

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-16**

### **PROCEDURAL HISTORY**

On February 5, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of two students (Students)<sup>1</sup> attending the Sultan School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Students' education.

On February 6, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent the same day. OSPI asked the District to respond to the allegations made in the complaint.

On February 27, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply.

On March 11, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on March 12, 2020.

On March 17, 2020, OSPI requested additional information from the District, which the District provided the same day. OSPI forwarded the information to the Parent on March 18, 2020.

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

### **ISSUE**

1. Did the District follow procedures to ensure the Parent's participation in the evaluation meeting that occurred on or about January 23, 2020?

### **LEGAL STANDARDS**

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 free appropriate public education (FAPE) to the student. WAC 392-172A-05001(1)(a). A school district must ensure that one or both parents of a student eligible for special education are present at each individualized education program (IEP) team meeting or are afforded the opportunity to participate. 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.

Meeting Without Parents: A meeting may be conducted without a parent in attendance if the district is unable to convince the parents that they should attend. In this case, the district must

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<sup>1</sup> The Parent's complaint listed two students—her son and daughter. The District's response clarified that the meeting on January 23, 2020 concerned only the Parent's son (Student).

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 is central to the IDEA's goal of protecting the rights of students with disabilities 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." *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).

Evaluation/Reevaluation Standards: 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. 34 CFR §300.304(b); WAC 392-172A-03020(2)(a). An evaluation must be completed within thirty-five school days after the date written consent for an evaluation has been provided to the district by the parent. WAC 392-172A-03015(3)(a).

### **FINDINGS OF FACT**

1. During the 2019-2020 school year, the Student attended a District preschool and was eligible for special education services under the category autism.
2. On October 25, 2019, the Student's individualized education program (IEP) team developed the Student's annual IEP. The IEP provided the Student with annual goals and specially designed instruction in the following areas from October 28, 2019 through June 11, 2020:
  - Adaptive: 83 minutes, 4 times per week (special education setting)
  - Social/Emotional: 82 minutes, 4 times per week (special education setting)

The IEP noted the Student would spend 660 minutes per week in school with zero percent of his time in the general education setting, as the Student attended a developmental preschool where all students were on an IEP.

The IEP also noted that from June 12, 2020 through October 24, 2020, the Student would receive 30 minutes weekly in each area: adaptive and social/emotional. This portion of the IEP noted the Student would spend 1,720 minutes per week in school with 96.51% of his time in the general education setting. During this period, the Student would be attending kindergarten in a general education classroom, with pull-out services.

3. On October 29, 2019, the Parent requested the Student be reevaluated to address speech, occupational therapy, and sensory concerns. The school psychologist confirmed a consent form would be provided to the Parent.

4. Between November 4 and 8, 2019, the Parent and school psychologist emailed regarding elements of the evaluation, including the areas in which the Student would be evaluated and different assessments.
5. On November 15, 2019, the Parent signed consent for the evaluation and on November 18, 2019, the District received the signed consent form via email.
6. On November 26, 2019, the school psychologist emailed the Parent two rating scales to complete for the Student's evaluation.
7. In additional information from the District, the school psychologist clarified that the Parent completed the rating scales and "endorsed various quantitative instruments that were part of the evaluation and included in various areas of the report including: a. The Autism Spectrum Rating Scales Parent Form; b. The Behavior Assessment System for Children, Third Edition Parent Rating Scales."
8. The District invited the Parent to the evaluation meeting on the following dates, using the following methods:
  - December 19, 2019: District called the Parent and the Student's father to schedule the evaluation meeting;
  - December 19, 2019: District emailed the Parent to schedule the evaluation and IEP meeting. The special education teacher provided some options for a time to meet and the Parent responded, selecting January 23, 2020;
  - December 30, 2019: District sent the Parents a letter, inviting them to a meeting to review the evaluation and subsequently develop the Student's IEP; and,
  - January 8, 2020: District sent home an invitation in the Student's backpack.

According to the District's contact attempt report, the Parent confirmed she could attend the meeting.

9. The District was on winter break from December 20, 2019 through January 3, 2020.
10. On January 14, 2020, the special education teacher emailed the Parent a form to provide input for the Student's upcoming IEP meeting. The Parent filled out the form, providing input on January 16, 2020.
11. On January 16, 2020, the Parent emailed the occupational therapist (OT) and stated, "I'm just touching base with you to see if it's possible for the evaluation report for [Student] to be sent over before our upcoming meeting on 1/23. I realize it might not be ready yet but I figured I'd ask ahead just in case. I appreciate your help with this." The OT responded and stated the evaluation report was not yet complete.
12. Also, on January 17, 2020, the Parent emailed the speech language therapist (SLP) and requested a copy of the Student's speech evaluation report. The Parent stated, "I'm just touching base with you to see if it's possible for the evaluation report for [Student] to be sent over before our upcoming meeting on 1/23. I realize it might not be ready yet but I figured

I'd ask ahead just in case. I appreciate your help with this." The SLP stated she could not send the report because it would be a possible FERPA (Family Educational Rights and Privacy Act) violation "to send the report out by email in advance." The SLP also stated, "if you have any specific questions or concerns going into the meeting, you could email me those in advance, and I can try to be ready with answers on the day."

13. On January 17, 2020, the special education teacher emailed the Parent to let her know she sent a draft copy of the IEP home with the Student's sibling. The special education teacher also stated, "have a wonderful weekend and I will see you on 1/23/2020." The Parent responded, "Thank you! I appreciate it. See you Thursday."
14. On January 18, 2020, the Parent emailed the school psychologist and requested the evaluation report to review before the meeting.
15. On January 23, 2020, the Parent emailed the special education teacher, school psychologist, SLP, and OT and requested the evaluation/IEP meeting be canceled because she had not received the evaluation report "as requested in a timely fashion for review." The Parent stated she felt it would be a "waste of everyone's time to proceed with a meeting that no one has been provided the information needed to be prepared."

The school psychologist responded:

I just want to confirm that you want to reschedule the meeting for today? The reason I ask is because all of the providers had confirmed attendance for the meeting. The evaluation will be presented and explained to you this afternoon with an opportunity for clarification from all of the providers.

Would you reconsider? Let me know because rescheduling a meeting with all of the providers involved in this evaluation, including you, may result in delaying educational programming for our student.<sup>2</sup>

16. Also, on January 23, 2020, the District's executive special education director (executive director) also emailed the Parent in response to her January 23, 2020 email and stated, "to clarify, evaluation reports are not written as drafts nor are they provided in advance of a results meeting." The executive director further stated:

Reports are written to substantiate qualifying criteria which is reviewed and discussed by a qualified school psychologist/service provider during a results meeting. If any party disagrees with the results, they can document 'dissenting opinion' on the document. Parents/guardians are provided with a copy at the meeting.

Evaluations are not provided as 'drafts' in advance. The review occurs during the results meeting. At that time, you are certainly provided time to discuss any questions that arise or seek clarification.

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<sup>2</sup> The Parent, in her reply to the District's response in this complaint, stated this email from the school psychologist verified her "intent to reschedule and not cancel." The email included in the District's response included a handwritten note, which stated: "no reply was received from parent."

The executive director requested the Parent let the special education teacher know "when you would like to reschedule this meeting scheduled for this afternoon or if you still opt to cancel."

The Parent replied and stated she wanted to see the policy and procedure regarding evaluation reports, as "this has never been an issue before, as I have received evaluation reports for another child..." The Parent stated she was "formally request[ing] those records" and "upon receiving the records I will be in contact to reschedule the meeting."

17. In her reply, the Parent stated she had previously received evaluation reports. The Parent provided the following examples:

- March 2019: Requested a copy of the Student's evaluation report for purpose of reapplying to the Developmental Disabilities Administration (DDA). The special education teacher sent a copy of the evaluation home with the Student. Here, it appears the evaluation meeting had already happened, and the District sent home a completed evaluation report that had already been reviewed.
- January 6, 2020: The OT emailed the Parent a copy of the evaluation report for the Parent's other child (Student's sibling). Based on the email, this was a draft report in advance of a meeting scheduled several days later.

18. On January 23, 2020, the District members of the evaluation group met. The evaluation report noted the Student continued to be eligible for special education services under the category autism. The evaluation report recommended the Student receive specially designed instruction in adaptive and social/emotional.

In additional information from the District regarding the evaluation, the school psychologist stated:

In addition to having participated in the evaluation and endorsing quantitative instruments, it was the Psychiatric Outpatient Report that the [P]arent provided to me dated 1/30/2017 that provided the basis for eligibility determination. If the parent had not provided this information, I could not, in good conscience and ethically, have been able to have made the Autism Eligibility Determination because [S]tudent currently does not meet the criteria for an Autism eligibility. Information provided in the report is clear that the [S]tudent currently does not participate or exhibit any of the behaviors associated with Autism. The report also underscores that the basis for continuing the Autism eligibility was made with great deference to the report that was provided by the parent to the school.

The psychologist stated, "Parent participation in this regard [information provided for the evaluation] was more than meaningful. It was determinant."

19. According to the Parent's complaint, she requested the meeting be canceled and rescheduled. The Parent stated in her complaint that she requested the meeting be canceled because she had not been provided the draft evaluation reports prior to the meeting, and thus could not prepare. She additionally stated she felt underprepared because she was sick, and the Student's father could not attend the meeting. The Parent stated in her complaint that the District held the meeting without her, denying her meaningful parental participation.

20. In its response, the District stated it decided to review the evaluation results at the meeting despite the Parent not attending. The District stated, "rescheduling the evaluation meeting with the multi-disciplinary staff including the parent...would have resulted in a delay of 3 to 4 weeks due to calendar constraints and staff availability," as the meeting had been scheduled for more than a month. The District stated it rescheduled the IEP meeting so the Parent could attend.

The District also noted in its response that there is no requirement to provide parents with a draft evaluation report prior to an evaluation meeting. The District stated its general policy is to provide the evaluation report at the meeting. In part, this is because:

Assessment staff bring graphs and charts and other visual supports to help the parents in understanding the data resulting from the evaluations. Although standard scores, scale scores and T-scores for score interpretations are included in the report in layman's terms, parents are not expected to have psychometric expertise to understand the data outside of the context of the support of assessment staff. Information in the evaluation report is based on empirical data collected in the course of the evaluation process...[P]arents participate in the evaluation in the form of completing various assessment instruments on their child's social, emotional, developmental, and behavioral levels of functioning along with any outside reports...

21. On January 24, 2020, the school psychologist emailed the Parent and stated the evaluation group met the previous day, as scheduled. The school psychologist attached a copy of the evaluation report to the email and stated a hard copy would also be mailed. The school psychologist stated the special education teacher would be in touch to schedule the IEP meeting.

22. According to the District's response, it mailed the Parent a copy of the evaluation report via certified mail. The Parent confirmed, in her reply, that she received the evaluation report and that it stated, "parent declined to attend" on "both [Parent] and her husband's signature lines."

23. On January 25, 2020, the Parent emailed the executive director, stating her disappointment that the evaluation group met without her. The Parent stated:

I am requesting to reschedule the evaluation results meeting. I wasn't clear about my reasons for canceling the meeting. I don't feel like I should have to disclose personal medical information about myself...I was sick to say the least. Also, my husband was unable to attend the meeting...I am not able to relay information to him. So I was asking for the results so he could read them with me and give me his questions to ask the team during the meeting. I would very much like to reschedule the evaluation results meeting so I can understand and participate in the process.

24. On January 27, 2020, the school psychologist emailed the Parent regarding a meeting to discuss the evaluation. The psychologist stated they already held the evaluation meeting, but that she would be "happy to meet with both of you [Parent and Student's father] and answer any questions you may have." The psychologist offered two potential dates and stated the special education teacher would reach out as well to schedule an IEP meeting.

25. Between January 27 and 31, 2020, the special education teacher emailed the Parent regarding scheduling the IEP meeting.
26. On February 6, 2020, the Parent, Parent's advocate, school psychologist, and executive director met and reviewed the evaluation.

According to the Parent's reply, the school psychologist explained her findings, but because the "SLP and OT weren't there, [Parent] still has not had their areas of evaluations explained to her." The Parent further stated the OT and SLP were not at the later IEP meeting (held February 19, 2020); thus, she was "never provided with an additional opportunity to have their evaluations and findings explained."

According to the school psychologist, at the meeting, they answered the Parent's questions and provided her "charts and graphs for each of the quantitative instruments endorsed by the [P]arent and the teacher and the standardized assessment results." The psychologist stated, "We had a mini psychometrics session during the conference. She took home a copy of the bell curve and standardized scores, percentile ranks and standard deviations." The psychologist also stated she reviewed the information in the communication and fine motor areas, since the evaluation results are "reported either in standard scores, percentile ranks, or standard deviations. These psychometric concepts were explained to the [P]arent as being a common language with which psychometricians communicate."

27. On February 19, 2020, the Student's IEP team met and developed a new IEP for the Student. The IEP provided the Student with annual goals and specially designed instruction in adaptive and social emotional. The minutes of instruction, setting, and providers were the same as the October 2019 IEP, with the only changes to services being updated date ranges.
28. In her reply, the Parent stated that because the District did not provide the evaluation report prior to the January 23, 2020 meeting, they were denied meaningful participation in the Student's education. The Parent stated: "We can neither agree nor disagree to the evaluation results not [sic] advocate for services or supports due to the fact that we have effectively been denied an explanation of the testing and findings from either the SLP or OT evaluations."

## **CONCLUSIONS**

**Issue: Evaluation Meeting & Parent Participation** – The Parent alleged the District held the Student's evaluation meeting without her, denying her an opportunity to participate.

Evaluation Meeting: 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 free appropriate public education (FAPE) to the student. Special education regulations do not explicitly require that a meeting be held to discuss a student's evaluation report; however, if the district chooses to hold a meeting, the parents should have an opportunity to participate.

Here, the Student was reevaluated in December 2019 and the evaluation group was scheduled to meet to review the reevaluation report on January 23, 2020. The Parent was invited to the evaluation meeting on December 19 and 30, 2019 and on January 8, 2020—on all occasions the Parent indicated she would attend. As of January 17, 2020, the Parent stated she would be at the evaluation meeting. Prior to the meeting, the Parent emailed the occupational therapist (OT), speech language therapist (SLP), and school psychologist, requesting a draft copy of the evaluation report in advance of the meeting. Both the OT and SLP stated they could not send the report out in advance. On January 23, 2020—the day of the meeting—the Parent emailed and initially requested the meeting be canceled because she had not received the evaluation report.

While parental participation is a central IDEA goal, a meeting may be conducted without a parent in attendance if the district is unable to convince the parents that they should attend. In a situation where a parent refuses to attend the meeting, the district must keep a record of its attempts to arrange a mutually agreed on time and place.

Following the Parent's email, the school psychologist responded, trying to confirm whether the Parent would attend the meeting and stating that all the Student's providers would be available to answer questions at the meeting. The psychologist asked the Parent to reconsider attending. The Parent in her reply to the District's response, stated this email from the psychologist indicated her "intent to reschedule and not cancel." However, the Parent did not reply to the school psychologist's email and the psychologist's email indicated the District was trying to determine what course of action the Parent wanted to take; it does not necessarily confirm the Parent's intent. The District's executive special education director (executive director) also responded to the Parent, clarifying that general District policy was to provide the evaluation report at the meeting, not prior, because reports are reviewed, assessments explained, and any questions discussed at the meeting. The executive director asked the Parent if she wanted to reschedule or cancel, to which the Parent responded she would like to see the policy regarding evaluation reports<sup>3</sup> and that she would not reschedule the meeting until she received the draft evaluation report.<sup>4</sup>

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<sup>3</sup> In her reply, the Parent stated she had previously received evaluation reports and provided two examples. The first was in March 2019 when the District sent a copy of the Student's evaluation home related to a question about eligibility for DDA (Developmental Disabilities Administration) services. However, in this example, it appears the evaluation meeting had already happened, and the District sent home a completed evaluation report that had already been reviewed—this was not a situation where the Parent was requesting a "draft" report prior to the evaluation meeting. The second example concerned the Parent's other child and it *does* appear the District provided the Parent a copy of the draft evaluation report prior to the evaluation meeting that was scheduled for several days later. This indicates inconsistency in the District's internal policy and practice, but does not indicate a violation of Federal or State special education law.

<sup>4</sup> In her January 25, 2020 email to the executive director, the Parent indicated her request to receive the evaluation report prior to the meeting was—in part—a request for an accommodation for her husband who could not attend the meeting. It was not clear prior to the meeting that the District was aware the Parent was requesting accommodations for this reason. If the Parent does require an accommodation, the Parent should ensure these requests are made before meetings. And, OSPI encourages the District to communicate with the Parent in future to discuss needed accommodations and, if necessary, alternative means for participation (e.g., video or phone conferencing if he cannot attend in person).



Ultimately, the District staff reviewed the evaluation results together at the originally scheduled meeting time, and mailed a copy of the report to the Parent. The District rescheduled the IEP meeting so the Parent could attend.

Here, the District interpreted the Parent's statement that she would not reschedule the meeting until she received the evaluation report as the Parent refusing to attend the meeting. In its response, the District explained that "rescheduling the evaluation meeting with the multi-disciplinary staff including the parent...would have resulted in a delay of 3 to 4 weeks due to calendar constraints and staff availability." The District also stated an evaluation meeting was the more appropriate venue to review evaluation results with parents because staff are there to explain and help ensure understanding, and parents are not expected to have the "psychometric expertise to understand the data outside the context of the support of assessment staff." OSPI believes that, while the District could have delayed the meeting in an attempt to reschedule, the District's interpretation of the Parent's email was reasonable in that the District reasonably believed the Parent was canceling the meeting unless she received a copy of the evaluation report. Further, as discussed below, the Parent's did participate in the evaluation process in other ways. OSPI thus finds the District was not in violation when staff reviewed the evaluation report without the Parent present.

Regardless, the District subsequently remedied any potential harm by providing the Parent with a copy of the final evaluation report and meeting with her two weeks later to review the evaluation and answer questions. The Parent, after being informed the January 23, 2020 meeting occurred without her, asked to reschedule the evaluation meeting. On February 6, 2020, the Parent, Parent's advocate, school psychologist, and executive director met and reviewed the evaluation. The Parent stated this review was inadequate because the OT and SLP were not there, and to date, she has not been "provided with an additional opportunity to have their evaluations and findings explained." According to the school psychologist, at the meeting, they:

- Provided the Parent "charts and graphs for each of the quantitative instruments endorsed by the [P]arent and the teacher and the standardized assessment results."
- Had a "mini psychometrics session during the conference. She took home a copy of the bell curve and standardized scores, percentile ranks and standard deviations."
- Reviewed the communication and fine motor information, since the evaluation results are "reported either in standard scores, percentile ranks, or standard deviations. These psychometric concepts were explained to the [P]arent as being a common language with which psychometricians communicate."

OSPI finds that the District provided the Parent with sufficient additional opportunity to review the evaluation report, discuss, and ask questions. If the Parent still has specific questions, she is welcome to reach out to the OT, SLP, and school psychologist with those questions.

Parent Participation Generally: OSPI notes the main issue raised in this complaint was the fact that the District met without the Parent. However, given the Parent's concerns, the question of parent participation in the evaluation process extends beyond the meeting. 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, including information

provided by parents. Beyond the meeting, the Parent did have the opportunity to participate in the evaluation process by giving input on the areas of assessment, completing rating scales for the evaluation, and submitting other written input for the evaluation and IEP. The school psychologist noted, in fact, information provided by the Parent, including a psychiatric outpatient report from 2017, was determinative in continuing the Student's eligibility under autism. Further, the District properly rescheduled the IEP meeting, to ensure Parent participation. And, on February 19, 2020, the Student's IEP team met and developed a new IEP for the Student.

OSPI finds no violation and that the District provided the Parent sufficient opportunity to participate in the evaluation process.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

### **RECOMMENDATION**

OSPI does note that the speech language pathologist (SLP) provided the Parent with inaccurate information when the SLP stated it would be a possible FERPA (Family Educational Rights and Privacy Act) violation "to send the report out by email in advance." As the report was requested by the Student's Parent, it would not be a FERPA violation to share the report with the Parent nor would it be a FERPA violation specifically because it was sent via email. OSPI recommends the District review FERPA requirements with staff that have access to and/or are sharing student records with personally identifiable information.

Dated this \_\_\_\_ day of March, 2020

Glenna Gallo, M.S., M.B.A.  
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**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.)