

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-86**

### **PROCEDURAL HISTORY**

On November 12, 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 Prosser 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 12, 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 November 21, 2019, the District requested an extension of time in order to respond to the complaint. OSPI granted this extension and requested the District submit its response no later than December 9, 2019.

On December 9, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On December 16, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on December 17, 2019.

On December 16, 2019, OSPI requested clarifying information from the District and on December 17, 2019, the OSPI investigator spoke with the District's director of special services.

On December 16, 2019, OSPI also requested additional documentation from the District. OSPI received that additional information on December 19, 2019, and forwarded it to the Parent on December 20, 2019.

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

### **ISSUE**

1. Did the District follow child find, referral, and initial evaluation procedures following behavioral incidents in September 2019 and the subsequent concerns of the District's outside evaluator; including, but not limited to, procedures around obtaining informed consent?<sup>1</sup>

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<sup>1</sup> OSPI originally included child find, referral, and initial evaluation procedures in the issue under investigation as it was unclear exactly what had happened with the evaluation for the Student. Based on the investigation, child find and referral procedures are not at issue or contested here. The actual issue is the characterization of the initial evaluation and procedures for obtaining consent; as such, this decision will focus on those issues.

## **LEGAL STANDARDS**

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

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must 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.

The evaluation must comply with the IDEA's procedural requirements and complete the evaluation within thirty-five school days from receipt of consent. 34 CFR §300.304; WAC 392-172A-03020.

Independent Educational Evaluation (IEE): Parents of a student eligible for special education have the right to obtain an independent educational evaluation (IEE) of the student at public expense if they disagree with the district's evaluation. An IEE is an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the student in question. At public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents. Each district will provide to parents, upon request for an IEE, information about where an IEE may be obtained and the district's criteria for IEEs. Parents are entitled to only one IEE at public expense each time the district conducts an evaluation with which the parents disagree. 34 CFR §300.502; WAC 392-172A-05005.

## **FINDINGS OF FACT**

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

1. During the 2019-2020 school year, the Student was in second grade and attended a District elementary school. At the start of the school year, the Student was not eligible for special education services.

2. The District's 2019-2020 school year began on August 27, 2019.
3. On September 19, 2019, the Student was suspended following a behavioral incident.
4. Later, on September 19, 2019, the Student's mother emailed the principal and stated she wanted to "request an appeal for [Student's] suspension." The Parent also emailed several times that day and stated, the Student "must return to school tomorrow unless it can be shown that current discipline law was followed."<sup>2</sup>

Subsequently, the District agreed to remove the disciplinary suspension from the Student's record.

5. On October 15, 2019, the Student had another behavioral incident wherein she became "physically aggressive toward students on the playground." Following the incident, the principal emailed the Parent and the Student's mother and stated he wanted to meet with them to "discuss a resolution to this behavior."
6. On October 16, 2019, the principal filled out a "Student Concern Form," which noted the several behavioral concerns. The principal wrote, on the form, that the Student had met with the school counselor on several occasions and would be "starting a friendship group" with the counselor. Finally, the form noted several potential "home/environmental factors" that may have been contributing to the Student's "aggressive outbursts" and stated there had been "three major outbursts this year. Two of the outbursts came on two consecutive days." During these outbursts, the Student "will not respond to verbal cues or talk with staff members. She becomes agitated and physical with her peers, staff and school property."
7. Also, on October 16, 2019, Student's general education teacher, principal, and a school safety officer attended a "Student/Staff Success Team" (SST) meeting. The SST referred the Student to the special education department for a full behavior evaluation.<sup>3</sup>
8. On October 23, 2019, the principal completed a special education referral form for the Student. On the form, the principal noted "behavior" as the reason for the special education referral.
9. On October 24, 2019, the special education department received the referral.

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<sup>2</sup> The documentation provided by the District in response to this complaint included more emails related to the behavioral incident, suspension, the Parent's belief that the District was not following current discipline laws, and the compensatory services the District offered. While the discipline incidents are related to the referral for a special education evaluation, whether or not the District followed the general discipline regulations is outside the scope of this complaint. Thus, the emails related to the discipline incidents will not be detailed further in this decision.

<sup>3</sup> Emails and a statement from the school safety officer provided in this complaint indicate the Parent and the Student's mother also attended a meeting on October 16, 2019. It is unclear if they attended the SST meeting or if a separate meeting was held with the Parent and the Student's mother. The SST form only included the names of the teacher, principal, and school safety officer.

10. According to the District's response, the director of special services (director) was informed by the District superintendent that the Parent did not want the District's school psychologist to conduct the evaluation. The District stated, thus, "this placed the District in the position of needing to bring someone in to do the evaluation."

The Parent, in his reply to the District's response, stated he never objected to the District's psychologist conducting the evaluation.

11. Also, on October 24, 2019, the District contacted a private provider and asked him to conduct the behavior evaluation.

12. According to the District's response, consent forms, prior written notice, and procedural safeguards were mailed to both the Parent and the Student's mother on October 24, 2019. The District stated, "because the parent had asked that our building psychologist not conduct the evaluation this form stated that this was an Independent Evaluation...this was an error, it should have stated outside evaluation."

13. On October 28, 2019, the Parent emailed the director and the principal, asking for clarification on the name of the private provider listed on the consent form. The director clarified the provider.

14. Also, on October 28, 2019, the Parent emailed the director, principal, and Student's mother and attached a signed "parent consent" form, with the signature, dated October 28, 2019. The consent form included the following checked boxes:

- "Behavioral/Emotional"
- "Other: Independent evaluation by [private provider]"
- "I give my consent"

The record in the complaint also contained the same consent form, signed on October 29, 2019, by the Student's mother. Both consent forms were stamped as received by the District on October 29, 2019.

15. On October 29, 2019, the District issued a prior written notice that indicated the District proposed to conduct a "independent behavioral evaluation" due to the Student's "behavioral issues at school." The prior written notice checked the box for "initial evaluation."

16. On November 7, 2019, according to the District's response, the private provider began his evaluation. The private provider contacted the director to let her know he recommended completing a full evaluation for special education eligibility.

17. Also, on November 7, 2019, according to the District's response, the director—in an effort to not delay the evaluation—contacted the Student's mother to see if she would like the private provider to proceed with a full evaluation. According to the District, the Student's mother gave verbal permission.

The documentation in the complaint included another signed "consent for initial evaluation" form, signed by the Student's mother and dated November 7, 2019 (stamped received by the District November 8, 2019). This consent form checked the box for "other" and noted "Other: External Evaluation." The Student's mother checked the box: "I give consent for my child to be evaluated."

18. On November 7, 2019, the director emailed the Parent and stated:

Good afternoon, I wanted to keep you both in the loop.

[Private provider] started his behavioral evaluation on your young lady this morning. He contacted me expressing his concern that there were possible educational issues and wanted to do a full-blown independent educational evaluation (IEE). Because of the press for time I only contacted mom via phone to get permission to proceed with the IEE. Mom agreed and [staff person] took consent to her for a signature.

My intent was to have [provider] gather all the information he felt was needed to make an informed decision as to what next steps are needed. Since he would not be back until December I was concerned with any further delay in time.

In response, the Parent emailed the superintendent and copied the Student's mother, director, and District and Parent attorneys, and stated:

...My understanding is that [private provider] provides contracted services to the District. Therefore, even if the school district was entitled to request an 'Independent Educational Evaluation' [(IEE)] – which it is not – [private provider] is affiliated with the school district and doesn't qualify under state regulations to act as an IEE evaluator.

[Director] has misrepresented [private provider] as being neutral...I want to see written confirmation of the following:

1. That Superintendent...communicated to [director] the communication protocol for information to be presented to and shared with my daughter's mother...
2. That [director] understands that only parents are entitled to request an IEE. A PARENT may request an IEE when the PARENT disagrees with an evaluation conducted by the school district. When an IEE is granted, the PARENT chooses the evaluator.
3. That [director] realizes the law does not allow school districts to call an evaluation by a District contractor an IEE.
4. That [director] requires written permission from BOTH parents in order to be able to proceed with an evaluation (of any type) of my daughter or any of my children.

I have not been asked for nor have I given my permission for an evaluation of any type to take place. I want an apology from [director] for misrepresenting [private provider's] role...I expect all of this to be resolved by the end of the day Friday November 7<sup>th</sup>, 2019.

19. In his complaint, the Parent stated that because the provider is a clinical psychologist who regularly provides behavior consultations for the District, the Parent understood the director's email to mean the District was "referring [Student] for an evaluation to determine eligibility under the IDEA." The Parent stated, "since the District had never evaluated [Student] previously, I could not understand why she referred to the District evaluation as an IEE." The

Parent further stated, "I was also surprised that [director] apparently let the District's contracted provider go ahead and evaluate [Student] and then sought parental permission (but only from my ex-wife) after the fact. I was extremely frustrated that [director] made a unilateral decision and that I was again not consulted ahead of time."

20. Later, on November 7, 2019, the director drafted a response to the Parent and sent it to the superintendent.<sup>4</sup> The director's draft email read:

[Parent]/[Student's mother],

1. That Superintendent...communicated to [director] the communication protocol for information to be presented to and shared with my daughter's mother and me on an equal basis.
  - I am now...fully aware that parents are to be included in communication equally in regards to the children.
2. That [director] understands that only parents are entitled to request an IEE. A PARENT may request an IEE when the PARENT disagrees with an evaluation conducted by the school district. When an IEE is granted, the PARENT chooses the evaluator.
  - I am aware of this requirement. The reason that the permission form had independent evaluation marked on it, along with the box for behavior, was because you expressed the fact that you did not want the school psychologist doing the behavioral evaluation and [private provider], while paid for services he renders, is not a contractor for the District. The form did not state we were doing an independent educational evaluation.
3. That [director] realizes the law does not allow school districts to call an evaluation by a District contractor an IEE.
  - This is correct, but again I was trying my best to make it clear on the permission form was 'not' for our district contracted school psychologist would not be doing the evaluation [sic].<sup>5</sup>
4. That [director] requires written permission from BOTH parents in order to be able to proceed with an evaluation (of any type) of my daughter or any of my children.
  - Understood
5. I have not been asked for nor have I given my permission for an evaluation of any type to take place.
  - I do have signed permission for the behavior evaluation. Is it your wish that we do not proceed with the evaluation?
6. I want an apology from [director] for misrepresenting [private provider's] role.

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<sup>4</sup> The director stated she drafted this email and sent it to the superintendent, but it was never actually sent to the Parent because she was waiting for the District's attorney to review the email.

<sup>5</sup> In a phone interview with the director, she stated she was trying to clarify that an outside provider was doing the evaluation and *not* the District's school psychologist, because the director believed the Parent had objected to the District school psychologist.

- I apologize for the appearance of misrepresenting [private provider's] role. My intent was to clarify, not represent.
7. I want an apology from [director] for excluding me and her promise that this will not occur again.
- I am sorry you felt excluded, in no way was that my intent, I will make sure that any further communication to parents from me will occur in tandem.

Given the concerns that [private provider] brought forth yesterday I would like BOTH parents to determine if they wish to move forward with an initial evaluation.

21. On November 8, 2019, the Parent emailed the director and superintendent and stated he understood the District to be referring the Student for an initial special education evaluation. The Parent stated, "it appears you are proposing that [provider], a contracted District provider, conduct the evaluation because the school district lacks expertise in house." The Parent asked the District to provide a consent form that "accurately states the District is requesting to conduct an initial evaluation to determine IDEA eligibility." The Parent further stated, a District "evaluation using a contracted provider is not an 'Independent Educational Evaluation'" and that he would "agree that the District can evaluate [my] daughter, but I do not agree that if the District chooses to use [provider], it would be an 'Independent Educational Evaluation.'"
22. Later, on November 8, 2019, the director emailed the Parent and the Student's mother an updated consent form. The director stated, "this is slightly different from the one signed yesterday. It is written to cover the behavior evaluation that was originally requested with the addition of cognitive and academic areas." The director further stated,
- This statement, 'It appears you are proposing that [provider], a contracted District provider, conduct the evaluation because the school district lacks expertise in house' is inaccurate. We have the expertise in-house to conduct this evaluation, however [Parent] stated very clearly he did not want [school psychologist] to conduct the evaluation when the original request for a behavior evaluation was made. To continue honoring that request [private provider] will conduct the initial evaluation.
23. According to the Parent's reply, the Student's principal had previously explained to the Parent and the Student's mother the District "had been using [private provider] to conduct such evaluations" and while the school psychologist was mentioned as a potential resource, the District "explained [school psychologist] did not have as much experience as [private provider] conducting behavioral evaluations of children [Student's] age."
24. On November 8, 2019, the Parent emailed the director and asked what the "other" box on the updated consent form represented. The director responded, "other was marked simply because it's an outside evaluation and that sentences is [sic] below it doesn't represent anything else other than that."

The Parent's attorney (who was copied on an earlier email in the email thread) also responded and stated, "what do you think makes it an 'outside evaluation'? If it is a District evaluation –

i.e., an evaluation requested by the District – it is not an ‘outside’ evaluation regardless of who conducts the testing.”

25. On November 11, 2019, the District had a no-school day for the Veteran’s Day holiday.
26. The record in the complaint contained another signed “consent for initial evaluation” form, signed by the Parent and dated November 11, 2019. The consent form had the boxes for behavior, cognitive, academic, and other checked; however, the Parent crossed out the box checked “other.” The Parent further crossed out the statement “Other: External Evaluation” and hand wrote, “I understand that the district is using a contracted evaluator.” The Parent suggested the following areas to consider: adaptive, social/emotional, observation.

The Parent noted, on the consent form, that he had not been given a copy of the notice of procedural safeguards and included the following statement: “[Principal] stated when we met about [Student] and her behavior that the district has been using [private provider]. [School psychologist] was mentioned but it was explained he doesn’t have experience dealing with children [Student’s] age.” The Parent signed the consent form.

27. The District generated a prior written notice, dated November 11, 2019, which stated the District proposed to initiate an initial evaluation. The notice described the proposed action as “conducting a complete initial evaluation.”
28. On November 12, 2019, the director sent the Parent and Student’s mother a new version of the consent form, without the “other” box marked. The consent form continued to recommend that an evaluation be conducted in the areas of behavior, cognitive, and academic.
29. On November 12, 2019, OSPI received the Parent’s request for a citizen complaint investigation and opened this complaint.
30. On November 18, 2019, the director emailed the Parent and Student’s mother, stating she had “received notice this afternoon that [private] provider is declining to complete your daughter’s initial evaluation.” The director stated, “the school psychologist...will now be doing the evaluation, unless you have another psychologist outside of the district that you would like to complete the evaluation. Please let me know your preference as soon as possible.”

The Parent responded he had no objection—and never had any objection—to the District’s school psychologist conducting the initial evaluation.

31. On November 19, 2019, the director notified the school psychologist he should proceed with the Student’s evaluation. The school psychologist, in turn, notified the special education teacher at the Student’s school that they were proceeding with an evaluation.
32. On November 19 and 20, 2019, the school psychologist emailed the Student’s general education teacher several assessments and rating scales to fill out as part of the evaluation.

33. On November 21, 2019, the Parent resent the version of the consent form he signed on November 11, 2019. This is the version that included his suggestions to evaluate in the areas of adaptive, social/emotional, and observation.
34. On November 23, 2019, the Student's mother responded to an email from the director and stated she agreed with the areas the Parent suggested for the evaluation. The Student's mother also asked whether these areas would "test reading trouble and possible auditory processing difficulties?"
35. In its response to OSPI, as part of this complaint, the District acknowledged the confusion and miscommunication and proposed corrective actions, including: clarifying how consent forms indicate the use of an outside provider and training for the director and other staff on December 18, 2019. The training was scheduled to include what qualifies as an IEE, among other topics. Further, the District's response stated the director "extends her apologies for being mistaken in which parent stated that they did not want the building psychologist doing the evaluation."
36. In his reply, the Parent stated most of the topics proposed for the training on December 18, 2019 "have nothing to do with the violation alleged in SECC 19-86" because this training was something the District committed to as part of a settlement agreement in an unrelated due process case.<sup>6</sup>
37. On December 18, 2019, District special education teachers, school psychologists, an occupational therapist, and the director attended training provided by a trainer from Educational Service District (ESD) 113. The training covered several topics, some unrelated to the issues in this complaint. The District provided copies of the training materials, which included the following, in relevant part:
- Handout: "6 steps to take when a parent requests an IEE at public expense" – actions steps and relevant authority;
  - Handout: "8 things you always wanted to ask about publicly funded IEEs" – Q&A and guidance related to IEEs;
  - Evaluation Review Tool – Includes information on prior written notice and parent consent;
  - *Letter to Zirkel*, 119 LRP 18141 (OSEP, May 2019) – Discussion on requesting an IEE in response to a determination of ineligibility; and,
  - "Want to avoid that next IEE request?" – Discussion on sufficient evaluations and addressing parent concerns.
38. As of December 6, 2019, the initial evaluation was still in progress. According to the director, the deadline for completing the Student's evaluation is January 16, 2020, but the director anticipated the evaluation would be completed prior to this date.

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<sup>6</sup> Based on the language quoted from the settlement agreement in the Parent's reply, training on what qualifies as an IEE was not originally part of the training agreed to in the settlement agreement.

## CONCLUSIONS

**Issue: Referral/Initial Evaluation** – The Parent alleged the District improperly characterized its initial evaluation for special education eligibility as an independent educational evaluation (IEE) and that the District failed to obtain informed consent prior to proceeding with an evaluation.

Between October 16 and 24, 2019, the District referred the Student for an initial special education evaluation in behavior to determine eligibility following several disciplinary behavioral incidents in September and October 2019. There was no disagreement that the Student should be evaluated.

### Characterization of the Evaluation

The purpose of an initial evaluation is to determine whether a student is eligible for special education. An independent educational evaluation (IEE) is an evaluation to which parents have a right to request, at public expense, if they disagree with the district's evaluation. An IEE is conducted by a qualified examiner who is not employed by the district responsible for the education of the student in question. Parents are entitled to only one IEE at public expense each time the district conducts an evaluation with which the parents disagree, which means a request for an IEE request must come after a district has completed an evaluation.

Here, following the referral, the District's director of special services believed—ultimately incorrectly—that the Parent did not want the District's school psychologist to conduct the evaluation. The director believed they needed to bring in a non-District employee (outside/private provider) to conduct the evaluation, and contacted a private provider regarding the same. This evaluation was described as follows, in various communications between the District and the Parent: "Independent evaluation by [private provider];" "independent behavior evaluation;" "External Evaluation;" and, "independent educational evaluation (IEE)."

The District, in its response, stated descriptions of the evaluation should have read "outside evaluation." In his complaint and communications to the District, the Parent correctly articulated that an IEE and an initial evaluation are not the same, as an IEE is requested by a parent when a parent disagrees with a district evaluation. In a draft email to the Parent and information provided to OSPI, the director articulated she understood the IEE policies/procedures; she recognized the communication was unclear; and, she stated she was attempting to communicate that the District's school psychologist would *not* be conducting the evaluation—that, instead, an outside, non-District provider would conduct the evaluation.

On December 18, 2019, at an already scheduled training for special education teachers, school psychologists, and the director, the District added information about IEEs to the training agenda. The training materials indicated the District covered information about IEEs and tips for responding to IEE requests.

Ultimately, this was an unfortunate and confusing miscommunication; however, this miscommunication did not rise to the level of a violation of the IDEA. The evaluation was not an

IEE and the Parent recognized it was not an IEE. And, while the District's word choice was confusing, the District was following initial evaluation procedures and timelines, *not* IEE procedures and timelines. Therefore, OSPI believes that while there was initial confusion, ultimately everyone understood the evaluation to be an initial special education evaluation and moved forward with that understanding. OSPI finds no violation.

Perhaps the clearest description of what the District was attempting to convey was that the initial evaluation was a District evaluation being conducted by an outside (non-District) or private provider. The District proposed it clarify how consent forms indicate the use of an outside provider. OSPI agrees and also strongly encourages the District to review its policies and procedures for initial evaluations, IEEs, and parent requests for non-District providers to conduct evaluations. In particular, the District should review the language used in these policies to ensure communication with parents is accurate and clear.

### Consent

A district is required to obtain informed parent consent before conducting an initial evaluation of a student suspected of needing special education services. Consent means the parent: has been fully informed of all information relevant to the activity for which consent is sought; understands and agrees in writing to the activity for which consent is sought; and understands that the granting of consent is voluntary and may be revoked at any time. Following the receipt of consent, the evaluation must be completed within thirty-five school days.

On October 24, 2019, the District mailed consent forms for a behavioral evaluation to the Parent and the Student's mother. This consent form stated, "Independent Evaluation." The Parent asked for clarification on the name of the provider and provided signed consent on October 28, 2019 (the Student's mother signed on October 29, 2019). At this point, it appears—based on the documentation—everyone understood a private provider would be conducting a behavior evaluation. Therefore, the District properly obtained written informed consent from the Parent.

On November 7, 2019, the private provider recommended the Student's behavioral evaluation be expanded into a full evaluation for special education eligibility. This is again confusing, as there had already been a referral for an evaluation for special education eligibility, although it only included behavior assessments. However, because this would expand the scope of the evaluation, it was necessary to obtain consent for the additional assessments and evaluations. The District requested and received verbal permission from the Student's mother to proceed, and that same day received a signed consent form from the Student's mother.<sup>7</sup> Also, on November 7, 2019, the

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<sup>7</sup> As a note, WAC 392-172A-01040 requires parents to provide *written* informed consent. Here, if the District had only received verbal permission from the Student's mother that would have been a violation. But the District also received written consent the same day. Although, as the Parent noted, he had not given written consent at this point. In his complaint, the Parent stated, "I was also surprised that [director] apparently let the District's contracted provider go ahead and evaluate [Student] and then sought parental permission (but only from my ex-wife) after the fact. I was extremely frustrated that [director] made a unilateral decision and that I was again not consulted ahead of time." Ultimately, the District received written consent from the

director emailed both the Parent and the Student’s mother regarding the evaluation, characterizing it as a “full-blown independent educational evaluation (IEE).” Due to the subsequent miscommunication (discussed above), consent was not received from the Parent until several days later. The Parent disagreed with characterizing the evaluation as an IEE and on November 8, 2019, the Parent emailed, stating he would agree to the evaluation, provided it was not an IEE.

The District emailed the Parent and the Student’s mother an updated consent form, which proposed evaluating the Student in the areas of behavior, academic, and cognitive. After further clarification, the Parent signed the consent form on November 11, 2019. Also, on November 11, 2019, the District generated a prior written notice that stated the District proposed to conduct a complete initial evaluation. On November 18, 2019, the director notified the Parent and the Student’s mother that the outside, private provider was declining to complete the evaluation and absent any objections, the District school psychologist would complete the evaluation. The Parent responded he had no objection—and never had any objection—to the District’s school psychologist. On November 21, 2019, the Parent resent the version of the consent form he signed on November 11, 2019 and on November 23, 2019, the Student’s mother emailed and stated she agree with the Parent.

Ultimately, the District obtained written, informed consent from the Parent and the Student’s mother to conduct an initial evaluation for special education eligibility. However, the miscommunication and confusion delayed the start of the Student’s evaluation by several days (the original consent was signed October 28, 2019 and the operative consent for a full evaluation was not signed until November 11, 2019). However, the IDEA and state regulations do not prescribe a specific timeline between deciding to evaluate a student and obtaining consent. Here, the delay was not unreasonable, and while the communication was frustrating, it was ultimately important to ensure everyone had the same understanding and agreed on the areas to evaluate the Student. Thus, while the series of events here was not ideal, there was no violation of the IDEA.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

### **RECOMMENDATIONS**

Given the miscommunications in this complaint, in future, OSPI recommends the District consider meeting with parents in person to discuss referrals for special education and proposed evaluations. At an in-person meeting, parents would have the opportunity to ask questions and immediately clear up any potential misunderstandings. This may be a practice in the District, but

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Parent several days later; thus, any error was corrected before the District moved forward again with the evaluation.

in this situation, if there had been a meeting with the Parent and Student's mother initially, much of the confusion may have been avoided.

Additionally, in his complaint, the Parent discussed requests he made for the Student's records. This was not included as an issue in the complaint for investigation, as it was unclear on opening the complaint if the Student was eligible for special education and thus whether the special education records regulations would apply. If the Student is found eligible for special education, OSPI reminds the District that there are several regulations that guarantee the Parent rights to access the Student's educational records (*see*, WAC 392-172A-03040, 392-172A-03100, 392-172A-05190). However, in general, OSPI encourages the District to work with the Parent to ensure he has access to the Student's educational records.

Dated this \_\_\_\_ day of December, 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.)