

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-89**

### **PROCEDURAL HISTORY**

On November 27, 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 Spokane School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On November 27, 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 December 16, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on December 17, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On December 30, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On December 30, 2019, OSPI determined additional information would be helpful to the investigation and contacted the Parent regarding the same. OSPI received this information from the Parent on December 30, 2019 and forwarded it to the District on December 31, 2019.

On December 30, 2019, OSPI determined additional information would be helpful to the investigation and contacted the District regarding the same. OSPI received this information from the District on January 1 and 2, 2020 and forwarded it to the Parent on January 2, 2020.

On January 2, 2020, OSPI determined additional information would be helpful to the investigation and contacted the District regarding the same. OSPI received this information from the District on January 7, 2020 and forwarded it to the Parent on January 8, 2020.

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 which occurred prior to the investigation time period, which began on November 28, 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 time period.

### **ISSUE**

1. Did the District follow procedures for removing adaptive skill instruction from the Student's individualized education program (IEP) in May 2019, including conducting a sufficient reevaluation?

## LEGAL STANDARDS

Evaluations must be Thorough and Accurate: 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. 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. 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. 34 CFR §300.304; WAC 392-172A-03020.

Reevaluation Timelines: A reevaluation must be completed within thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent. WAC 392-172A-03015(3)(a).

Parent Participation in the Evaluation and IEP Development Process: Parents must be afforded an opportunity to participate in meetings with respect to the evaluation, educational placement, and the provision of a free appropriate public education (FAPE) to the student. 34 CFR §300.501; WAC 392-172A-050005. Specifically, information provided by the parents must be considered by the evaluation group in determining: (a) whether the student is eligible for special education as defined in WAC 392-172A-01175; and (b) 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. WAC 392-172A-03020(2); *see also* WAC 392-172A-03035(1)(e); WAC 392-172A-03040(1)(a). Additionally, in reviewing the existing data on the student the evaluation group has, the parent may provide information on additional information that is needed to properly determine the student's eligibility and/or IEP content. WAC 392-172A-03025(2)(a).

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) 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. WAC 392-172A-03100(1)-(3).

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive a FAPE. It is not appropriate to make IEP decisions based upon a majority "vote" and no one team member has "veto power" over individual IEP provisions or the right to dictate a particular educational program. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the

student'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 Education Act (IDEA), 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9<sup>th</sup> Cir. 2003). See also, *Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9<sup>th</sup> Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

Prior Written Notice: 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. It 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. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

Prior Written Notice – Components: 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.

## **FINDINGS OF FACT**

### **2018-2019 School Year**

1. At the beginning of the 2018-2019 school year, the Student was in the fifth grade, attended a District elementary school, and was eligible for special education under the category of intellectual disability.
2. On November 13, 2018, the Student's individualized education program (IEP) team created a new IEP for the Student. In part, the Student's November 2018 IEP provided the Student with 30 minutes per week of specially designed instruction in adaptive/life skills. The Student's November 2018 IEP also included the following annual goal in adaptive:

When given an assignment, Student will be able to self-start (begin the assignment, ask for help, or choose an appropriate alternative task), improving from self-starting on 2 out of 5 assignments to self-starting on 4 out of 5 assignments, to be measured by weekly teacher data.<sup>1</sup>

3. As of December 2018, the Student had made the following progress on the adaptive goal in his November 2018 IEP: "Student has not yet made progress on this goal. He is doing better about independently working in the resource room without multiple prompts."
4. As of March 2019, the Student had made the following progress on the adaptive goal in his November 2018 IEP: "Student is still working on this skill in the classroom setting. In the resource room, Student is able to self-start on 4 out of 5 opportunities."
5. On April 23, 2019, the District provided the Parent with a prior written notice, stating the District intended to reevaluate the Student and that it needed to gather "additional data...to determine continued eligibility and need for services."
6. On April 29, 2019, the District received signed consent from the Parent for it to reevaluate the Student.
7. As of May 2019, the Student had made the following progress on the adaptive goal in his November 2018 IEP: "Student has met this goal in the resource room. He is able to self-start about half the time in his classroom."
8. On May 14, 2019, the District invited the Parent to a reevaluation meeting for the Student scheduled for May 20, 2019. The District invited the Parent to this meeting via both "phone" and "regular postal delivery."

On May 14, 2019, the school psychologist emailed the Parent, stating, in part: "You are invited to an evaluation meeting for Student [which will take place] at the Student's elementary school which has been scheduled for May 20, 2019."

On May 15, 2019, the Parent responded, stating, in part: "I will be there."

9. On May 15, 2019, the District invited the Parent to a reevaluation meeting for the Student scheduled for May 20, 2019. The District invited the Parent to this meeting via a "notice delivered home by Student."
10. The District's response to this complaint contained an undated 'Parent/Guardian Invitation to Attend a Meeting'—though this page was physically located on the page opposite that which

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<sup>1</sup> The Student's previous IEP (from November 2017) had included the following adaptive goal: "When given a worksheet, Student will increase his ability to follow multi-step tasks without prompting from 0/5 opportunities to 4/5 opportunities." As of November 2018, the Student had made the following progress on this adaptive goal: "Student consistently follows multi-step directions in small groups and is typically able to follow multi-step directions in class."

detailed the invitations made on May 14 and 15, 2019. This version of the invitation documents the following: the purpose of the May 20, 2019 meeting; where the meeting would take place; the location of the meeting; who was invited to attend the meeting; and, the fact that the Parent could “invite individuals to participate in the IEP meeting who have knowledge or special expertise about” the Student.

11. On May 20, 2019, the Student’s evaluation group completed a reevaluation of the Student. The Student’s May 2019 reevaluation report read, in part:

Adaptive/Self-Help Skills

The Student’s general education teacher reports that adaptive skills are adequate (Date: 5/4/19). The Student’s special education teacher provided the following information regarding Student’s present levels of adaptive skills (Date: 5/14/19).

Student has been working on follow multi-step directions this year. Student is typically able to follow multi-step directions about 85% of the time. Student is able to follow classroom routines and consistently meets behavior expectations across all settings. Student consistently interacts appropriately with peers and adults.

Student no longer evidences a need for specially designed instruction in the area of adaptive skills. It is recommended that specially designed instruction in adaptive skills be discontinued.

The Parent signed the Student’s May 2019 reevaluation report. According to the District’s response, “The Parent attended the evaluation meeting [and] provided input.”<sup>2</sup>

12. According to the District’s response, the Student’s May 2019 evaluation group considered the fact that the Student had “achieved his [November 2018] adaptive goal” as part of the reevaluation process.

In the course of this investigation, OSPI highlighted the following for the District: the adaptive goal in the Student’s November 2018 IEP related to being able to self-start assignments and tasks.

OSPI’s investigator asked the District to comment on the following: since the last progress reporting entry for this goal (May 2019) read, “Student has met this goal in the resource room. He is able to self-start about half the time in his classroom,” it does not appear that the Student, as least in so far as his participation in the classroom was concerned, actually met this goal. In other words, as applied to the November 2018 adaptive goal, as of May 2019, the Student was only able to self-start on roughly 3 out of 5 assignments in the classroom—and the goal had been for the Student to self-start on 4 out of 5 assignments.

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<sup>2</sup> The Student’s May 2019 evaluation group found that he remained eligible for special education, but under the category of specific learning disability, as opposed to intellectual disability.

In response to this inquiry, the school psychologist stated: "The decision [to remove adaptive] was ultimately made on [the Vineland-3] rating scales that put his performance in the average range, [as well as teacher observations]."

13. According to the Parent's reply, she found it suspicious that, as of December 2018, the Student had not made any progress on the adaptive goal in his November 2018 IEP, but then only "five months later, in May 2019, Student no longer qualified for [specially designed instruction in adaptive]."

According to the Parent's reply, she also found it suspicious that the adaptive goal in the Student's November 2018 IEP was not supposed to be completed until November 2019, and the Student somehow mastered it approximately five months early.

14. The Parent's complaint stated, in part: "The Student's general education teacher did not think Student would do well without [adaptive] services in a middle school environment and [this opinion] was not included in the reevaluation [report]."

In response to this allegation, the District stated the general education teacher no longer worked for the District, but that the principal "does not recall this [alleged] statement being said. I do recall the general education teacher stating that Student is social and has friends in class and seems happy at school."

15. The Parent's complaint also stated that the Student's May 2019 reevaluation report did not incorporate "parent input," and, to the extent it did incorporate parent input, it "failed to use [it] correctly."

During the instant investigation, the District's special education director stated that the Parent's opinion on the Student's adaptive needs, as of the date of the May 20, 2019 reevaluation meeting, did not appear to have been "recorded" in the May 2019 reevaluation report.

16. On May 20, 2019, the Student's IEP team developed a new IEP for the Student. The Student's May 2019 IEP did not include specially designed instruction in adaptive.

17. On May 20, 2019, the Parent emailed the school psychologist, stating, in part:

I am concerned that [adaptive] services are going to be taken away not based on a test but based on the school's opinion. Even though Student has made great progress and we are very proud of him, I feel there is a lot more progress to be made before he enters middle school...So I just want to make sure that the test is given and accurately shows his adaptive behavior abilities and not just the school's opinion.

18. On May 21, 2019, the school psychologist responded, stating:

We will complete an adaptive assessment for Student. There are a number of reasons why using present levels (data collected from IEP goals) in an evaluation is indicated rather than a standardized assessment. However, I will complete the adaptive rating scale you requested for Student.

19. According to the District:

In late May, Parent called the counselor to ‘pick her brain’ about [a particular public charter school] and if it was a good fit for Student...The counselor explained that Student is happy [in his current setting] and doing well socially and she could not recommend [the public charter school] for Student.

20. In late May and early June of 2019, the Student’s Parent, general education teacher, and special education teacher each completed a Vineland-3 survey.<sup>3</sup> On June 4, 2019, the Student’s May 2019 reevaluation report was amended to incorporate the result of those surveys:

<b>Category</b>	<b>Special Education Teacher</b>	<b>General Education Teacher</b>	<b>Parent</b>
Receptive	Moderately Low	Adequate	Low
Expressive	Adequate	Moderately Low	Low
Written	Moderately Low	Low	Low
<i>Communication</i>	<i>Moderately Low</i>	<i>Moderately Low</i>	<i>Low</i>
Personal	Adequate	Adequate	Low
Numeric	Adequate	Moderately Low	—
Domestic	—	—	Low
School Community	Adequate	Adequate	—
Community	—	—	Low
<i>Daily Living Skills</i>	<i>Adequate</i>	<i>Adequate</i>	<i>Low</i>
Interpersonal	Adequate	Moderately Low	Low
Play and Leisure	Adequate	Adequate	Low
Coping Skills	Adequate	Adequate	Low
<i>Socialization</i>	<i>Adequate</i>	<i>Adequate</i>	<i>Low</i>
<b>Average</b>	Adequate	Adequate	Low

Based on these survey results, the Student’s June 2019 amended reevaluation report concluded:

In the school setting, Student demonstrates adequate overall levels of adaptive behavior when compared to individuals in his age group in the normative sample. At home, Student’s levels of adaptive behavior were consistently rated lower. Several explanations may account for this difference: 1) raters may be comparing Student’s behavior to that of different groups of children; 2) Student may be exhibiting different behaviors at home than at school; 3) routines, structure, and expectations are different between the home and school setting; and/or 4) teachers may have rated behavior more positively than warranted or Parent may have rated behavior more negatively than warranted.

Results of the Vineland-3, in conjunction with present level of performance [as] described in the evaluation dated May 20, 2019 indicate that Student consistently meets behavioral expectations in the school setting, interacts appropriately with peers and adults and has met his IEP goal of following multi-step direction consistently. Overall, results of this

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<sup>3</sup> The Vineland-3 survey is “a standardized measure of adaptive behavior—the things people do to function in their everyday lives.” Scores for the Vineland-3 range from low to high, with low representing minimal adaptive ability and high representing significant adaptive ability.

assessment indicate that Student does not require specially designed instruction in the area of adaptive skills.

**Recommendations:**

- Though Student is not eligible to receive special education services in the area of adaptive skills, it is recommended that he attend the counselor's social skills/friendship group for the 2019-2020 school year.
- Student could benefit from attending social skills group with the special education teacher as necessary and appropriate.

21. According to the principal, the counselor's social skills/friendship group:

Was a mix of special education and general education students. The counselor...had five boys join her once a week for 30 minutes. She ran activities: [a] check-in; [a] complete the sentence [exercise]: 'In my home world, I feel \_\_\_' and 'In my school world, I feel \_\_\_.' They played social emotional card games...It was a time to be social and heard.

The principal further stated: "It is correct to say that [the recommendation that Student participate in the counselor's social skills/friendship] group was outside of the IEP and not required [by the Student's needs]. Our counselor has several social groups for many kids."

According to the school psychologist:

[The counselor's social skills/friendship group] was NOT a special education group. [This] general education group was offered to help with the Parent's concerns regarding the Student...Based on Student's average levels of socialization skills [from the Vineland-3], it was determined that there was no education impact and that Student does not require specially designed instruction in the area of adaptive skills.

22. According to the District, the special education teacher's social skills group would be mostly special education students, with some general education students participating, but that any potential participation by the Student in this group would be "outside [the] special education [context]."

23. According to the Parent's reply, the fact that the District recommended that the Student still participate, in a more informal basis, in these two different social groups, was an implicit recognition by the District that the Student still had adaptive needs.

24. On June 4, 2019, the District provided the Parent with a prior written notice that read, in part: Per Parent request, we have drafted an evaluation amendment to include documentation of Vineland-3 assessment results...[We did this because] Parent requested [a] standardized adaptive assessment in addition to the present levels of performance [currently found in the May 2019 evaluation report]...[The] results of [the] standardized assessment are consistent with the Student's present levels of performance: Student no longer requires specially designed instruction in the area of adaptive skills.

25. On June 4, 2019, the school psychologist emailed the Parent, stating, in part: I have spoken with the special education teacher and the counselor and they have both agreed to keep Student/add him to their social groups for the next year. Although this is



not an IEP goal, please think of this as an ongoing conversation we can have regarding Student.

In this same email, the school psychologist provided the Parent with a copy of the completed Vineland-3 results.

On June 5, 2019, the Parent responded, stating, in part: "Thank you so much! I am so proud of him. This means a lot to see actual results and makes sense that some areas are lower at home."

26. The last day of the 2018-2019 school year was June 13, 2019.

### **Summer 2019**

27. According to the District, "On July 6, 2019, when Student returned from a week of camp, Parent stated to the counselor that Student was going to attend [a public charter school as] she felt Student needed a fresh start at [a] new school."

28. According to the District, in August 2019, it received a request for records relating to the Student from the public charter school.

### **2019-2020 School Year**

29. For the 2019-2020 school year, the Parent enrolled the Student in a public charter school for sixth grade. According to the Parent, while at the public charter school, the Student has struggled with adaptive skills.

### **CONCLUSIONS**

The Parent alleged the District did not follow proper procedures for removing adaptive skill instruction from the Student's May 2019 individualized education program (IEP), including conducting a sufficient reevaluation.

#### Evaluation – Thorough and Accurate

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. 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. 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.

Here, these requirements were met. As of May 20, 2019, the reevaluation group had three pieces of information on the Student's adaptive skills to consider. For example, as of that date, the

reevaluation report included: the general education teacher's observation that the Student's "adaptive skills are adequate;" and the special education teacher's observation that the Student was able to follow multi-step directions and classroom routines, as well as demonstrate appropriate behavior "across all settings...with [both] peers and adults." Additionally, according to both the District's response to this complaint, as well as the school psychologist's May 21, 2019 email, certain members of the evaluation group also considered, as of May 20, 2019, that the Student had made progress on the adaptive goal in his November 2018 IEP.

Then, on June 4, 2019, the evaluation group had a fourth piece of information to consider: results from the Vineland-3 survey. The average scores for the Student were as follows: special education teacher (adequate); general education teacher (adequate); Parent (low). According to the June 2019 amended evaluation report, the results of the Vineland-3 provided further support for the May 20, 2019 decision to remove adaptive services from the Student's IEP.<sup>4</sup>

In light of the foregoing, OSPI finds that the evaluation group used a variety of assessment tools; the evaluation group did not rely on a single test or measure as the sole criterion as to whether the Student required specially designed instruction in adaptive.

Furthermore, there is nothing in the record that suggests the Vineland-3 survey was conducted in an inappropriate or unreliable manner. Therefore, OSPI finds that, at least in so far as the area of adaptive is concerned, the Student's May 2019 evaluation was both sufficiently thorough and accurate.

#### Reevaluation Timelines

A reevaluation must be completed within thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent. Here, the District received signed, written consent from the Parent to conduct a reevaluation of the Student on April 29, 2019. The evaluation group completed the amendment to incorporate the results of the Vineland-3 into the reevaluation of the Student on June 4, 2019. Based on the District's 2018-2019 calendar, June 4, 2019 was 25 schools days after April 29, 2019, so in this respect, also, the Student's reevaluation was IDEA-compliant.

#### Parent Participation

A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an

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<sup>4</sup> The Parent stated the decision to remove adaptive services from the Student's IEP was odd, in that the June 2019 amended reevaluation report still recommended that the Student take place in a couple social groups—but outside the context of the IDEA. However, OSPI notes the following: both the Student's November 2017 adaptive goal, and his November 2018 adaptive goal, did not concern social skills—rather, those two goals dealt with completing multi-step tasks and "self-starting" assignments, respectively. Thus, the social group recommendation does not necessarily imply the Student still required specially designed instruction in adaptive skills.

opportunity to attend; and (2) 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.

Here, these requirements were met. The District first informed the Parent of the May 20, 2019 IEP meeting via email on May 14, 2019. This email included the location, purpose, and time of the meeting. On May 15, 2019, the Parent replied to this email, stating, in part: "I will be there." Then, on or about May 14 or 15, 2019, the District sent an IEP meeting invitation to the Parent. This invitation also included the purpose, time, and location of the meeting. It also informed the Parent of who the District was inviting to attend the meeting, as well as the fact that the Parent had the right to "invite individuals to participate in the IEP meeting who have knowledge or special expertise" on the Student. Finally, the Parent actually attended the May 20, 2019 IEP meeting and the District stated that, at the meeting, the Parent "provided input." In light of the foregoing, the District followed proper procedures in inviting and scheduling the May 20, 2019 IEP meeting.

Additionally, though, parents must be afforded an opportunity to participate in meetings with respect to the evaluation, educational placement, and the provision of a free appropriate public education (FAPE) to the student. Specifically, information provided by the parents must be considered by the evaluation group in determining: (a) whether the student is eligible for special education as defined in WAC 392-172A-01175; and (b) the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. Furthermore, in reviewing the existing data that the evaluation group has on the student, the parent may provide information on additional information that is needed to properly determine the student's eligibility and/or IEP content.

Here, these requirements were also met. For example, after the meeting on May 20, 2019, the Parent emailed the school psychologist, saying that, before removing adaptive from the Student's IEP, she wanted some sort of formal adaptive assessment to be done—that she didn't want adaptive to be removed purely on the basis of the "opinion" of two teachers. In response, the District assessed the Student using the Vineland-3 survey, an evaluation used to measure an individual's adaptive capabilities. It is also notable that the Vineland-3 survey involved the Parent completing a survey about the Student's adaptive capabilities. According to the Student's June 2019 amended evaluation report, the results of the Vineland-3 survey showed "the Student demonstrates adequate overall levels of adaptive behavior when compared to individuals in his age group in the normative sample" and supported the May 20, 2019 determination to end the Student's adaptive services. The foregoing establishes that the District followed proper procedures for ensuring the Parent's participation in the reevaluation process in May and June of 2019. Therefore, there has been no violation of the IDEA on this score.

#### Prior Written Notice

Essentially, then, the Parent disagrees with the substantive result of the spring 2019 reevaluation process—that adaptive services were removed from the Student's IEP. It is important to note, though, that while the IEP team should work toward consensus, it is the district that has ultimate

responsibility to ensure the IEP includes the services the student needs in order to receive FAPE. No one IEP team member has 'veto power' over individual IEP provisions or the right to dictate a particular educational program. Here, while the Parent believed that the Student continued to require adaptive services, the District staff members of the Student's IEP team did not believe that the Student continued to require adaptive services and provided an IEP that offered FAPE. Therefore, the fact that the Student's May 2019 IEP did not include adaptive services does not represent a violation of the IDEA.

If an IEP team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program. Here, the District provided the Parent with a sufficient prior written notice on June 4, 2019. That prior notice read, in part:

Per Parent request, we have drafted an evaluation amendment to include documentation of Vineland-3 assessment results...[We did this because] Parent requested [a] standardized adaptive assessment in addition to the present levels of performance [currently found in the May 2019 evaluation report]...[The] results of [the] standardized assessment are consistent with the Student's present levels of performance: Student no longer requires specially designed instruction in the area of adaptive skills.

Therefore, the foregoing circumstances do not represent a violation of the IDEA.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

### **RECOMMENDATION**

OSPI does, though, note the following: while WAC 392-172A-05010 does not explicitly require that a prior written notice clearly state if a particular decision (proposal or refusal) is contrary to the parent's wish, it is advisable to include such a statement in the relevant prior written notice. When a prior written notice documents a decision that is contrary to the parent's desire, OSPI recommends that the prior written notice document this fact.

Dated this \_\_\_\_ day of January, 2020.

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.)