered was being provided by the Parent, the District decided not to evaluate the Student until the Parent and District staff could review the data and discuss the decision together."

59. On December 21, 2018, the Parent emailed the director regarding her concerns about the meeting and forwarded her email to the director to the District's chief of student support services (chief of student support).

60. On December 24, 2018, the District emailed the Parent with prior written notice regarding its decision to not evaluate the Student. The notice stated:

Description of the proposed or refused action: We are proposing to not initiate an evaluation at this time until the team can meet when school resumes in January 2019. The meeting is to discuss the parent's areas of concern, how the student would be assessed and review any data provided by the family. Since the student is not attending [the District] any information that is being considered is provided by the parent and their provided outside reports. The family reports that they have been homeschooling the student.

The reason we are proposing or refusing to take action: We are not able to initiate an evaluation at this time. The parent refused to meet for the scheduled meeting on 12/20/2018 to make the determination if [the District] will evaluate [the Student] and what areas might be assessed. The parent refused to attend the meeting as they would not be in the same room as the special education supervisor (because of a telephone message regarding the school psychologist's refusal to participate in the meeting if it was being recorded). The special education supervisor was representing the district and special education department since the Psychologist was not comfortable being recorded by the parent in this meeting.

...

The reason(s) we rejected those options was: Holding the meeting without a representative from special education present was rejected. This was rejected as the district was ready to hold the meeting and the parent cannot dictate who participates from the district. The team of three (Principal, Vice Principal, and Parent) would not have the procedural and content knowledge to proceed with the meeting.

...

Any other factors that are relevant to the action: The district was ready to hold this meeting on 12/20/2018. The district will work to schedule another meeting as soon as possible when staff return in January 2019 with [Student's] family. The parent has indicated that they will not be sending [Student] to school until an evaluation takes place. [District] would like to discuss how an evaluation could take place if the student is not in school and depending on areas of evaluation how this could impact the evaluations results and comprehensiveness.

61. The District was on winter break December 24, 2018 through January 4, 2019.

62. On January 8, 2019, the Parent emailed supervisor 1 and other District members of the Student's team and attached her response to the District's December 24, 2018 prior written notice and guidance regarding recording IEP meetings. The Parent's response to the prior written notice included the following comments, in part:

Description of the proposed or refused action: ...

[The Student] was in fact enrolled in the [ALE] Program. The [ALE] is a [District] School. His ID number is [...].⁹

The reason we are proposing or refusing to take action: ...

It is the school district's responsibility to investigate claims of...harassment, intimidation, and breaking trust by [District] district staff. It is not ok for the district to force a child's mother to choose between: her son's timely education in exchange for being locked in a small room across from a man who she accused less than 24 hours beforehand of unlawful and socially unacceptable behavior towards her -or- not having a meeting or any resolution whatsoever for 18 days, knowing she would be required to carry this trauma through the holiday...all the while knowing her son's education by [District] would be pushed out to a later and later date.

Additionally, I was in attendance.

⁹ Parent's comments included, in part, in italics.

This [prior written notice] is a subsequent act of intimidation by the district that has shaken my family...[repeated concerns regarding supervisor.]

...

*We don't understand: Why [supervisor 1's] presence was necessary. The principal and assistant principal were there and already representing the district. -and- How [supervisor 1] has the qualifications to step in for a school psychologist...It is important to add here too that [school psychologist] doesn't feel comfortable being recorded in **any** meeting...I was told that [psychologist] doesn't feel that he can 'speak freely' if he is being recorded. It is unclear why [psychologist]...puts his preference before his role as a person in public service, refusing to serve the parents. [Program specialist], even though invited to the meeting on 12/20/2018, did not attend or requested written excusal from us, per [300.321(e)].*

...

Both of [Student's] 'parents' weren't in attendance. Only [Parent], [Student's] mother, was in attendance. I met with both the principal...and assistant principal...[and] discussed:

- *Whether a [referral] meeting could be had without representation from Special Education or Psychology. We decided that the meeting wasn't appropriately staffed. No one was present who was qualified to make decisions based on [Student's] evaluations. [Student's] case requires qualified guidance. This is clear from [Student's] known, multiple diagnoses and symptoms, as stated in his medical records.*
- *The school staff and I agreed to rescheduling the [referral] meeting to a time that the district could properly staff the meeting.*

The reason(s) we rejected those options was: ...

[Repeated concerns about supervisor 1, Parent's request to remove supervisor 1 from the team...]

This section of the [notice] needs to be updated to also address that a vital member of the team from the district refused to attend the meeting. If that representative does not want to attend because the meeting will be recorded as part of another team member's required accommodations, then the school or district should have designated someone else to attend the meeting instead of cancelling it...

...

Any other factors that are relevant to the action: ...

*The first sentence in this section is not true. **The district was not ready to hold the meeting on 12/20/2018**, with or without [supervisor 1] in attendance. The third sentence is also not true. We have said that it is not safe for [Student] to start school without accommodations in place on his first day of school. [Student] has had many assessments by medical doctors, mental health providers, and clinicians, and the district has copies of those reports. The evaluations are concrete and actionable. It is our understanding, as well, that the meeting that was to occur on 12/20/2018 was not to discuss an evaluation but, rather, whether [Student] formally qualifies for an IEP (the 504 meeting determined he did). At the 12/20/2018 meeting, the attendees were going to determine which assessments he should be given to then inform subsequent accommodations.*

...

[Student] is in school. The district knows this. He is homeschooled. It is offensive that the district would further insult and patronize me and our family by saying that his is not in school...

[Additional information about the Student and records the District has regarding the Student.]

63. Subsequent to the Parent's email, various District staff responded to the Parent and attempted to resolve concerns. The Parent and District staff also exchanged numerous emails regarding scheduling a referral meeting. It was also agreed a different student support services supervisor (supervisor 2) would be part of the Student's team.

In response to the Parent's concerns, the chief of student support stated:

I'm sorry that there wasn't an initial agreement on the conditions for a meeting to discuss a proposed evaluation of your son...director...will help work with you and the team...[to] get a meeting scheduled...We want to help you with some of the issues impacting your family as you listed in your previous e-mail with a focus on getting quality educational services for your son. I recognize some [of] the challenges in getting a meeting scheduled and feeling comfortable with the personnel at the table. We want to get the meeting scheduled and will have a representative team with licensed personnel to assist the student intervention team meeting and, if agreed upon, an evaluation for special education services.

64. On January 11, 2019, the Parent emailed the director and principal regarding rescheduling the referral meeting. The Parent stated she would be attending and assumed they would also need a District representative, a licensed psychologist, and the school principal. The Parent also asked if the school's OT and reading specialist would be able to attend, and stated the Student's private therapist and possibly his private OT would attend as well.

The principal responded and stated she would be "happy to include [neighborhood school's] OT and Reading Specialist" in the meeting. The director also responded and stated she was working on getting the team together and that she would be in touch regarding the "meeting participants, as well as dates/times to meet."

65. On January 14, 2019, the director emailed the Parent to introduce the Parent to supervisor 2—"who will now be working with you in support of [the Student]."

The Parent responded and reiterated that she would need to meet on a Monday, Tuesday, or Wednesday so that the Student's private therapist could attend.

66. On January 18, 2019, the District invited the Parent to a referral meeting scheduled for January 29, 2019. The Parent, in response to an email from supervisor 2 regarding the meeting, stated she had added the Student's private therapist to the email and confirmed that January 29 would work for a meeting. The Parent added "I'll also need 48 hours after the meeting to be sure my husband and I both have time to review anything that needs a signature."

67. On January 25, 2019, the Parent emailed the principal, supervisor 2, and director (among others), with several questions:

- "What is the scope this meeting?"

- "It's my understanding from the 504 meeting I had with [504 coordinator] and [principal] that the decision to evaluate was made during that meeting. We three decided that [Student's] needs surpassed that which a 504 could provide."
- "We tried to have a [referral] meeting before. The reasons the meeting was canceled was that there was no one qualified to answer questions about assessments...this leads me to believe too that the meeting this next week is a [referral] meeting to inform assessments. Can you please confirm?"
- "Is there an agenda for the meeting? We have some VIPs attending, so let's be sure the most important decisions and discussions are in the beginning."
- "Will you have any questions for me or [Student's] therapist, [...], who will also be attending?"
- "Will there be any handouts?...Will there be any consent forms or other items to sign?"

The Parent stated she would bring extra copies of the Student's private evaluations and assessments; samples of the Student's work; and, videos of the Student at "circus school," during a writing lesson, and during an assessment with a psychologist to the meeting.

68. On January 28, 2019, supervisor 2 emailed the Parent in response to her January 25, 2019 email and provided the Parent with a draft consent form. Supervisor 2 explained that the form was a draft and would "be finalized through discussion," and that the agenda for the meeting was "to finalize the areas to assess and develop an assessment plan." In terms of the agenda, supervisor 2 stated they would "be discussing the areas to assess. Questions may just come in an organic way [and] more detailed information will be gathered during the evaluation process." Supervisor 2 stated that if the Parent had "any questions regarding the evaluation process, please send before the meeting tomorrow morning. It will be helpful to have them in advance if at all possible."
69. Also on January 28, 2019, in an internal email from the lead psychologist to supervisor 2, the school psychologist, and director, he stated "it appears some progress was made in the case (a [decision to assess] DTA has been made, consent sent)." He stated there were some lingering questions about the meeting scheduled for January 29, including "what is the purpose of this meeting."
70. On January 29, 2019, prior to the meeting, the Parent emailed the District a list of concerns regarding the Student (and some strengths) in the following areas: social/emotional, physical, language, cognitive, literacy, math, and sensory. The Parent's attachment also had a section of "additional information" and diagnosis.
71. On January 29, 2019, the Parent met with the Student's private therapist, the principal, the head teacher, an OT, a speech language pathologist (SLP), a District psychologist, supervisor 2, a District specialist for communication disorders, and the advanced learning program specialist. At the meeting, the team agreed to proceed with an evaluation in the areas of adaptive/life skills, cognition, reading, math, written language, motor, communication, study/organization, and social behavior.

According to the District's response, the psychologist explained, and the team discussed, that it was important to be able to observe the Student in school—particularly when assessing him

in social behavior, "to determine whether or not there is an adverse impact in the school setting that requires special education services." The Parent expressed concern about the Student not having adequate supports. The District reiterated that supports could be available to the Student while the evaluation was underway, including a 504 plan, behavior plan, safety plan, access to a special education setting, increased adult support, and other interventions.

The District stated the Student would be provided "agreed-upon supports and interventions during this time," including that the OT would check in with the Student during the day and prior to starting school with "agreed-upon supports" and the Student "would have a few sessions of assessment by the OT and/or SLP to build trust."

72. Later on January 29, 2019, the psychologist emailed the Parent an updated consent form and the special education procedural safeguards. The District also provided the Parent with a prior written notice, which documented the decision to initiate an evaluation. The notice stated the evaluation would include the areas of adaptive/life skills, cognition, reading, math, written language, motor, communication, study/organization, and social/behavior. The notice stated the group reviewed the Parent's report, existing records, and private standardized assessments provided by the Parent. The notice also stated the group agreed the Student would access a shortened schedule "wherein he receives instruction in the academic and social/behavior areas of concern. The amount of support provided by general education school staff during this time will be determined by administration and family. [The Student] will access the general education curriculum throughout the evaluation with any agreed upon supports and interventions" and the Student "will be assessed in all school based areas of concern (reflected in the school setting) and his evaluation will use data to determine whether or not there is an adverse impact in the school setting that required special education services."
73. On January 30, 2019, the Parent emailed the school psychologist with follow-up questions regarding the consent form. The Parent asked "can you help me understand out of which assessment an SLP will work with [the Student]...I'm interested in understanding where he would be given a communication assessment for expressive and receptive language." The Parent also asked why the Student would not be given "functional reading" and "functional written language" assessments rather than reading and written language assessments. The school psychologist responded and stated the Student could "either have functional reading **OR** reading" and that "functional reading skills are assessed through a very limited battery as these are skills for students who present with **severe** cognitive and/or physical delays who may still be working on pre-reading and writing skills well into their teenage years or adulthood for example." The psychologist stated that this "is not for students who are either reading or will be reading anywhere in the near future" and that this type of evaluation was not appropriate for the Student based on the information presented. The psychologist clarified that readings services can include pre-reading skills.

The SLP also responded and stated the communication evaluation could cover the following areas: receptive language, expressive language, social/pragmatic language, articulation, and voice and fluency.

74. On February 4, 2019, the Parent emailed the SLP additional questions about whether physical aggression was seen as a “low form of communication,” whether the SLP would have time to review outside private reports regarding the Student, and whether the SLP had experience testing students like the Student who “are both verbally highly gifted and severely disabled in their ability to understand or convey, for example, non-verbal language?”

The SLP responded and stated she would be working with the OT to assess the Student, and described how she would go about testing the Student. The SLP stated she was trained to evaluate verbal and non-verbal communication, and that evaluating his behaviors potentially fell under social language and overlaps with what the school psychologist will be looking at. The SLP stated she would do a full review of the Student’s existing records and that she has completed many communication evaluations for students with autism and complex communication issues. The SLP stated, “I will work with you and the team (you included) to figure out the best way to complete this evaluation.”

75. Also, on February 4, 2019, the Parent signed consent for the Student to be evaluated for special education. The Parent added under “other”: “Please address all areas of concern listed in the ‘2019-01-29 [I]EP Concerns.pdf’ file sent to [Student’s] [District] team in email on 2019-01-20” and “[Student] needs to be assessed for learning disabilities. To date, he has not been. [Student] has used physical aggression as a low form of communication. He needs thorough testing in all areas of communication.”

The District received the consent form on February 6, 2019, as the District was closed for snow days on February 4 and 5, 2019.

76. On February 4, 2019, the school psychologist emailed the principal, head teacher, OT, and SLP regarding planning the Student’s evaluation. The psychologist reiterated, “like I mentioned in the meeting, one of the only ways we can establish adverse impact is if a student is consistently accessing the general education curriculum so I will need to coordinate with the teacher to make sure they are collecting the data needed for the eval.”

In a second email, the psychologist sent the team some of the regulations that describe the requirements for establishing eligibility and stated, “in order to establish that a student cannot access the general education class with or without individual accommodations we have to have data to support that” and “we must also establish that the student has had access to appropriate instruction within the general education curriculum.” Further, the psychologist stated, “basically the student must have consistent, valid and reliable access to the gen ed curriculum in the academic areas of evaluation...we must be able to establish that the student has had access to the same curriculum as his peers and has been taught by a certified teacher.”

77. Emails between staff in early February 2019 indicated the District members of the Student’s evaluation team believed—based on their understanding of the discussions at the January 29, 2019 meeting—the Parent would start sending the Student to school so the evaluation could be conducted in the neighborhood school’s educational environment.

78. On February 6, 2019, the principal emailed the evaluation team and stated her understanding of next steps from the January 29, 2019 meeting were as follows:

- Student meets with OT and SLP to do assessments and build relationship;
- Once assessments completed, OT and/or SLP would attend instruction with the Student in the general education classroom;
- "It wasn't clear to me during/after our meeting when this was going to happen, or for how long, but it was my understanding that we were thinking something along the lines of 1 hour of gened instruction at a time."

The psychologist responded, "it was my understanding that [Student's] time would be slowly increased until he was accessing instruction in all academic areas and social/behavior...The WAC [Washington administrative code] and OSPI are very clear in their expectation that children have adequate access to instruction and intervention in all areas for evaluation."

79. On February 6, 2019, the OT emailed the Parent to schedule time to evaluate the Student.

80. On February 7, 2019, the Parent emailed the principal, psychologist, supervisor 2, and the OT a letter from the Student's private OT, recommending the Student be "evaluated for an Individual Education Program PRIOR to his placement in a classroom" because the Student "demonstrates severe challenges with safety, appropriate peer social interactions, and sensory sensitives that could result in elopement from the campus, physical aggression, and verbal aggression."

81. On February 8, 2019, the Parent and supervisor 2 emailed regarding the Parent's concerns and scheduled a follow-up meeting to discuss the assessment plan. Prior to the meeting, multiple emails were exchanged between the Parent, supervisor 2, and the principal. The following was discussed in multiple emails:

- The Parent asked for an agenda for the meeting and stated, "it feels a lot like the district and administrators just yanked the rug out from under my son, and it would be nice to calm the stress or any misunderstanding." The Parent stated she did not understand what changed "since our [referral] meeting agreement for OT and 'in class' assessment. We agree to let my and [OT] get to know each other so that [Student] could become comfortable with her, and that she could learn how best to co-regulate before going with him into class." The Parent stated the psychologist "said that the District requires 'in class' assessment for the evaluation to be compliant with [District] policy, and this was our agreed-upon path to ensure everyone's safety. [Principal] had agreed to this too...**It is not safe to put my son in a classroom without a paraeducator by his side.**"
- Supervisor 2 stated the meeting "would be to discuss the elements of an assessment plan, including process and schedule."
- The Parent stated at the January 29, 2019 meeting the team discussed "timing and how to carefully and safely introduce [Student] to school for the first time...[psychologist] discussed, at length, how his assessment must occur in a classroom. We all agreed that [OT] and [Student] would meet a couple times before the 'in classroom' day. On that day, we agreed that [OT] would stay with him and act as a paraeducator for him. This wasn't a short discussion, and I felt there was a great deal of understanding and camaraderie around the room. Please feel free to explain – in email – if this has changed." The Parent also asked for a "link or a copy of this policy that requires children to be assessed for accommodations while they're in a classroom. Does it

spell out that they are not allowed any accommodations during assessment? I want to understand the parameters and how strictly defined 'in a classroom' must be in the policy, given that our team agreement, cadence, and schedule has suddenly changed."

- Supervisor 2 stated that at the January 29, 2018 meeting, they "discussed areas to assess, components of the evaluation process and eligibility" and that, "at this moment, the biggest point of concern was [Student] being in school." The supervisor stated, "in honoring both sides of the concern, the team did talk about ways to integrate the student, accommodating the following: 1. Approaching in a way that will not harm [Student's] view and connection to school; and, 2. Complying with the WAC in a flexible manner so we can gather as much information as possible to support a decision." Supervisor 2 stated the agreement was to have a "slow start to assessment" and that the "SLP and OT were to assess in a 1:1 setting at [neighborhood school]. Once a few sessions took place, we are going to integrate [the Student] in a supported academic setting..."
- The Parent emailed the principal and asked why the principal asked the OT to cancel sessions with the Student because the prior written notice "specifies his start date is still 1/29. That was to be his start date for a one-hour initial [occupational therapy] session 1:1 with [OT]. This was to get to know her and see the inside of a big school for the first time. He was going to have two sessions with her before we decide if he was ready to go with her into a classroom."
- The principal responded and clarified that she "didn't ask [OT] to cancel her [occupational therapy] sessions with [Student]" and stated "I think you are right – there has been some confusion and/or miscommunication about next steps after our meeting when the team was all convened. I know that you are meeting with [supervisor 2] tomorrow...and that the intent of the meeting is to clarify next steps, and then to communicate to [neighborhood school's] team on how to proceed."

82. On February 11, 2019, the psychologist emailed the evaluation team regarding the ongoing Parent concerns and confusion regarding the evaluation. The email stated, in relevant part:

Unless I am seriously mistaken, the conversation that we had discussed providing him all general education accommodations that he needed throughout the evaluation process and school attendance. The only thing we were not able to provide were special education services. We did not ever offer OT as a full time paraeducator while the student is in class. I think there is some parent confusion about accommodation and [specially designed instruction] services. Push in OT services are not accommodations as you all know. [OT]- did you want to add some notes about what was actually said in the [prior written notice] before I send it out? This is probably the last time we will document this meeting. [Supervisor 2] the general education accommodations/supports that the school has to offer are: 504, behavior plan, interventions as offered by the school, safety plan, home base being a classroom decided upon by admin and the family, [and] modified schedule. We were very clear that these would be available during the evaluation process.

83. On February 11, 2019, the District provided the Parent with a prior written notice that documented the decision to evaluate the Student and the receipt of Parent consent—with updated information to record discussions that had occurred at and after the January 29, 2019 meeting. The notice included: information from the state special education regulations regarding evaluation procedures and eligibility for special education—including that a student must have a disability or disabilities, the disability adversely impacts educational performance,

and a student's unique needs cannot be addressed through general education alone (with or without accommodations) and requires specially designed instruction.

The notice documented the agreement that the Student would be "accessing a shortened schedule wherein he receives instruction in the academic and social/behavior areas of concern" and that "the amount of support provided by general education school staff during this time will be determined by administration and family." The notice stated the Student would be "assessed in all school based areas of concern (reflected in the school setting) and his evaluation will use data to determine whether or not there is an adverse impact in the school setting that require special education services."

The notice recorded the following supports and services that had been offered to the Parent: Section 504 plan offered on December 6, 2018; behavioral intervention plan as recommended by outside therapists; intervention services provided by neighborhood school; safety plan as needed; instruction in a special education classroom with adult supervision when accessing instruction; and, "shortened day with all of the above supports with the student accessing only reading, writing and math and a social skills group." The notice stated the Student would:

access the general education curriculum until it is determined by a special education evaluation whether or not he qualifies for special education services. [Neighborhood school] will offer the services that are available to them to best support [Student] while he is enrolled and the evaluation is being completed...as he is currently enrolled as a student in the elementary school throughout the process of the evaluation and intends on attending the school for the foreseeable future.

84. On February 15, 2019, the Parent emailed supervisor 2 a list of questions and concerns in advance of their meeting. This included:

- Questions about what regulation required a student to be tested in their learning environment.
- Statements that the Parent could provide videos of the Student "in his learning environment...taking standardized tests...videos of him dysregulated when he's been told to do something he doesn't want to do...having a hard time at [occupational therapy]" and the Parent had "police records...inpatient records from [hospital]...references and letters from his doctors and clinicians."
- A link to a video of the Student doing a lesson with the Parent.
- Requests for other references to evaluation procedures.
- Concerns regarding the Student's safety and statements that the Parent felt the District was not considering her "expert's recommendations and [her] parental input...I do not feel like I'm being considered by [District] staff to be an equal member of my son's team."
- "Why can't the District, administrators, and staff not trust that myself, his OT, his two psychologists, his psychiatrist, and his councilor [sic] know what his issues are? What is the disconnect?"

85. After being rescheduled several times due to snow, a meeting took place on February 15, 2019. The Parent met with supervisor 2 and the director. According to the District's response, at the meeting, the Parent indicated that "due to safety concerns, she would not longer agree to bring [the Student] into a school setting for observation prior to an IEP being developed." The District reiterated the importance of observation, particularly when assessing

social/behavior. The District stated, "in compromise, the District agreed that [the Student] would be tested individually by the OT, SLP and psychologist and the Parent agreed that the District could observe [the Student] in an alternative group [or] educational settings that [the Student] attended."

86. On February 15, 2019, the District provided the Parent with a prior written notice, recording the decisions made at the meeting that day to "discuss an Initial Evaluation Assessment Plan and any other concerns regarding the evaluation process." The notice stated the team considered assessing the Student in the school setting, but that the Parent felt that bringing the Student into a school setting was "unsafe for [the Student], staff and students. [the Student] has been out of school as [Parent] believes [Student] needs an IEP in place before entering the school environment. All parties agree [the Student] should be assessed to determine eligibility." The notice stated the team agreed to "adjust" the prior written notice, dated January 29, 2019, and agreed the Student "would be tested individually by the OT, SLP, and School Psychologist. We also talked about ideas for observing [the Student] in a group/educational setting. The purpose of the observations is to see how he is accessing core curriculum and interacting in his environment."

87. The District was on mid-winter break February 18-22, 2019.

88. On February 25, 2019, the OT and SLP reached out to the Parent to schedule evaluation sessions.

89. On February 26, 2019, the Parent replied and stated the Student "**will not be assessed in a classroom that contains students**" and that they "need to be sure that we are all in agreement about where [Student] will be assessed by OT and SLP before we can move forward with any of [Student's] assessments."

The Parent also included a "prior written notice response document" that included additional information and proposed edits to the February 11, 2019 prior written notice, stating, "it must be correct and agreed up by all team members – but especially the child's parents." The Parent stated all of the items listed in this document were agreed upon by her, supervisor 2, and the director. The Parent stated the follow should be deleted:

- References to the regulation describing when a student would "not be determined to be eligible for special education services."¹⁰
- References to the December 6, 2018 meeting with the 504 coordinator and principal, in particular that any services had been offered to the family.

¹⁰ The language the Parent objected to was from WAC 392-172A-03040 Determination of Eligibility – which states, in part: "(2)(a) A student must not be determined to be eligible for special education services if the determinant factor is: (i) Lack of appropriate instruction in reading, based upon the state's grade level standards; (ii) Lack of appropriate instruction in math; or (iii) Limited English proficiency; and (b) If the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction."

The Parent stated, "part-time schooling for [Student] at [neighborhood school] was something we all discussed in this [referral] team meeting, but it was not something we all agreed to."

The Parent stated that she continued to have concerns about the idea that the Student's "assessments must take place in a classroom for the assessments to be 'in compliance.'" The Parent stated, "if [psychologist] feels – in her judgment – that an assessment needs to take place in the classroom as part this comprehensive evaluation, then *her requirement* might be what is making [Student's] assessments have to occur inside a physical [District] classroom; she has made this an issue of compliance."

The Parent stated she did see a reference under the specific learning disability eligibility category that the Student undergo "observation in 'the student's learning environment.'" The Parent stated that "after careful consideration and discussion with [director] and [supervisor 2]" she wanted to ask the psychologist to "*individualize* [Student's] assessment process as we discussed it." The Parent stated, "there is no policy that we could find – or that OSPI could find either – that requires a prospective student's Special Education assessments to occur inside of an [District] classroom" and that at the referral meeting, "we all agreed that [Student] would not be placed inside of a classroom with other students until after he has an IEP in place (parents, therapist, OT, psychologists, psychiatrists are all on record having said that they agree)." The Parent also stated, "From our vantage point – and as equal members of our son's team – we don't believe our son needs further evaluation for the team to determine whether or not he's eligible for an IEP."

The Parent also stated that during the meeting, "we also discussed the possibility of me reaching out to [circus school] to see if [Student] could take one class with them in a peer group so that an [District] employee could directly observe him with his peers" and "since that suggestion, we have decided that this is not necessary. We have video of [Student] in...class."

The Parent also sent links to videos of the Student so "staff can see [the Student] in various situations and how he handles those situations" and a list of testing tips.

90. On February 27, 2019, supervisor 2 responded to the Parent's February 26, 2019 email and stated, "we will continue to come up with ideas to observe and evaluate group and instructional settings, learning how [Student] accesses his environment and instruction."

The Parent responded and asked supervisor 2 to clarify her statement, and again stated, "we do not give [District] permission to assess him in a classroom if that classroom contains students. I do not give [District] permission to assess him around any students unless you have written notice from me to do so." The Parent asked if she viewed the videos she sent, as they "included a variety of situations wherein [Student] was accessing instruction and his environment, both in group and individual settings." The Parent then described examples from the videos of a group setting and individual setting.

91. Also, on February 27, 2019, the psychologist emailed the Parent and the Student's father and requested they complete questionnaire/rating scales.

92. On February 28, 2019, the psychologist emailed the Parent and asked if she could send the private autism evaluation referenced in a letter. The Parent responded and attached the private evaluation report.
93. According to the documentation in this complaint, assessments of the Student were conducted in the first few weeks of March 2019, including sessions with the OT, SLP, and school psychologist.
94. On March 1, 2019, the OT emailed the Parent regarding the occupational therapy evaluation and noted that she had "reviewed all of your emails/videos."
95. On March 1 and 2, 2019, the psychologist and the Parent emailed regarding the Student's homeschool curriculum and instruction. Their communication included the following, in part:
- The psychologist emailed and requested a list or description of the curriculum the Parent had been using in the areas of reading, writing, math, and social/behavior ("type of curriculum, frequency and duration of lessons as well as any other information you would like to provide about the instruction"). The psychologist also asked the Parent to describe the Student's performance in his math class at the ALE, interaction with peers, and ability to access the math instruction at the ALE.
 - The Parent emailed, questioning why the psychologist was requesting this information. The Parent stated she would provide the names of the curriculum, but would "not provide the frequency and duration of those lessons." The Parent then provided some information about the Student's time at the ALE.
 - The Psychologist responded and explained that information regarding curriculum is something that is looked at for every student during evaluations, and that the team "will need to understand what a child is learning, how often they are learning about a certain subject and in what way they are learning about a certain subject in order to understand their present levels of performance." The psychologist stated, "understanding what [Student] is learning is of great importance to the evaluation. What types of instruction have worked, what hasn't worked, how often he is accessing instruction, and his work stamina is all important when trying to understand [the Student's] educational profile." The psychologist also explained the District had the Student's records from his time at the ALE and "throughout this evaluation process, I will be interested in your perspective as a parent."
 - The Parent replied, stating, "I need you to please remember that I am both [the Student's] parent and teacher. When you say that you are interested in my perspective as his parent, you are neglecting to recognize a huge part of my role in his life and on his SpEd team...Please do not minimize my role in [the Student's] education." The Parent requested that the psychologist "take that leap of faith needed to know there's no need to prove that [Student] hasn't received reading, writing, math, or social skills instruction." The Parent stated that in requesting the home-school curriculum the psychologist "might be trying to form a conclusion that [the Student] does not have a learning disability, but that I haven't taken the time to properly instruction him." The Parent expressed concern about gathering information about the Student's homeschool curriculum, asked what the deadline was, and stated she "needed to prioritize other complicated and urgent life situations."
 - The psychologist responded that the deadline for the evaluation was April 15, 2019, and "if you do not feel as though this is enough time to provide this information we can discuss an extension as we approach the due date."

96. Also, on March 2, 2019, the psychologist emailed the ALE principal and counselor about the Student's time at the ALE. The psychologist stated,
so far [ALE] is the ONLY source of information that is not provided by the parent for the purpose of this evaluation. The information that this parent has provided is drastically different than the information you all have provided. Do you all have any data collected from his time at [ALE] by any chance? Mom is reporting several incidents in the classroom where the student became dysregulated (about 4 times per 45 minute session), incidents with other children cheating off of his papers, poor relationship with the teacher and two incidents on the playground where the student had to be removed. Is there any information to support this? Was there any academic data collected during this time there?

The ALE counselor responded that the "few discussions [principal] and I had with the mom is about [Student] being gifted not ever about behavior issues...Never was this student brought up in MTSS...We would have no data collected as there were no incident reports received."

97. On March 4, 2019, the OT requested that the Parent sign a release of information for her to contact the Student's private OT and mental health counselor.

98. On March 4 and 12-13, 2019, the Parent, the psychologist, and the director emailed regarding the questionnaire and rating scales. The emails are summarized as follows, in part:

- The Parent asked the psychologist to resend the links to the Student's father and to "send teacher assessments only to me."
- The psychologist resent the forms to the Student's father and sent the Parent the "teacher report version of those forms."
- The psychologist sent the Parent an updated version of the procedural safeguards and noted that she had resent the "rating scales to [Student's father] and sent you the teacher rating scales." The psychologist stated that for one form she only sent the parent scale because she was "waiting for the teacher forms to restock and then I will send you a teacher report form."
- In response to questions from the Parent, the psychologist listed the forms that were sent, stating she sent "one teacher report and one parent report," noting the Parent had "specifically requested teacher forms because of your dual role so I've provided two." The psychologist stated, "all forms have been sent to the both of you (teacher forms for you and parent for [Student's father])."
- The Parent replied and asked why she was only being asked to fill out the teacher forms because she was the Student's "teacher *and* his primary parent."
- The psychologist replied and explained that "one individual cannot fill out two of the same forms for both settings because you are only one rater...because they are the same questions just asked through the lens of a teacher or a parent." The psychologist stated, "I have sent you the teacher forms because you explicitly requested that I send you the teacher forms in a previous email." The psychologist acknowledged that the Parent had "mentioned in [her] emails you play a dual role. You asked that I send you the teacher rating scales so that is what I have done. So that we still are able to get the parent scales completed, I have sent [Student's father] the parent rating scales also."
- The Parent responded and stated, "I pray that the adversarial replies and abrasive messages won't carry over either to how our son is treated in your care, or how he is assessed by you to qualify for special education."

- The Parent forwarded her concerns to the director and stated the psychologist “seems either to have a technical limitation of being able to select one role per person/email address, or she’s being quite difficult.”
- The Director responded, stating the psychologist “is a highly-skilled practitioner with a solid body of work to demonstrate her acuity and professionalism in [the District]” and refuted allegations of bias, stating that “in fact, unfounded allegations of this sort can be detrimental to the collaborative nature of special education services.”
- The Parent replied and stated that her concern about bias was “a rational concern after she has repeatedly refused to acknowledge my dual role as parent and teacher.”
- The Parent then forwarded her emails to the chief of student supports.

99. On March 10, 2019, the Parent emailed the SLP additional information about the Student’s core strength, transitions, “stimming” (self stimulating or soothing), stuttering, and pronunciation.

100. On March 15, 2019, the Parent emailed the chief of student supports and the director and stated, “because the evaluation form situation seems to be at a dead end, I am worried about delay of [the Student] starting at [the District].” The Parent stated the psychologist “not sending me the parental form feels like intentional limitation on my parental input. I am [Student’s] primary caregiver and my view of him as a parent is not the same as a teacher. I should be allowed to give my input in both roles.”

101. On March 26, 2019, the director replied to the Parent’s March 15, 2019 email and stated the psychologist was using the parent report form the Parent filled out during one of the Student’s private evaluations.

102. On March 29, 2019, supervisor 2 emailed the Parent to remind her that the evaluation was close to completion and requested the rating scales/questionnaires as well as the information about the Student’s curriculum. The supervisor stated that input would be needed with enough time to score and report, and also stated, “we also want to ensure you receive the report 48 hours in advance.”

The Parent replied and stated she would provide the information by April 1, 2019, and “in no way do we approve an extension to any timeline [District] is following. If you recall, we were hoping to get him in school by January 2019.”

103. Also, on March 29, 2019, supervisor 2 invited the Parent to a meeting scheduled for April 15, 2019, to review the evaluation report. Supervisor 2 stated they would be “sending a draft of the report to you by end of day, Friday, April 5th with all the information we have received to that point.” The Parent replied with the following questions:

- “Is the ‘feedback meeting’ the same as the IEP meeting?”
- “Is this a meeting wherein we will learn if the district believes [Student] qualifies for special education?”
- “Will we be discussing only the assessments, or will we be discussing possible accommodations that would be informed by the assessments?”
- “What is the meeting agenda?”

- "Who will be attending this meeting?"
- "Can we meet sooner than April 15th?"

The Parent stated, "this has been an excessively long process to get [Student] to a point where we can even discuss a [free appropriate public education]" and "we neither agree to push out any timelines now or in the future, nor have we agreed to push out timelines in the past."

104. Later, on March 29, 2019, supervisor 2 responded to the Parent's email with answers to her questions as follows:

- "The first meeting is an eligibility determination meeting. Should [Student] be found eligible for special education services, an IEP meeting will follow within the next 30 calendar days from the eligibility meeting."
- "During the evaluation feedback meeting, the providers discuss results and may provide accommodation ideas based on their assessments."
- "We will send an agenda along with a draft of the evaluation by next Friday."
- Meeting attendees: supervisor 2, principal, school psychologist, SLP, OT, Parent, Student's father.

105. On March 30, 2019, the psychologist emailed supervisor 2 and stated that the Student "just got a cognitive assessment by his outside provider" in November and December 2018, and "those scores are still accurate so they are within the report. There is no need to complete an additional cognitive assessment."

106. On April 1, 2019, the Parent emailed the psychologist and explained her approach to completing the rating scales. The Parent stated that "to keep things consistent and perhaps more logical and less rigid without further [District] input, I filled out the forms you sent to [Student's father]...I am [Student's] parent before I am his teacher. At least that's how we decided to weigh my role overall and without more straightforward answers to our questions from [District]." In a second email that day, the Parent provided information about the Student's homeschool curriculum and learning experiences.

107. Also, on April 1, 2019, the psychologist emailed supervisor 2 and the director regarding the homeschool curriculum addendum the Parent provided. The psychologist stated, "I should clarify that the main concerns about access to instruction were: - we need to understand the content and methodology of both successful and unsuccessful learning strategies. - need to ensure access to instruction." The psychologist stated that some of the information on the Parent's report "checks off those boxes and **if** [Student] does qualify after the meeting, this information that we typically get from the teacher can help develop the IEP."

108. On April 5, 2019, the Parent emailed supervisor 2 and asked whether she would receive the draft evaluation that day, as the District had previously indicated they would send the draft evaluation on April 5, 2019. The Parent stated, "based on the schedule you gave me, I have an appointment to go over the evaluation with my experts on Monday. I obviously need the promised evaluation to have that meeting."

109. According to the District's response and documentation, on April 5, 2019, supervisor 2 emailed the Parent a draft copy of the evaluation. However, due to a technical or email server error, the email was not received by the Parent.
110. On April 8, 2019, the Parent emailed supervisor 2 and the director regarding the draft evaluation report. The Parent stated:
Today is Monday. **When will you email my son's evaluation and the agenda for the 4/15 meeting?** The agenda and draft evaluation are now 3 days past the date by which you said I would have them. This is unacceptable and unprofessional. You had me rush my deliverables to you and agree to your timeline, and now that date has come and gone for your own deadline. By doing this, you have inconvenienced several people who planned on meeting with me to help me understand your evaluation...This is about my son's education...This is about human decency, when you get down to it. I do not appreciate these games – at all. They are a gross misuse of my time, taxpayer money, and your position. I'm looking forward to your reply and answer to my above **question**.
111. On April 8, 2019, supervisor 2 forwarded the email she had sent on April 5 to the Parent, which included the draft evaluation and agenda for the meeting scheduled for April 15, 2019.
112. The District was on spring break April 8-12, 2019.
113. On April 12, 2019, the Parent emailed the psychologist and supervisor 2 and requested "all comprehensive scoring for each evaluation and all subtests that were administered." The Parent stated she needed these after "reviewing the evaluation report" and she needed "to review this prior to our evaluation feedback meeting on Monday [April 15, 2019]." In a second email the same day, the Parent stated, "I want to be prepared for our meeting on Monday, and I will be if I'm able to understand the data behind comments like 'adequate range.'"
114. According to the District's response, neither the psychologist or supervisor 2 were in the office on April 12, 2019, because this Friday was during spring break.
115. On Sunday, April 14, 2019, the Parent emailed the team and stated she would need to reschedule the April 15 meeting in order to have time to review the subtests. The Parent stated she and the Student's father had "done all we can to comb through the draft evaluation without the comprehensive scoring for each test and all subtests," but that she needed "to have those score sheets for us to have a productive meeting where we're not matching data to adjectives or undefined ranges and quantifications instead of talking about [Student] directly." The Parent further stated, "we also did not receive the evaluation before last weekend when we went on vacation, which has made it extremely hard and inconvenient to find dedicated time to concentrate on the evaluation." The Parent asked when they could expect to receive the comprehensive scoring for each test and all subtests and stated, "I will need *at least four business days* with the comprehensive scoring for all tests and subtests before we meet" and proposed either April 24 or 25, 2019 to meeting.
116. On April 14, 2019, supervisor 2 responded and stated she understood the Parent to be "asking for an extension of the timeline for [Student's] evaluation because you would like

copies of the standardized score reports.” The supervisor explained that “all of the scores are in the report draft that was sent to you via email” and the “feedback meeting is meant to discuss scores as they relate to eligibility and understanding [Student’s] learning.” Supervisor 2 stated she felt confident the Parent would “have a clear understanding of the scores as a result of the feedback evaluation meeting” and the team would like to move forward with the meeting as planned.

The Parent replied and stated she was not asking for an extension of the timeline and she would be unable to attend a meeting without first receiving the score sheets.

117. On April 15, 2019, supervisor 2 replied to the Parent, stating, “while the scores are part of the evaluation, I will make sure you get the score report summaries” and stated the District would hold a meeting on April 15, 2019 to discuss the Student’s eligibility.

The Parent replied and again requested the meeting be postponed, because the “evaluation report is not a document in a format that would make the information accessible to me...like I’ve said, I need all educational records provided to me in a form that makes them accessible to me, and I need those ahead of meetings to allow enough time to process the information.”

118. Also, on April 15, 2019, supervisor 2 emailed the Parent the score reports and the SLP sent her the communication scoring. Supervisor 2 stated, “in terms of sending you all documents presented at the evaluation meeting 48 hours in advance of the meeting, we sent you what we review at the meeting.” Supervisor 2 further stated, “because today is the due date for the evaluation, we would be willing to formally extend the timeline on the basis of gathering more information as it relates to adverse educational impact. You would need to agree to this. If you do not agree to this, we will need to continue the eligibility decision-making today.”

The Parent responded around 4 pm that same day and stated, “I just received the score reports today after our scheduled meeting time—despite repeatedly reminding you to send them to me prior to today...” In her reply to the District’s response to this complaint, the Parent stated that because she did not receive the score sheets in advance, she “was unable to make an informed decision and consent or dispute the evaluation results. Parental involvement is required...”

119. According to the District, given the evaluation deadline and the Parent’s consistent communication she would not agree to an extension, the school team—OT, psychologist, SLP, supervisor 2, and principal—met on April 15, 2019. The evaluation was finalized and the team found the Student eligible for special education services under communication disorder, because the Student demonstrated a “moderate articulation disorder that interferes with his intelligibility.” The evaluation report recommended the Student receive specially designed instruction in communication.

The evaluation report incorporated results from private evaluations conducted in November and December 2018, and included input from the Parent. The report included Parent observations about the Student’s struggle with being overwhelmed and sensory input, and

concerns about other behaviors including hyperactivity and aggression. The report noted the Student had been diagnosed with severe ADHD, anxiety, sensory processing issues, unspecified disruptive impulse control conduct disorder, and reportedly diagnosed with bipolar disorder. The report noted the Student received private OT and mental health services. The report further noted the Parent stated the Student has been struggling with learning to read and write, but was advanced in math.

The report noted the team “was not allowed to observe [the Student] in the general education school setting at the parent request. The only observations available were during the one on one testing sessions and during transition times for these testing sessions.” The Parent provided an addendum regarding “adequate instruction” (“Curriculum & Learning Experiences”) and the Parent stated:

[Student] has ingested a huge body of knowledge in his 7 short years. [Student] has been taught using very little typical curriculum, but rather through life experience, unit studies, games, reading, and online, his education hasn’t been linear like what public schools required of students. And as you’ll see when I figure out a way to quantify and disseminate how I’ve tried to teach him, he will always require supplemental ‘enrichment’ material at home to quench his insatiable hunger for learning more.

The evaluation report recorded the following information, assessments, observations, and conclusions:

District Psychologist Testing Observation Summary

- “A physical break DID NOT help [Student]...One five minute structured break was most helpful...[Student] was able to engage in appropriate reciprocal conversation about both preferred and nonpreferred topics throughout the testing session...[Student] was able to complete an entire battery within one testing session...It is unclear whether snacks did or did not help because he only chose to eat a snack one time.”
- The Student “demonstrated poor impulse control...common testing observation with students who struggle with attention and hyperactivity.”

General Education (ALE)

- Information from homeschool class reported by the Parent, class sessions at the ALE, and WSLP progress notes. Staff reported having discussions with the Parent about the Student “being gifted not ever about behavior issues,” on site progress reports were “not personal because he was there so little that the teacher didn’t know him well,” and there were no incident reports.
- The ALE counselor reported “mom thought he was advanced, but he wasn’t able to do advanced work...he wasn’t capable of doing the work of a 2-3 grader. He only took one class here, and he did lots of work at home, so he didn’t have issues here.”
- The Parent reported that the Student’s teacher “didn’t ‘get’ my 6 year old...the teacher was not familiar with 2e¹¹ or autistic children, and she seemed to take it personally that he didn’t want to do more than 4 math problems on a page of 20 because he proved mastery.” Parent stated she attended every class with the Student and “stepped in every time he started to dysregulate – at least 4 times during the 45-minute class time. [The Student] couldn’t read then either, so he needed 1:1 help with instructions, games, and word problems. He also needed help staying

¹¹ “2e” is often used to refer to students labeled as “twice exceptional”—in other words, students who qualify as highly capable or for advanced learning programs and for special education services.

on task...and during all transitions...[the ALE] also had too much visual and auditory noise for [the Student], even with headphones."

Principal's observation: Student "seemed excited to be finished with his work...brief but positive encounter...he followed directions...cooperative during testing...seemed like a happy and healthy 1st grade boy...his ability to follow directions and interact positively with adults was comparable to other students his age."

Adaptive/Life Skills

- Results from a private evaluation indicated the Student's overall adaptive functioning score fell within the average range, with community use scores falling above average and his self-care and social skills scores falling below average.¹²
- The report noted the "Vineland-III Adaptive Behavior Scales¹³" produced "drastically different results than the adaptive measure completed just a few months [before.]" Here, "all scores on the Vineland III completed by [Parent] fell within the Low range with the exception of Motor skills which fell within the Adequate range. All results are according to the parent report form completed on 03/31/2019."
- The report further stated that the team could not determine whether or not the Student was demonstrating a disability in the area of adaptive/life skills because "data collected is variable, only from one data point and is without direct observation of skills" and that "eligibility cannot be determined until the evaluation team has been able to directly observe disability, adverse impact and need for specially designed instruction. [The Student] does not qualify for specially designed instruction in the area of adaptive/life skills at this time...adverse impact and need for specially designed instruction cannot be observed/established."

Cognitive: Results from a private evaluation indicated the Student "demonstrated significant strength in verbal reasoning skills. His nonverbal reasoning and spatial skills generally appear less developed than his verbal skills." The report noted that the overall score "should be interpreted with caution, as there was a significant difference between his performance on the Verbal Abilities cluster as compared to the Nonverbal Reasoning and Spatial Abilities clusters."

Communication

- Based on existing records, the Student "was diagnosed with sensory processing differences around the age of 2 and has been seen by various occupational therapist for treatment," and has also received a diagnosis of "Unspecified Disruptive Impulse Control Conduct Disorder."
- Parent report indicated the Student passed a hearing evaluation.
- SLP Observation: Student "was generally cooperative, but at times his attention/concentration fluctuated."
- The SLP also used parts of an informal "social thinking dynamic assessment protocol," which included gathering a writing sample to measure asking for help (asked some questions), an interview (easily answered basic questions, "difficulty with the double interview indicate limited perspective taking and the inability to hold a reciprocal conversation about a non-preferred topic"), assessing eye gaze (area of strength), sequencing (area of strength), and interpreting social ("[the Student] had difficulty identifying emotions...struggled with identifying environmental context/roles").

¹² The private evaluation used the Parent report on the "Adaptive Behavior Assessment System, Third Edition (ABAS-3)," which is a "standardized measure of adaptive functioning."

¹³ The Vineland-III assesses "personal and social sufficiency of individuals from birth through adulthood based on the report of the individual's parent, caregiver or teacher."

- "The teacher questionnaire was not returned so information on [the Student's] social communication skills in a learning environment are not included here. Observational data of [the Student] interacting with peers was not gathered as there was no opportunity to observe [the Student] in a 'classroom' situation with peers."
- Articulation skills "as measured by the Goldman Fristoe Test of Articulation-3" found the Student's articulation errors to be "considered developmentally appropriate" but his "intelligibility (80%) is significantly below 100% which is the expectation for a child over 5 years old."
- "When excited or dysregulated his rate of speech increases which negatively affects his intelligibility."
- Parent reported a stutter when the Student is anxious.
- Significant Findings: Receptive and expressive language scores were "average performance," narrative language ability index score was average, a social/pragmatic language score in the first percentile that indicates below average skills.¹⁴
- The report recommended specially designed instruction in the area of communication "because he shows a significant discrepancy in the area articulation development relative to other children his age. Professional judgment was used to determine that [the Student] would benefit from speech and language services under the umbrella of special education."

Math, Reading, and Written Language

- Information about the Student's math, reading, and written language curriculum and homeschooling goals provided by the Parent.
- Math assessments scores indicated math was an area of strength for the Student and that he scored in the low average range (borderline to average on math subtests)—the "variability prompted the examiner to complete supplemental testing in the area of math fluency and calculation in order to confirm the validity of the assessment."
- "The team agrees that [the Student] is demonstrating a disability in the area of math. Direct observation of skills and standardized assessment demonstrate a disability in this area." However, "eligibility cannot be determined until the evaluation team has been able to directly observe adverse impact and need for specially designed instruction as only standardized testing has been administered and teacher and parent/teacher report is variable. [the Student] does not qualify for specially designed instruction in the area of math at this time."
- "A broad reading score was not able to be obtained due to [the Student's] limited reading abilities. The reading fluency task was attempted but could not be completed."
- "The team agrees that [the Student] is demonstrating a disability in the area of reading." However, "eligibility cannot be determined until the evaluation team has been able to directly observe adverse impact and need for specially designed instruction as only standardized testing has been administered and teacher and parent/teacher report is variable with looking at communication, cognitive and academic standardized assessment only...[The Student] does not qualify for specially designed instruction in the area of reading at this time."
- The Student's overall written language score was classified as "Low" although there was some variability in the Students skills. The Student "struggle[s] to complete all written work." And, "writing is not a preferred task for [student] and this may have negatively impacted his performance."
- "The team agrees that [the Student] is demonstrating a disability in the area of writing." However, "eligibility cannot be determined until the evaluation team has been able to directly observe adverse impact and need for specially designed instruction because standardized

¹⁴ Assessment used the Comprehensive Assessment of Spoken Language, 2nd edition (CASL-2).

assessment performance was variable and no direct observation has been allowed. [Student] does not qualify for specially designed instruction in the area of written language at this time."

Motor

- "Based on skilled observations, teacher, and parent report, [the Student] is not demonstrating participation restrictions due to underlying challenges in functional fine/visual motor skills."
- Private report referenced noted "Occupational therapy focused on global self-regulation...OT reported emotional regulation and sensory processing were [Parent's] main concerns and that fine/visual motor skills were not a priority to work on during therapy at that time."
- According to the Parent, the Student "demonstrates moderate difficulties in sensory processing that impact his daily function...prominent profile is characteristic of sensory sensitivity, or defensiveness."
- Another private report noted sensory differences ("greater than two standard deviations from average" in the areas of tactile sensitivity, under responsive/seeking attention, and auditory filtering.
- "Based on skilled observations, private evaluations, and teacher/parent report, [the Student] is demonstrating underlying challenges in sensory processing. These challenges have an educational impact by impeding his participation in the educational environment" and recommended "school-based occupational therapy services." Although, "the level of service cannot be determined without direct observation of adverse impact."

Social/Behavior

- Private evaluations indicate hyperactivity and significant "social, emotional, and behavioral challenges."
- Parent reported Student has eloped, can display aggression, and is "hyper and immature".
- Parent completed the "parent report form of the [Behavior Assessment System for Children, Third Edition] BASC-3...scores on this report fell within the clinically significant range across all behavioral areas with the exception of somatization and withdrawal."
- Parent completed the "parent report...Autism Spectrum Rating Scales...all scores on this measure fell within the Very Elevated range with the exception of atypical language which fell within the Elevated range."
- "The team agrees that [the Student] is demonstrating a disability in the area of social behavior." However, "direct observations from all evaluators and other service providers do not correlate with parent report. Due to variable report based on direct observation, parent/teacher report and only one data source provided, eligibility cannot be determined until the evaluation team has been able to directly observe adverse impact and need for specially designed instruction."

Study/Organizational Skills

- The Parent and the Student's father were asked to complete "the Behavior Rating Inventory of Executive Functioning Second edition Parent or Teacher report. Only the BRIEF-2 Parent report from [Parent] was returned."
- "At this time the team cannot determine whether or not [the Student] is demonstrating a disability in the area of study/org."
- "Data collected is not from a general education classroom setting, only from one data point and is without direct observation of skills. Eligibility cannot be determined until the evaluation team has been able to directly observe disability, adverse impact and need for specially designed instruction."

As part of the District's response to this complaint, it also submitted the raw data, score reports, private psychological evaluation, and a detailed "curriculum & learning experiences"

addendum¹⁵ the Parent submitted, which were used to inform and create the evaluation report.

According to the District, while not noted in the evaluation report, the psychologist, OT, and SLP all viewed the videos provided by the Parent. The SLP reported, "that for her purposes, because it was difficult to hear talking/have context of interaction, she did not believe the videos were helpful for her speech evaluation."¹⁶

120. On April 17, 2019, supervisor 2 emailed the Parent regarding the evaluation meeting and stated:

The deadline for evaluation completion was yesterday, Monday, April 15th. We made sure you had the draft evaluation paperwork far in advance...the team did convene yesterday during the scheduled meeting time...During that time, I did email you offering a formal extension on the basis of gathering more information as it relates to adverse educational impact. While we did hear back from you, you did not acknowledge and respond to the extension request which held the team accountable to the timeline at hand. As such, the school psychologist and team had to move forward with and complete the meeting. The document is finalized and attached to this email.

We understand and prioritize the importance of parent involvement and will be scheduling a meeting with both of you to discuss the findings and next steps. I will be reaching out to the team to gather their availability, keeping the dates you provided in mind.

Supervisor 2 attached a copy of the evaluation report and prior written notice—dated April 16, 2019. The prior written notice stated the Student qualified for special education services under the communication disorder category, and stated the Student "is demonstrating an articulation disorder that is preventing him from accessing the general education curriculum without supports and requires specially designed instruction." The notice stated the team did not qualify the Student in other areas because:

the team offered several opportunities throughout the evaluation process to observe adverse impact both in the general education setting and in [the Student's] outside homeschool classes. These requests were repeatedly denied by the family and adverse impact and need for specially designed instruction could not be established due to the reasons listed in the evaluation. Articulation was able to be determined as an area for [specially designed instruction] based on direct observation from the examiner, multiple data sources and standardized testing. All other areas assessed either had only one data

¹⁵ This addendum included information on curriculum and enrichment; educational and peer, group, and community experiences; homeschool educational goals; and, Montessori scope and sequence from age 3 to present.

¹⁶ Based on the documentation available in this investigation, the Parent does not believe the District viewed the videos of the Student she provided. For example, in a July 20, 2019 email to the District, the Parent stated she had asked the team "many times throughout this process" to view the videos and when she asked if individuals had viewed the videos at the facilitated IEP meeting "everyone said they had (LEA, Principal, SLP, OT). But then no one could answer a very simple question I asked about the shape of the very unique equipment [Student] was on when he performed at Circus School." The Parent also pointed out that "we hosted the videos and know that there was no traffic to them from [District] domains."

source ([Parent]) or were not able to be observed via classroom/learning environment observation or in the testing environment.

The notice stated the team reviewed the Parent’s report, standardized assessments, records, observation in the testing environment, observation during transition to the testing environment, and outside practitioner consultation. The notice also stated the Parent was invited to the evaluation meeting, but did not attend. The noticed stated the Parent “requested an extension until either 04/24 or 04/25 for additional time to review the data in a different format than presented in the draft evaluation sent home” and “the team did not agree to an extension for this purpose and told the family that the meeting will proceed as scheduled. [The Student’s] family chose not to attend this initial evaluation meeting.” Finally, the notice stated, “A re-evaluation can be initiated once [the Student] is in school and adverse impact can be observed.”

121. In an email to OSPI, as part of the complaint investigation, the Parent provided additional concerns about the evaluation report, which included that the school psychologist used “subjective commentary...misuse of qualitative data, and intentional omissions of data that would otherwise help out son if she had chosen to provide it within the draft Evaluation.” The Parent stated, “every subtest for math, reading, and writing defined [Student] as having scores that are indicative of Students who have a ‘frustration level’ with the general education environment...and all tests are at least 2-3 standard deviations below grade level.”

The Parent noted the following based on the Student’s subtest scores document (cluster/test and relative proficiency index (RPI)) and a document titled “Explanation of the RPI-Woodcock-Johnson IV Tests of Achievement (Relative Proficiency Index)”:

Cluster/Test	RPI	Proficiency Level	Student will find demands of related tasks at age or grade level
Reading	1/90	Extremely Limited	Nearly Impossible
Basic Reading Skills	2/90	Extremely Limited	Nearly Impossible
Mathematics	54/90	Limited	Very Difficult
Broad Mathematics	34/90	Limited	Very Difficult
Math Calculation Skills	18/90	Very Limited	Extremely Difficult
Written Language	0/90	Extremely Limited	Nearly Impossible
Academic Skills	2/90	Extremely Limited	Nearly Impossible
Academic Applications	0/90	Extremely Limited	Nearly Impossible
Brief Achievement	4/90	Very Limited	Extremely Difficult
Letter-Word Identification	0/90	Extremely Limited	Nearly Impossible
[...] Problems	73/90	Limited to Average	Difficult
Spelling	4/90	Very Limited	Extremely Difficult

Passage Comprehension	5/90	Very Limited	Extremely Difficult
Calculation	35/90	Limited	Very Difficult
Writing Samples	0/90	Extremely Limited	Nearly Impossible
Word Attack	38/90	Limited	Very Difficult
Oral Reading	0/90	Extremely Limited	Nearly Impossible
Math Facts Fluency	9/90	Very Limited	Extremely Difficult

122. Later, on April 17, 2019, the Parent responded to supervisor 2's email and stated, "Parent involvement in eligibility decision making is required by law, so I don't consider the results of whatever meeting [the District] had on 4/15 to be valid" and requested "date confirmation for the evaluation feedback meeting."

123. On April 19 and 22, 2019, supervisor 2 proposed a meeting on April 30, 2019, to "review the results of the evaluation." The psychologist responded and stated she wanted to clarify that "this meeting cannot change the eligibility outcome, as the evaluation is completed. The purpose of this meeting is to provide feedback about the finding of the evaluation."

124. On April 22, 2019, OSPI received the Parent's request for a citizen complaint investigation and opened this complaint.

125. On April 23, 2019, the Parent responded to supervisor 2 and the school psychologist's emails with her availability. The Parent also stated:

As [Student's] primary parent and teacher, I know more about this child and student than anyone of any qualification in any meeting room or office or school. To that end, this meeting is only for evaluation feedback, and it is not to quibble over timeline or evaluation finality. There will be no shenanigans permitted. We have repeatedly put the district on notice that we do not consider your recently emailed evaluation to be final. There was no parental input. That is the law.

126. On April 25, 2019, the Parent emailed supervisor 2 additional concerns regarding the evaluation, which she stated was "not valid" because she "did not get any parental input into the evaluation." The Parent requested an independent educational evaluation (IEE)¹⁷ and outlined further concerns.

Additionally, in her reply to the District's response to this complaint, the Parent alleged that the Student was "not evaluated in all areas of suspected disability" because the District "did not assess whether he has specific learning disabilities (writing or reading), or his behavioral needs (FBA...)."

¹⁷ The documentation in this complaint indicated the District denied the Parent's request for an IEE and filed a due process hearing request to defend its evaluation. The Parent then withdrew her request for an IEE and the due process was dismissed.

127. According to the District, the Parent has since declined to meet to review the evaluation.
128. On May 9, 2019, the District provided the Parent with a draft IEP and invited the Parent to an IEP meeting scheduled for May 13, 2019. In an email, the SLP attached the draft IEP, the agenda, and procedural safeguards. The SLP stated she would attend the IEP meeting, along with supervisor 2, the OT, the principal, and a general education teacher.
129. The draft IEP included information from the April 2019 evaluation report in the present level of educational performance section. The IEP included several draft communication measurable annual goals, a draft accommodation ("access to sensory tools/strategies"), and a 10-minute monthly occupational therapy consultation as a support for school personnel. The draft IEP proposed 30 minutes of specially designed instruction in communication from the SLP in the special education setting and stated the Student "spends the majority of his day in a home school setting...except when he is receiving [specially designed instruction] in Communication in the special education setting. [The Student] does not participate in PE because he is home schooled."
130. On May 10, 2019, the Parent emailed the SLP, supervisor 2, and the director to "formally request a facilitated IEP meeting." The Parent stated it would not be "possible to get parental input on this document without a) more meeting time and b) a facilitator." The Parent stated she had assumed the IEP meeting would only be to discuss "those services and accommodations that are related to the [specially designed instruction] that the District decided for our son: Communication – Speech Articulation" and stated:
- We had no way of knowing until last night that this IEP document covers so much more! A large portion of what is pasted therein is what I assume you covered in the evaluation meeting without us. We have had no opportunity to discuss or give feedback about this content. As you know, the decision to qualify our son for [specially designed instruction] was made without parental input. Now, I find myself invited to a short meeting without my husband to discuss this [specially designed instruction] to which neither I nor my husband have had any input to date...You've left us with a 27-page conundrum! You only start to go over the services and accommodations...on page 19...Our schedules and childcare issues don't allow for another meeting before the 5/15 deadline that [SLP] mentioned in her email. So would that again mean the District would limit our parental input into our son's education again because of your scheduling issues?
131. A facilitated IEP meeting occurred on June 6, 2019. According to the Parent, the facilitated IEP meeting did not go well because the facilitator was biased and discriminated against her. Based on the Parent's written summary of the meeting:
- The facilitator's behavior limited the Parent's input;
 - The District "still hadn't watched any videos or read the document, despite both being listed on the evaluation consent form;"
 - "I spent more time calling out [facilitator's] impartiality and overt aggression...than I did getting real change made on my son's IEP;" and,
 - "We will need yet another facilitated IEP meeting. I'm literally shocked at what a barrier she was to [Student's] IEP team making actual progress."

The Student's father also provided written feedback regarding the facilitated IEP meeting, which echoed the concerns the Parent raised. In a subsequent email to OSPI, the Parent stated "the level of discrimination and dismissiveness...has almost completely and totally silenced our ability to either participate in our son's public school education."

132. On June 7, 2019, the Parent emailed the SLP and attached a signed "written parental consent for initial special education services," noting that the Parent "[gave] consent for my child to receive special initial special education services." The Parent hand wrote on the form and noted in her email that "We do agree to Special Education placement, but we do not agree with this IEP as written." Both the Parent and the Student's father signed the consent form.

In subsequent emails to the District, the Parent stated the IEP needed to be re-written because it contained factual errors.

133. On June 26, 2019, according to additional email documentation provided by the Parent in her reply to the District's response to this complaint, the Student was scheduled to receive speech services and attended services at 10:00 am—per his IEP. The SLP, in emails, noted that speech services would resume in September when school started again for the 2019-2020 school year.

134. The District's last day of the 2018-2019 school year was June 27, 2019.

135. Also, on June 27, 2019, supervisor 2 emailed the Parent, following up to the facilitated IEP meeting. Supervisor 2 stated in her email that, "At this point, it is recommended that an IEP Team convene at the beginning of the school year to discuss the IEP and a plan moving forwarded."

136. Additional documentation, provided by the Parent, indicated she and the District were discussing potential opportunities for the District to observe the Student when he attended a summer camp, in order to observe him in a learning environment around peers. It is not clear whether an observation occurred as of the date of this decision.

In an email on July 20, 2019, to the team's new student support services supervisor (supervisor 3), the SLP, OT, principal, and supervisor 2, the Parent stated, regarding the summer opportunities to observe the Student:

because it seemed to be such a roadblock for the evaluator, we are again emphasizing and documenting how we have been offering opportunities to observe him in his various future learning environments, despite plenty of opportunities for her to observe [Student] in his current and past learning environments. The evaluator had the opportunity to view videos of [Student] that I shared for observations, she was invited to come observe him at home during his lessons, and we offered for the team to visit his classroom in his homeschool co-op program.

CONCLUSIONS

Issue One: Referral & Initial Evaluation – The Parent alleged that the District delayed referring the Student for a special education evaluation and failed to follow procedures for conducting the Student’s initial evaluation.

May 2018 Referral

Specifically, the Parent alleged that the District both failed in its child find obligation and delayed referring the Student for a special education evaluation. School districts must conduct child find activities calculated to locate, evaluate, and identify students who may need special education services. Child find activities extend to students who reside within the school district boundaries, regardless of enrollment. A district’s obligation to consider evaluating a student, either through child find or referral processes (any person who is knowledgeable about the student may make a referral of a student suspected of having a disability), is triggered when the district has reason to suspect a disability and reason to suspect that special education services may be needed to address that disability.

When a student suspected of having a disability is brought to the attention of school personnel, the district must document that referral, provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether the student is a good candidate for evaluation. The district must review the referral and collect and examine existing school, medical, and other records. The district must determine within twenty-five school days after receipt of the referral whether it will evaluate the student and then provide the parent with written notice of its decision.

The Parent stated she provided the District with information about the Student’s diagnoses on May 1, 2018, and this constituted a referral for a special education evaluation. The District’s response stated no referral was made by the Parent in May 2018, and due to the Student’s limited attendance at the alternative learning experience (ALE) program, the District was not knowledgeable about the Student and had no basis to refer the Student for an evaluation. The District argues that when the Parent indicated the Student may have needed supports, she was referred to the District’s multi-tiered system of supports (MTSS)—a first step used by schools to determine what supports a student may need; however, the Parent did not return the form and the Student was unenrolled from the District a few days later. The District also argued that in the spring of 2018, the concerns communicated by the Parent were largely related to the Student’s grade level and his need for advanced learning opportunities.

Based on the documentation in this complaint, the Parent did express concern regarding the Student’s grade level and advanced learning. However, there is documentation that the District had enough information to suspect a disability—interestingly, this documentation was provided by the Parent pursuant to a public records request and was not included in the District’s response to this complaint. While prior to the investigation timeline, a March 2018 email from the principal, included his interpretation of information shared by the Parent—the principal stated the Student was denied admission in another program because the program did not offer special education

services. It is not unreasonable to infer the principal believed the Student needed special education services. On May 1, 2018, the Parent emailed the ALE counselor and asked about getting an individualized education program (IEP) for the Student. And on May 2, 2018, the Parent shared information about the Student's diagnoses (unspecified attention-deficit/hyperactivity disorder (ADHD), unspecified anxiety disorder, and sensory processing differences) with the ALE. At this point, the ALE counselor emailed the Parent the MTSS form to start the MTSS referral process; however, internal emails between staff provided conflicting information: emails stated the Parent wanted to pursue an IEP, indicated that staff would cancel the MTSS referral, and indicated that the District would send notice to the Parent, documenting the referral and next steps. This did not occur.

There are several points where the District failed to follow child find and referral procedures. The Parent requested an IEP and notified the District that the Student had several diagnoses in May 2018. This was enough to trigger the District's obligation to, at minimum, consider evaluating the Student—i.e., enough to begin the special education referral process. This means, the District should have provided the Parent with written notice documenting the referral and next steps. The District failed to provide written notice. While there is no evidence the Parent returned the MTSS form¹⁸ and the Parent did unenroll the Student a few days later, the District's obligation did not end just because the Parent unenrolled the Student. A district's child find obligation applies to resident students, regardless of enrollment status. Even though the Student was only briefly enrolled, and the District had limited information, the District had an obligation to follow referral procedures. The District should have continued to communicate with the Parent subsequent to the Student's unenrollment to determine if the Parent was interested in exploring special education services and potential next steps, and the District should not have stated the Student should be taken off the "work list" for the referral process.

OSPI finds the District in violation of referral and child find procedures. The District failed to follow referral procedures when it had reason to know the Student had a disability and potentially required special education services, and finds that the District failed to meet its child find obligation when it based its decision to discontinue the referral process on the Student's enrollment status. Ultimately, this failure delayed beginning the special education process for this Student and the District will be required to provide the Student with compensatory services based on the analysis below. Further, the District will be required to review its policies and procedures around child find, in particular for resident students who are not enrolled in the District.

Had the District properly responded to the referral for special education on May 1, 2018, the District would have decided to evaluate by June 6, 2018 (25 school days) and an evaluation would have been completed by October 5, 2018 (35 school days, assuming the Parent gave consent right away). From there, an IEP would have been developed by November 5, 2018 (30 calendar days), and assuming the Parent signed consent for the provision of special education services right way, the IEP could have been implemented potentially as early as November 6, 2018. This means, there

¹⁸ The Parent stated she did at the same time she provided the private evaluation report on May 2, 2018; however, the documentation indicates the District gave her the form on May 3, 2018, meaning it is impossible the Parent filled out and turned in the form before the District gave it to her.

were approximately 29 remaining weeks of school in the 2018-2019 school year (excluding breaks). Ultimately, the Student's draft IEP provided him with 30 minutes of specially designed instruction in communication from the SLP, which equates to 870 minutes or 14.5 hours. As an equitable remedy, given the child find violation and the delay in providing the Student services, the District will provide the Student 14.5 hours of compensatory services in speech.

November 2018 Referral & Determination Not to Evaluate

The Parent stated she made the referral on November 11, 2018, when she emailed the District's 504 coordinator regarding sending the Student to school and the supports she believed the Student needed. In this email, the Parent stated the Student would need an IEP and a 504 plan. The District stated the 504 coordinator did not think the Parent was making a referral for special education and that this did not become clear until subsequent emails were sent by the Parent. The District stated the referral was made on November 21, 2018. A district has twenty-five school days following the receipt of a referral to review records and information before deciding whether or not to evaluate. Whether the referral was made on November 11 or November 21, 2018, the District would have been required to decide by January 7 or 11, 2019; and the District ultimately decided on December 20, 2018 to not evaluate the Student. Therefore, OSPI finds that the District followed the referral timeline. However, the District failed to provide the Parent written notice documenting the referral, which may also have contributed to the confusion about next steps.

The District's next step of scheduling a preliminary information gathering meeting with the Parent on December 6, 2018 was appropriate. As the meeting approached, it became clear the Parent was interested in evaluating the Student for special education services. Although, it was clear the Parent did not understand the special education process (e.g., the Parent asked if the first meeting was to start working through an IEP when the District had not yet decided to evaluate). At the same time, District staff members also seemed confused about the process—for example, the principal asked multiple times that someone from the District's special education department attend the meeting and the 504 coordinator stated several times that the plan was to start with a 504 plan, despite not having met with the Parent or clarified that this was actually what the Parent wanted.

While ultimately the special education department provided the principal with some information about the private school evaluation process (for students *not* enrolled in the District) and the neighborhood team evaluation process (for *enrolled* students), and offered to be available by phone during the meeting; OSPI does note it is concerning that the special education department stated it "had reservations involving the regional special education team for a student that is not eligible for services nor enrolled in the district. This is the reason a representative from 504 is attending until eligibility is established." However, as discussed above, a district has a child find obligation regardless of a student's enrollment status and the special education department's obligation/involvement does not start at the point a student is determined eligible. In retrospect, OSPI believes confusion could have been avoided if someone from the special education department had been present at the meeting on December 6, 2018. OSPI urges the District to review the communications prior to the December 6 meeting and think about how the central office supports school staff beginning at the child find/referral stage.

Ultimately on December 6, 2018, the Parent met with the principal and 504 coordinator and provided additional information about the Student from his private providers. Also, on December 6, the Parent reenrolled the Student in the District. While this meeting was intended as a preliminary information gathering meeting, this investigation finds communication indicated some staff and the Parent believed the decision to evaluate the Student was essentially decided in early December 2018. For example, the Parent gave the District a signed 504 consent form, modified to state that she consented to a special education evaluation.¹⁹ Further, communications from the principal indicated she believed the Student would be evaluated (e.g., December 7, 2018 email to the psychologist regarding the Student and a special education evaluation; and emails to school staff, stating, “we have a new student to evaluate and to create an IEP for!” and “we are now doing the evaluation through the [neighborhood school] team.”) While it is possible that staff were using “evaluation” interchangeably with “referral/deciding to evaluate,” this all contributed to a situation where it was unclear what next steps were being communicated to the Parent. It was not unreasonable that the Parent believed the evaluation decision had been made.

On December 20, 2018, a referral meeting was scheduled to determine whether the District would evaluate the Student. Emails indicated the meeting on December 20 was to discuss what areas the Student would be evaluated in. Additionally, emails prior to the January 2019 meeting (discussed below) indicate that prior to that meeting, the District had already decided to evaluate the Student (e.g., January 28, 2019 email from supervisor 2, stating the agenda for the meeting was “to finalize areas to assess and develop and assessment plan” and email from lead psychologist, stating, “a [decision to assess] DTA has been made, consent sent”). Taken as a whole, communications indicate the District was ready to make this determination by December 20, 2018, regardless of whether a meeting occurred.

Ultimately, the meeting on December 20, 2018 did not take place.²⁰ The District stated because the Parent was not involved in the meeting and all the information being considered was provided by the Parent, the decision was made to not evaluate the Student. The District stated because the Parent declined to meet with the District special education program supervisor, had they (Parent, principal, and vice principal) met, there would have been no special education representation; or, had only District staff met, then the Parent would not have been involved. Therefore, the District declined to evaluate the Student.

The District’s decision is not consistent with the referral procedures, which state a district must review the referral and collect and examine existing school, medical, and other records. The district

¹⁹ Prior to the meeting, the District sent the Parent forms, including a consent form for a 504 evaluation and the private school referral packet, which included a special education evaluation consent form. OSPI acknowledges that the District did this based on the Parent’s requested accommodations. However, providing the consent forms prior to holding a referral meeting also made this situation more confusing.

²⁰ As detailed in the facts section, there is disagreement between the Parent and the District over why this meeting did not take place. However, as this largely relates to allegations made by the Parent about accommodations and discrimination—which are beyond the scope of this investigation—the conclusion will not address these allegations.

must determine within twenty-five school days after receipt of the referral whether it will evaluate the student and then provide the parent with written notice of its decision. While parent involvement in this process is important, there is no requirement to have a meeting. Here, the Parent was involved in that she had provided the District with information about the Student, information from private providers, and outside evaluations. While a meeting may be the District's standard practice, it is not required and the fact that a meeting did not occur on December 20, 2018 was not a valid reason to decline to evaluate the Student, especially given email communications prior to (and after the meeting) that indicate some District staff believed the decision to evaluate the Student had already been made. Therefore, OSPI finds the District in violation of referral procedures on December 20, 2018, when it declined to evaluate the Student. The District will be required to develop guidance regarding referral procedures and provide this guidance with the evaluation team involved in this complaint, following the review of existing policies and procedures ordered above.

Determination to Evaluate & Initial Evaluation

The Parent alleged that the District's failure to follow evaluation procedures contributed to a delay in providing an evaluation, a delay in the identification of the Student's "impairments," and a delay in the provisions of appropriate accommodations and services. The Parent also alleged that the District "failed to include known information in its special education evaluation report."

Determination to Evaluate & Evaluation Timelines

The purpose of an initial evaluation is to determine whether a student is eligible for special education. The evaluation must comply with the IDEA's procedural requirements. Once a decision to evaluate a student has been made, a district must fully evaluate the student and arrive at a decision regarding eligibility within thirty-five school days after the date written consent has been provided to the district by the parent.

Here, the District ultimately decided to evaluate the Student following a second referral meeting, with the Parent, on January 29, 2019. The evaluation group decided to evaluate the Student in adaptive/life skills, cognition, reading, math, written language, motor, communication, study/organization, and social behavior. The District provided the Parent with sufficient prior written notice of this decision. The District received the Parent's signed consent for the special education evaluation on February 6, 2019.

The District's special education evaluation of the Student was due by April 15, 2019—thirty-five school days from February 6, 2019. The District completed its evaluation and finalized the evaluation report on April 15, 2019. While further concerns are discussed below, the District did meet the timeline outlined in state regulations to complete the evaluation. OSPI finds no violation related to the evaluation timeline.

Parent Participation

Parents are considered equal partners with school personnel in making decisions regarding a student's educational program. Parental participation in the IEP and educational placement

process is central to the IDEA's goal of protecting the rights of students with disabilities and providing such students with a free appropriate public education (FAPE). The evaluation group must document and carefully consider information from a variety of sources—including, information provided by the parent. While a district does not need to adopt all parental input, they must document their consideration of such input. The evaluation report should also document the individual assessments of each professional member of the group who contributed to the report. The IDEA places an affirmative duty on districts to include parents in the IEP process. Importantly, a meeting may only be conducted without a parent if, "the public agency is unable to convince the parents they should attend." When a public agency is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, courts have repeatedly stressed the importance of parental participation in the IEP process.

The Parent's allegations that her participation in this process were denied fall flat given the large amount of information provided by the Parent and considered by the District. In fact, it is hard to understand how the Parent can argue that she did not have the opportunity to participate in this process. The Parent met with the District several times (e.g., December 6, 2018, January 29, 2019, and February 15, 2019) to discuss the Student, refer him for special education, and discuss and plan the special education evaluation. There are numerous examples of the District's consideration of the Parent's emailed concerns, information, and documentation submitted as part of the evaluation process.

The Parent's concerns about parent participation seem to be mainly related to her belief that because she did not attend the evaluation and eligibility determination meeting, the evaluation is invalid and not final.²¹

On March 29, 2019, the District invited the Parent to the evaluation and eligibility meeting, scheduled for April 15, 2019. The District stated it would send the Parent a draft of the evaluation report by April 5, 2019 (the Parent noted, based on this communication, she scheduled a meeting with some of the Student's private providers on April 8, 2019 to review the draft). The Parent made it clear, numerous times, that she would not approve any extension to the evaluation timeline. According to the District, the Parent was sent a copy of the draft evaluation on April 5, 2019, but due to an email server error, the email did not go through. Regardless, the District resent the draft evaluation to the Parent on April 8, 2019—a week before the scheduled meeting.

²¹ The Parent had an additional allegation, raised in an email, that the District limited her input by directing her to only fill out evaluation questionnaires and rating scales once, from one point of view. There was conflict between the Parent and the psychologist regarding whether the Parent could fill out the questionnaire and ratings scales twice—once from the perspective of being the Student's Parent and a second time from the perspective of being the Student's homeschool teacher. The psychologist stated that one individual cannot fill out two of the same form, while acknowledging the Parent's dual role. The psychologist stated the Parent could fill out the form with one perspective and the Student's father could fill out the form with the other perspective. The Parent ultimately filled out and submitted the questionnaire and rating scales. OSPI sees no reason to question the psychologist's expertise regarding how these forms are completed; and, regardless of the conflict, the questionnaires and rating scales were incorporated into the evaluation. OSPI finds that the Parent's input was not limited here.

While OSPI encourages districts to provide draft documents prior to meetings in order to facilitate parent input and collaboration, there is no special education legal requirement that a district always provide the draft evaluation prior to an evaluation meeting. Here, the District provided the Parent the draft evaluation a week prior to the meeting. When the draft was sent may have inconvenienced the Parent regarding her meeting scheduled with the Student's private providers; however, this does not mean the District was out of compliance with the IDEA or state regulations. There is no requirement that an evaluation report be reviewed by a student's private providers. The District provided the Parent the draft report a week prior to the meeting and OSPI finds no violation related to the provision of the draft evaluation report.

On April 12, 2019 (the Friday of the District's spring break), the Parent emailed the District and requested the score reports for all of the evaluation assessments and subtests, and stated she required this information prior to the meeting on April 15, 2019. On Sunday, April 14, 2019, the Parent stated she would need to reschedule the meeting in order to have time to review the scores and stated she required the scores to understand the evaluation. The District responded that all of the scores were in the draft evaluation report and that the purpose of meeting was to discuss the scores as they relate to eligibility and understanding the Student's learning.

The Parent maintained she would not agree to extend the evaluation timeline, but also that she would be unable to attend the meeting without first receiving the scores. The District again stated the scores were part of the evaluation, but that they would send the Parent the score reports and would hold the meeting on April 15, 2019. On April 15, 2019, the District emailed the Parent the score reports and met to review the evaluation report and determine eligibility. The Parent did not attend the meeting. The District stated that in the absence of an agreement to extend the timeline, the District met without the Parent to complete the evaluation within the required 35 school days. The District made several efforts to schedule a subsequent meeting with the Parent to go over the evaluation, and stated a reevaluation could be initiated once the Student was attending school and adverse impact could be observed. As of the date this complaint was filed, the Parent had declined to meet to discuss the evaluation.

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 meeting a timeline, courts have stressed that parental participation in meetings usually takes precedence. OSPI finds that the District invited the Parent to the meeting and made efforts to gain her agreement to attend—including providing her with the draft evaluation report a week prior to the meeting; ultimately, OSPI finds that the Parent declined to attend the meeting. While the Parent may have had her reasons to not attend, a district is allowed to conduct a meeting without a parent when the district is unable to convince the parent to attend. Here, given that the Parent made very clear she would not extend the evaluation timeline, the District chose to proceed with the evaluation meeting and found the Student eligible, despite the lack of Parent attendance. Given the circumstances, OSPI finds the District's decision to be reasonable. While it is not ideal that the Parent did not attend and OSPI does not diminish the importance of parent participation in meetings, the Parent was overall provided ample opportunity to participate in the evaluation process despite not attending this meeting.

The Parent also alleged in her reply to the District's response to this complaint that the District limited her parental involvement when it did not send her the subtest and score reports in a timely manner. According to the Parent, this meant she was "unable to make an informed decision and consent or dispute the evaluation results." However, the Parent has clearly disagreed with the results of the District's evaluation as she both requested an independent educational evaluation (IEE) and filed this complaint. Parents must consent to the initial provision of special education services before a student can receive services, but there is no requirement that a parent "consent" to an evaluation or evaluation results. A parent may disagree with the results of an evaluation, at which point a parent can request an IEE; however, disagreement does not necessarily mean an evaluation is invalid. Here, the Parent's ability to disagree with the evaluation—and access dispute resolution options—was not limited by when the score reports were sent.

Finally, as discussed below, the evaluation report incorporated a large amount of information provided by the Parent. Overall, while not perfect, OSPI finds the District made sufficient efforts to ensure parental participation and incorporate the Parent's input into the decision making. OSPI finds no violation related to parent participation.

Sufficiency of Evaluation & Eligibility Determination

To be found eligible for special education services, a student must have a disability in one of several enumerated categories, and who, because of the disability and its adverse impact on the student's education, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations. The evaluation for special education eligibility must be sufficiently comprehensive to cover all areas of suspected disability. An evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about a student. This must include information provided by the parents, and no single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student.

Here, the evaluation group found the Student eligible for special education services under the category communication disorder, based on the Student's moderate articulation disorder. The evaluation report recommended the Student receive specially designed instruction in communication and school-based occupational therapy services (with the level of services to be determined). Regarding the Student's specific needs, the evaluation report determined that in adaptive/life skills and student/organizational skills, the group could not determine whether the Student demonstrated a disability "because only one data point, no direct observation of skills. No observation of disability, adverse impact, or need for specially designed instruction." And, in math, reading, written language, and social/behavior, the team "agreed the Student demonstrated a disability;" however, "the evaluation team did not directly observe adverse impact of a need for specially designed instruction."

The Student's evaluation included assessments and observations conducted by the occupational therapist (OT), speech language pathologist (SLP), and school psychologist. The evaluation report included information in the areas of adaptive/life skills, cognitive, communication, math, reading,

written language, motor skills, social/behavior, and study/organizational skills. The evaluation group reviewed information provided by the Parent, including: multiple private evaluations and other information from private providers; information about the Student's multiple diagnoses; questionnaire/rating scales completed by the Parent; information about the Student's homeschool curriculum, goals, and learning experiences; concerns outlined in emails; and, videos of the Student in a group setting and receiving homeschool instruction from the Parent.²² The evaluation group also obtained information from the ALE regarding the Student's brief attendance at the ALE math class, reviewed the Student's written student learning plan, and reviewed feedback from the ALE's general education teacher and counselor.

There were several areas where the District noted there was only one source of data, due in large part because the District stated it was not able to observe the Student in an educational environment. The need for observation was a source of conflict between the Parent and the District. Following the referral meeting and email discussions, the District's understanding was that there was agreement to have a "slow start to assessment" and that the "SLP and OT were to assess in a 1:1 setting at [neighborhood school]. Once a few sessions took place, we are going to integrate [the Student] in a supported academic setting..." The District stated it could provide general education accommodations during the evaluation, but not specially designed instruction (e.g., "push-in occupational therapy services"). Prior to beginning the evaluation, the District communicated to the Parent the importance of observation, "to determine whether or not there is an adverse impact in the school setting that requires special education services."

The Parent stated, due to safety concerns, the Student would need to be evaluated prior to attending school and that her understanding was the District agreed to first let the Student and the OT get to know each other and then the Student would attend class with the OT acting as his paraeducator. The Parent stated if the District required assessments to occur "in class," then this was her "agreed-upon path to ensure everyone's safety." Following a meeting on February 15, 2019 to discuss the evaluation plan, the Parent indicated "she would no longer agree to bring [the Student] into a school setting for observation prior to an IEP being developed." According to the District, it reiterated the importance of observation, "in compromise, the District agreed that [the Student] would be tested individually by the OT, SLP and psychologist and the Parent agreed that the District could observe [the Student] in an alternative group [or] educational settings that [the Student] attended."

²² The evaluation report did not reference the videos; however, District staff stated in emails and in response to a question from OSPI that they did view the videos provided by the Parent. An evaluation should document a district's consideration of parent input; however, a district is not required to adopt all parental input. Additionally, an evaluation can still be found sufficient even if a district does not document each and every piece of information a parent provides. Here, the Parent provided a substantial amount of information and documentation. OSPI reminds the District that it should strive to document consideration of parent input—which, in this case would have included the videos, especially considering the Parent's focus on them. However, the failure to make a note about the videos in the evaluation report does not affect the overall validity of the evaluation or the eligibility determination.

Subsequently, the Parent emailed the District and stated the Student “will not be assessed in a classroom that contains students” and stated she no longer felt it was necessary to have the District attend one of the Student’s classes so the District could observe the Student in an alternative group or educational setting. The Parent again emphasized that the videos “included a variety of situations wherein [Student] was accessing instruction and his environment, both in group and individual settings.” Later, in July 2019, the Parent stated she had offered “plenty of opportunities...to observe” the Student, including inviting the psychologist “to come observe him at him at home during his lessons” or “visit his classroom in his homeschool co-op program.” However, there is no contemporaneous documentation from the evaluation time period that supports this statement. In fact, as stated above, the Parent specifically stated she did not think it was necessary to arrange to have the District observe the Student in an alternative setting. Throughout, the Parent questioned the District’s need to observe the Student in a classroom, and interpreted the District’s emphasis on this as an attempt to maintain “compliance” or that the District had “made this an issue of compliance.”

The evaluation report ultimately noted the team was “not allowed to observe [the Student] in the general education school setting at the parent request. The only observations available were during the one on one testing sessions and during transition times for these testing sessions.” As a result, the team was not able to identify adverse educational impact and a need for specially designed instruction in several areas.

As stated above, in order for a student to be found eligible for special education, a student must have a disability, the disability must have an adverse educational impact, and because of that, the student’s “unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services.” Further, the data and information contained in a special education evaluation assists the parent and district in crafting an educational program. Case law and state regulations lay out that one of the purposes and goals of special education is to enable “the student to be involved in and progress in the general education curriculum.” Taken together, this implies it is important to have information regarding a student’s previous education, strengths and challenges, and progress and performance in an educational setting. While there is no requirement in state regulations that this information can only be found in a district’s public school classroom, the District here is correct when it emphasized that “one of the only ways we can establish adverse impact is if a student is consistently accessing the general education curriculum” and that “we must also establish that the student has had access to appropriate instruction within the general education curriculum.” OSPI finds it entirely appropriate that the District wanted to observe the Student in a classroom setting—particularly given the Student had not yet attended and was not currently attending school in the District (apart from a few classes at the ALE) and therefore, the District had very little direct information about the Student’s academic progress and performance.

The Parent disputes the District’s interpretation of some of the information and has argued that the District could have “observed” the Student by watching the videos she provided. The District stated that while the videos were viewed, they were not particularly helpful for the evaluation and

did not establish the required adverse impact and need for specially designed instruction (e.g., SLP stated the videos were not helpful for the speech evaluation due to difficulty in hearing and the lack of context for the interaction). Further, while it is important to respect the Parent's concerns regarding the Student's safety, the Parent refused to send the Student to school and also prevented the District from observing the Student in an alternative setting. Further, while the Parent did provide some information about the Student's homeschool curriculum, progress, and challenges, this was only one source of information. Adverse educational impact and the need for specially designed instruction cannot be determined based on only one source of data, as no single test or measure may be used as the sole criterion for determining the appropriate educational program for a student. The District needed the additional information observations of the Student would have provided—both to have a second source of data about the Student and importantly, to determine whether there was adverse impact and a need for specially designed instruction.

Overall, the Parent disagreed with the outcome of the evaluation and the eligibility determination. In information sent to OSPI, the Parent argued the Student's subtest scores in math, reading, and writing, which were 2-3 standard deviations below grade level and indicated a "frustration level" with the general education environment, indicated the Student was eligible for special education. The Parent is not necessarily wrong about what the Student's scores indicate; however, the Parent misses or misunderstands the second and third requirements for special education eligibility: a student must have a disability, the disability must have an adverse educational impact, and the adverse impact must indicate a need for specially designed instruction.²³ While scores are a part of an evaluation, scores alone are not necessarily enough to show adverse impact and a need for specially designed instruction. These data indicate lower skill areas, but need to be considered along with other data, such as other tests scores, classroom grades, teacher, and parent input. Here, the District was not able to obtain any other academic or classroom information about the Student. The District, in fact, stated the Student demonstrated a disability in math, reading, written language, and social/behavior (due in part to the scores the Parent cites), *but* the District did not have data to support an adverse educational impact or need for specially designed instruction.

Finally, the Parent pushed back against communications from the District that referenced the need to rule out lack of appropriate instruction (e.g., prior written notice that referenced elements of the regulations for when a student would be determined not eligible for special education). The Parent stated the District's request for information about the Student's home school curriculum "might be trying to form a conclusion that [the Student] does not have a learning disability, but that I haven't taken the time to properly instruction him." While OSPI understands that this

²³ Additionally, further communications from the Parent illustrate her misunderstanding of the special education evaluation process. The Parent stated she did not understand why the District couldn't just "trust" the Parent and his private providers to "know what his issues are" and stated the District needed to "take that leap of faith needed to know there's no need to prove that [Student] hasn't received reading, writing, math, or social skills instruction." The Parent also stated, "from our vantage point...we don't believe our son needs further evaluation for the team to determine whether or not he's eligible for an IEP." However, the IDEA and state special education regulations require more than trust and a leap of faith, and instead lay out specific requirements for eligibility.

requirement could be off-putting to parents that have been homeschooling their children, state and federal regulations require a district to rule out a lack of appropriate instruction in reading and math. The District's intent was not to criticize the Parent or her teaching, but again to determine if the Student had a disability that created an adverse educational impact, requiring specially designed instruction. As discussed above, this means the District must look at what the Student has learned, his curriculum, instruction, and progress. OSPI does not find the District's actions during the evaluation inappropriate or out of compliance.

While the Parent may disagree and continue to disagree with the District's eligibility determination, disagreement does not always indicate there has been a violation of evaluation procedures. Should the Parent continue to disagree, she is free to access other dispute resolution processes such as due process.²⁴ OSPI finds no obvious flaw with the District's eligibility determination and in the absence of any errors, OSPI will not overrule the professional judgment and decision of the evaluation team. OSPI finds that the evaluation was sufficient and that the eligibility determination was, based on the evaluation and information available, appropriate. OSPI does encourage the District to consider reevaluating the Student should he begin attending school or if/when the District is able to obtain more information about potential adverse impact and the need for specially designed instruction, as the Parent has indicated a willingness to allow observations in a July email. Overall, OSPI finds no violation regarding the initial evaluation procedures or evaluation sufficiency and eligibility determination.

Issue Two: Individualized Education Program (IEP) Development – The Parent alleged that the District failed to develop the Student's initial IEP within thirty days. Once found eligible for special education services, a student's initial IEP must be developed within thirty days of that determination. And, as soon as possible following the development of the IEP, special education and related services must be made available to the student in accordance with the student's IEP. A parent must also provide consent for the initial provision of special education and related services, prior to the student receiving those services.

The parents of a student eligible for special education are expected to be equal participants along with school personnel, in developing the IEP for their child. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in state and district-wide assessments, and what services the agency will provide to the child and in what setting.

A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. When a public agency is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA—e.g., parental

²⁴ OSPI notes that the Parent did request an independent educational evaluation (IEE), to which the District declined to provide an IEE and filed a request for a due process hearing to defend its evaluation. The Parent subsequently withdrew her request for the IEE and the due process was dismissed.

participation and meeting a timeline for compliance, courts have stressed the importance of parental participation in IEP creation. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit.

Here, the Student was found eligible for special education services under the category communication disorder on April 15, 2019. The District would need to meet by May 15, 2019 to develop the Student's IEP. This complaint was opened on April 22, 2019; thus, as of the complaint filing, this allegation was actually premature as the deadline to have an IEP developed had not yet passed.

Regardless, on May 9, 2019, the District invited the Parent to an IEP meeting schedule for May 13, 2019, and sent the Parent a copy of the draft IEP. The draft IEP proposed the Student receive 30 minutes a week of communication from a speech language pathologist, in the special education setting. On May 10, 2019, the Parent requested a facilitated IEP meeting.

The District in its response stated that it was ready to meet on May 13, 2019, and that it provided the Parent a draft IEP in advance of the meeting. But, the District agreed to the Parent's request for a facilitated meeting and that meeting was scheduled for June 6, 2019. The District, in its response, cited case law that supports prioritizing parent participation over a procedural timeline requirement, when the parent indicates a desire to participate in the process. The documentation provided in this complaint indicates that following the June 6, 2019 IEP meeting, the Parent signed consent for the provision of initial special education services, but stated she disagreed with the IEP as written. While the Parent disagreed, and continues to disagree, with the IEP as written, the Student did receive one speech session with the speech language pathologist (SLP) on June 26, 2019, prior to the end of the District's 2018-2019 school year. The SLP stated that speech services would resume in September when the District's 2019-2020 school year begins.

OSPI acknowledges the importance of parent participation in the development of a student's IEP and finds that, in situations such as this, in order to ensure Parent participation in the process, it was appropriate for the District to prioritize parent participation over the procedural deadline for completing the IEP. It appears the District has an IEP in place, ready to implement at the start of the 2019-2020 school year. OSPI encourages the District to continue working with the Parent to resolve disagreements regarding the current IEP at the start of the 2019-2020 school year. OSPI also reminds the District that while a parent may disagree with elements of an IEP, the District ultimately has the responsibility to offer and provide a free appropriate public education (FAPE). OSPI finds no violation related to the development of the Student's initial IEP.

Issue Three: Prior Written Notice – The Parent alleged that the District failed to consistently provide prior written notice and failed to include correct information in the prior written notices. Prior 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: proposes or 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; b) an explanation of why; c) a description of each evaluation procedure, assessment, record, or report used as a basis for the proposed or refused action; d) a statement regarding

procedural safeguards; 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 proposal or refusal.

There were several points at which the District should have provided written notice and did not. A district is required to provide written notice to document a referral or request for a special education evaluation (the notice should document the referral because of a suspected disability and notify the parent that the district, with parental input, will determine whether or not to evaluate the student)—meaning, here, the District had an obligation to provide written notice in May 2018 and November 2018 following the Parent’s referrals for special education. The District’s response stated the email on December 5, 2018—which attached information about the 504 and special education evaluation processes—served as the written documentation of the referral. As discussed in issue one, there is documentation to support a referral occurred in May 2018, based on the fact the District had reason to know the Student had a potentially disabling condition—a prior written notice should have followed. Further, the District acknowledged that the Parent referred the Student for a special education evaluation in November 2018. While the District noted it documented a referral date in its system, OSPI finds that the December 5, 2018 email did not clearly document the referral to the Parent and thus, was not sufficient written notice. Given the evidence of confusion regarding next steps on both the District and Parent’s side, a prior written notice at this point likely would have helped clarify the process. OSPI finds the District in violation for failing to provide written notice following the referrals and the District will be required to develop guidance.

There were also several points at which the District should have and did provide prior written notice. Upon review, the following prior written notices were sent after a proposal or refusal to initiate or change the identification, evaluation, or educational placement of the Student or the provision of FAPE and contained all the required elements:

- December 24, 2018: Prior written notice the District was proposing to *not* initiate an evaluation until the Parent and the District met.
- January 29, 2019: Prior written notice the District was proposing *to* initiate a special education evaluation, and listing the areas for evaluation.
- February 11, 2019: Prior written notice further documenting the decision to evaluate, the receipt of Parent consent, and documenting further discussions between the Parent and District regarding the evaluation.
- February 15, 2019: Prior written notice regarding decisions made regarding the assessment plan and agreement to “adjust” the January 29, 2019 prior written notice per some of the Parent’s concerns.
- April 16, 2019: Prior written notice documented the evaluation group determination that the Student was eligible for special education services under the communication disorder category.

OSPI finds that much of the Parent’s disagreement with these prior written notices was based on either a disagreement with word choice, the District’s characterization of events, the inclusion of certain information (e.g., information from state regulations regarding evaluation procedures and eligibility requirements), or a misunderstanding regarding the special education process and

procedures. For example, on January 8, 2019, the Parent emailed the District her comments on the December 24, 2018 prior written notice, in which she disagreed with the District's characterization of the Student's enrollment,²⁵ disagreed with the District's characterization of the meeting, raised concerns regarding District staff, questioned why certain staff needed to be at the meeting, and stated she believed the December 2018 meeting was to formally qualify the Student for an IEP (at this point, the District had not yet agreed to evaluate the Student).

There are also instances of the Parent disagreeing with the District's proposed course of action and the Parent stated a prior written notice must be "correct and agreed upon by all team members – but especially the child's parents." While a prior written notice should be accurate, the document may include information that is *not* agreed upon by all of the team members. In fact, the regulations require a prior written notice to document any disagreement with the parent, and it should clearly describe what the district proposes or refuses to initiate.

Prior written notice ensures a 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. Here, given the Parent's comments on the various prior written notices, it is clear she was aware of the decisions the District was making, as she was often in disagreement and shared her disagreement with those decisions. Disagreement does not always mean there is a compliance violation. Here, when the District provided prior written notice, the notice contained all the elements required by the IDEA and state regulations. OSPI finds no violation with respect to the prior written notices the District provided.

Issue Four: Responding to Special Education Citizen Complaints – OSPI identified an additional concern in this complaint investigation that must be addressed. State special education regulations require a school district to investigate allegations and respond in writing to OSPI following the opening of a special education citizen complaint (SECC). The District shall respond with documentation of the investigation, no later than twenty calendar days after the date of receipt of the complaint. The response to OSPI shall clearly state whether: a) the allegations contained in the complaint are denied and the basis for such denial; or b) the allegations are admitted and with proposed reasonable corrective action(s) deemed necessary to correct the violation. WAC 392-172A-05030. To guide the District's investigation and response, OSPI, in its opening letters, requires a district to "investigate the issues and respond" by a certain date, provide all *relevant* information, and requests a list of documents, including, in relevant part:

- A specific response to the issues, including a chronology of relevant information; and,
- All correspondence, including emails, letters, and telephone calls *regarding the issues*. If the documentation includes handwritten notes, please provide a transcription.

(Emphasis added).

²⁵ As an example: The Parent said the Student was enrolled, while District said "the student is not attending..." Here, both the District and the Parent are correct. The Student was enrolled in the District at this point; however, he was not attending a District school. While the language in the prior written notice could, perhaps, be more precise, a disagreement over preferred wording is not evidence of noncompliance.

Here, OSPI notes that the District's response contained a few emails from the spring of 2018—the time period where the Student was enrolled in the District's alternative learning experience (ALE) program. However, upon receipt of additional emails provided by the Parent to OSPI, it became clear that there were additional emails relevant to the issues under investigation that the District had not provided. The Parent obtained these emails through FERPA and/or public record requests to the District for her Student's educational records, and then provided these emails to OSPI as part of her Parent reply to the District's response. OSPI finds it extremely concerning that the District omitted relevant documentation from its response to this complaint. It is unclear if this was an unintentional oversight, was due to technical challenges presented by how the District's technology department pulls emails, or was due to a deliberate exclusion. Regardless, OSPI notes that there were key emails from this time period that established the District knew or should have known the Student had a suspected disability that warranted a referral for special education (see above discussion), which is directly *relevant* to the issues under investigation. The District should have provided a more complete response and complete documentation regarding the time period in which the Student attended the ALE.

The District did meet the basic requirements of the regulation – to investigate and respond to the complaint; thus, OSPI finds no violation. However, OSPI reminds the District that it has an obligation to investigate and respond to SECCs, which includes providing OSPI with all *relevant* documentation as part of the investigation. OSPI strongly recommends that the District's special education administration and legal department meet and review procedures and processes for responding to SECCs.

CORRECTIVE ACTIONS

By or before **September 6, 2019, September 20, 2019, October 16, 2019, October 25, 2019,** and **January 3, 2020,** the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By or before **August 30, 2019,** the District will develop and offer the Parent a schedule for a total of 14.5 hours of compensatory services in the area of speech, to be provided by a speech language pathologist. The District should endeavor to provide a few different scheduling options, in order to allow the Parent to select a time that works for the Student. Services will occur in a one-on-one setting and instruction will occur outside of the District's school day and may be accessed over District breaks. The District will provide OSPI with documentation of the schedule for services by or before **September 6, 2019.**

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. Regardless of any rescheduling, the services must be completed no later than **December 20, 2019.**

The District must provide OSPI with documentation by **October 16, 2019** of the compensatory services provided to the Student. This documentation must include the dates, times, and length

of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. By or before **January 3, 2020**, the District must provide OSPI with documentation that it was completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburse the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation related to transportation or reimbursement by **January 3, 2020**.

DISTRICT SPECIFIC:

Policy Review

By or before **September 13, 2019**, the District's special education administration will review its policies and procedures around child find, in particular for resident students who are not enrolled in the District. The District will discuss whether any of the policies and procedures need to be updated or revised, given the violations identified in this complaint. By **September 20, 2019**, the District will notify OSPI of next steps, including any policies or procedures that need to be updated and a proposed timeline for completion. OSPI will determine whether any further reporting deadlines are necessary.

Written Training (Guidance)

By or before **September 20, 2019**, the District will develop written guidance on referral procedures, taking into consideration its review of policies and procedures required above. This guidance should include specific examples regarding students who may be referred for special education, but are not yet enrolled in the District.

The guidance will be provided to all certificated special education staff, including educational staff associates (ESA) at the school identified in this complaint. ESAs include school psychologists, physical therapists, speech language pathologists, school counselors, and other service providers. The guidance will also be provided to the building administrators and the appropriate regional special education administrators (program specialists, program supervisors, and directors).

By **September 20, 2019**, the District will submit a draft of the written guidance to OSPI. OSPI will approve the guidance or provide comments by October 4, 2019 and provide additional dates for review, if needed.

By or before **October 18, 2019**, the District will provide the written guidance to the above listed individuals and ensure that the staff have an opportunity to review the guidance and ask questions. By **October 25, 2019**, the District will provide OSPI with documentation that the staff has reviewed the written guidance. The documentation will include an official human resources roster of the required staff, so OSPI can cross-reference the list with the actual recipients.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

RECOMMENDATIONS

The District has indicated a willingness to obtain more information about the potential adverse impact the Student's disability has on his education and the need for specially designed instruction, and the Parent has communicated to the District several opportunities to observe the Student in summer camps and classes. OSPI strongly recommends that the District conduct an observation of the Student this summer, prior to the start of the school year. OSPI urges the District to get this observation scheduled as soon as possible.

Further, OSPI notes that some of the conflict and confusion that arose in this situation resulted from gaps in communication or situations where communication seemed unclear. For example, there was no communication between the ALE and the District's special education department in May 2018, when the first referral for special education occurred. Or, as OSPI noted above, it was concerning that the special education department stated it "had reservations involving the regional special education team for a student that is not eligible for services nor enrolled in the district. This is the reason a representative from 504 is attending until eligibility is established." While admittedly this is often easier to see in retrospect, OSPI believes confusion could have been avoided if someone from the special education department had been present at the meeting on December 6, 2018. OSPI strongly recommends the District to review the points at which communication gaps occurred, consider how these communication issues led to conflict, and consider how the central office supports staff beginning at the child find/referral stage—including ALE staff.

Finally, OSPI strongly recommends that the District's special education administration and legal department meet and review procedures and processes for responding to SECCs.

Dated this ____ day of August, 2019

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.)