

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-54**

### **PROCEDURAL HISTORY**

On July 3, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parents (Parents) of a student (Student) attending the Seattle School District (District). The Parents alleged that the District violated the Individuals with Disabilities Education Act (IDEA).

On July 5, 2017, 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 July 26, 2017, OSPI received the District's response to the complaint and forwarded it to the Parents on July 28, 2017. OSPI invited the Parents to reply with any information they had that was inconsistent with the District's information.

On August 31, 2017, OSPI received the Parents' reply and forwarded that reply to the District on the same day.

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

### **OVERVIEW**

During the 2016-2017 school year, the Student attended sixth grade at a District school and was found eligible for special education services during the school year. In September, the Student's mother referred the Student for a special education evaluation. In October, the District considered the referral and agreed to evaluate the Student. In December, the Student's evaluation group met with the Parents and determined that the Student was eligible for special education services under the category of other health impairment. Also in December, the Parents requested an independent educational evaluation (IEE) for the Student and the District agreed to pay for the IEE. In January, the Student's individualized education program (IEP) team met to develop the Student's IEP based on the December 2016 evaluation. The Parents did not attend the meeting and did not consent for the initial provision for special education services. In March, the District held a second IEP meeting to review the Student's IEP based on the December 2016 evaluation, so the Parents could participate in developing the Student's IEP. The Parents again declined to consent for special education services because they were waiting on the results of the IEE. In May, the Student's evaluation group met to review the results of the Student's IEE but the Parents left the meeting because of their dissatisfaction with school staff. The District and the Parents later agreed to meet to review the results of the District's evaluation report incorporating the results of the IEE, but the school year ended before the meeting was scheduled. The Parents alleged that the District did not follow procedures for conducting the Student's initial evaluation. The District denied the allegations.

## ISSUE

1. Did the District follow procedures for conducting the Student's evaluation during the 2016-2017 school year?

### LEGAL STANDARDS

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

Decision Whether to Conduct an Initial Evaluation: Following a request for an initial evaluation to determine if a student is eligible for special education, a district must document the referral and: notify the student's parents of the referral; collect and examine existing school, medical, and other records in the possession of the parents and school district; and within 25 school days after receipt of the referral, decide whether or not to evaluate the student. 34 CFR §300.301; WAC 392-172A-03005.

Consent for Initial Evaluation: A district is required to obtain informed parental consent before conducting an initial evaluation of a student suspected of needing special education services. 34 CFR §300.300(a); WAC 392-172A-03000(1). Consent means that 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(1). 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). The District must complete the evaluation within 35 school days of receiving consent, unless a different time period is agreed to by the parents and documented by the district. WAC 392-172A-03015(3).

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. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. 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(b); WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

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

Districts must also ensure that assessments and other evaluations are used for the purposes for which they are valid and reliable, and are administered by trained and knowledgeable personnel and in accordance with any instructions provided by the producer of the assessment. Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need, and must best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment accurately reflects the student's aptitude or achievement level rather than reflecting the student's impairment. If necessary as a part of a complete assessment, a district may obtain at its expense a medical statement or assessment indicating any additional factors that affect the student's educational performance. Students should be comprehensively assessed in all areas of suspected disability, and districts must use assessment tools and strategies that provide information that directly assists those determining the student's educational needs. Finally, districts must ensure that evaluations of students who transfer from one district to another within the state during a school year are coordinated with the student's prior and subsequent district as necessary and as expeditiously as possible, to ensure prompt completion of the full evaluation. 34 CFR §300.304; WAC 392-172A-03020(3).

When IEPs Must Be in Effect: For an initial IEP, a school district must ensure that: the school district holds a meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and as soon as possible following

development of the IEP, special education and related services are made available to the student in accordance with the student's IEP. 34 CFR § 300.323; WAC 392-172A-03105.

Consent for Initial Provision of Services: A school district responsible for making a free appropriate public education (FAPE) available must obtain informed consent from the parent of a student before initially providing special education and related services to the student. 34 CFR §300.300(b); WAC 392-172A-03000(2)(a). If the parent of a student fails to respond or refuses to consent to services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student. 34 CFR §300.300(b)(3); WAC 392-172A-03000(2)(c) and (d). If the parent of the student refuses to consent to the initial provision of special education and related services, the school district will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent. 34 CFR §300.300(b)(3); WAC 392-172A-03000(2)(d).

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. If the parents request an IEE at public expense, the district must either: initiate a due process hearing within 15 days to show that its evaluation is appropriate; or, ensure that an IEE is provided at public expense, unless the district demonstrates in a hearing under this chapter that the evaluation obtained by the parents did not meet agency criteria. If the parent obtains an IEE at public or private expense, the results of the evaluation: must be considered by the district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and may be presented as evidence at a hearing regarding that student. If an administrative law judge requests an IEE as part of a due process hearing, the cost of the evaluation must be at public expense. 34 CFR §300.502(d); WAC 392-172A-05005.

Parent Participation in Meetings: IDEA specifically provides that parents of children with disabilities have an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to their child. 34 CFR §300.501(b); WAC 392-172A-05000(2)(a).

Tape Recording: Federal law neither requires nor prohibits the use of recording methods, and the use of recorders is subject to state or district policy. Federal and state regulations implementing the IDEA amendments require districts to adopt methods to ensure that parents are allowed to participate in meetings, which can include methods for recording the meeting. OSEP guidance provides that a school district has the option to require, prohibit, limit or otherwise regulate the use of recording devices at IEP meetings. *Letter to Anonymous*, 40 IDELR 70 (OSEP 2003). School district policies that prohibit taping should include exceptions to allow

for circumstances when taping is the only way parents would have a meaningful opportunity to participate in the IEP meeting. *In the Matter of the Issaquah School District*, Special Education Cause No. 2003-SE-0133 (WA SEA 2003).

### FINDINGS OF FACT

1. At the beginning of the 2016-2017 school year, the Student was in the sixth grade and attended a District school. The Student was eligible to receive modifications/accommodations and related services under a section 504 plan. The plan stated the Student experienced challenges with writing, organizing tasks (processing, sorting), and completing projects and homework, and provided accommodations for the Student.
2. On September 20, 2016, the Student's mother (the mother) emailed the school assistant principal, the school counselor, the school psychologist, and the Student's father (the father), requesting the District to initiate a special education evaluation for the Student. The mother stated the Parents wanted the Student "retested for IEP (sic) ASAP". The psychologist responded that he would make the referral.
3. On September 20, 2016, the school psychologist referred the Student for a special education evaluation. The referral form stated the mother requested the evaluation due to concerns about the Student's writing ability and anxiety issues. The form also stated the Student was assessed for special education services when he was in the fourth grade and the Student was found not eligible at that time. The District issued prior written notice regarding the referral on this same day. The notice stated the District would make a decision whether to assess the Student within 25 school days.
4. On October 7, 2016, the school principal emailed the Parents, the school counselor, the assistant principal, the school psychologist, and a District section 504 coordinator. The principal addressed the email to the father, stating the District agreed to evaluate the Student for special education eligibility and that the school psychologist would contact the father to inform him of the evaluation timelines and the assessments that would be used as part of the Student's evaluation.
5. On October 10, 2016, the father emailed the section 504 coordinator, inquiring how the Parents could request an independent educational evaluation (IEE) at public expense.
6. On October 12, 2016, the Parents, the school counselor, the principal, the school psychologist, the Student's language arts teacher, a District administrative assistant for student section 504 plans (section 504 administrative assistant), the section 504 coordinator, a District general education communities in school teacher, and a parent advocate<sup>1</sup> met to

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<sup>1</sup> According to the Parents' complaint, they invited the parent advocate to attend the meeting because the parent advocate is a college professor who speaks Parent 1's dominate language and "knows the process of special education".

amend the Student's section 504 plan. The group also discussed the Student's referral for special education and the possibility of the District paying for an IEE. The meeting notes stated the District agreed to conduct a special education evaluation and that the evaluation would include "the BRIEF, a test requiring adults who know the Student to complete protocols and the Written Expression subtest of the Kaufman test of education achievement (K-TEA)". Additionally, the District agreed to consider a private evaluation report from a private occupational therapist (OT) the Parents employed. The meeting notes further stated the Parents also asked about obtaining an IEE in lieu of the District school psychologist completing the Student's initial evaluation. The meeting notes stated the District provided the Parents with a consent form for the evaluation. The consent form stated the Student would be evaluated in the areas of writing, study/organizational skills, and "other". The consent form also stated, "Only new testing in writing and study/organizational skills. Other areas will look at current existing data." Attached to the consent form was a chart of evaluation instruments, which identified types of assessments used in the areas of academic tests, behavior ratings, development tests, intellectual tests, motor tests, preschool instruments, and speech language test. The District issued prior written notice, proposing to initiate an evaluation of the Student on this same day.

7. On October 14, 2016, the mother emailed the school psychologist and copied the father, the school counselor, the section 504 coordinator, the school principal, and the assistant principal, stating that she wanted to know the specific assessments the District was going to conduct as part of the evaluation before she would sign the consent form. The mother also attached a list of "issues/concerns" the Parents had about the Student's abilities.
8. On October 17, 2016, the school psychologist responded to the mother's email, stating "tests are not listed, you give consent or not to the areas of evaluation. It is up to the person doing the evaluation to decide on the an (sic) appropriate measures to use." The Student's father replied to the psychologist's email, asking whether the assessments would cover the Parents' concerns. The psychologist replied, stating he would test the Student for a suspected specific learning disability in writing or a possible health impairment in writing and study/organizational skills.
9. On October 24, 2016, the Student's mother provided written consent for the District to evaluate the Student. The mother hand wrote a note on the consent form, requesting the District assess the Student in the areas of "fine motor-sensory processing, writing fluency, and communication evaluation". Also attached to the consent form was the list of "issues/concerns" the Parents had about the Student's abilities.
10. Also on October 24, 2016, the Student's mother emailed the school psychologist, the father, the school counselor, the section 504 coordinator, the principal, and the assistant principal a copy of the private evaluation report completed by the Student's private OT on September 14, 2016. The private report stated the Student "presented with deficits in the areas of body control and awareness, organization, self-regulation, and time management" and "could benefit from skilled occupational therapy intervention".

11. On October 25, 2016, the Student's father emailed the school psychologist and copied the school counselor, the principal, the assistant principal, and the section 504 coordinator. The father stated the Parents expected "advanced notice of the evaluation date". The psychologist responded to the email, confirming he received the signed consent form and stated the District had thirty-five school days to complete the Student's evaluation. The psychologist also stated advanced notice of the date of an assessment is not typically provided to families and students and that if the Student gets nervous, "he would have a chance to center before beginning the testing".
12. On October 28, 2016, the Student's father emailed the school psychologist, the mother, the principal, the assistant principal, the school counselor, and the section 504 coordinator. The father stated the Parents were attempting to schedule private appointments for the Student, and inquired when the psychologist would be testing the Student. The father sent a second email, stating that the Student was anxious about the testing and asked for "a proximate window" regarding when the testing would occur. The school psychologist responded to the emails, stating that the Student would be tested "between now and winter break" and offered to speak with the Student on Monday regarding his evaluation.
13. On October 31, 2016, the Student's father emailed the section 504 coordinator regarding the special education evaluation. The father inquired if "there was anything that can be done to make sure this does not take that long". The section 504 coordinator responded to the email, stating she could talk with the school psychologist.
14. Also on October 31, 2016, the Student's father emailed the school psychologist, the principal, the assistant principal, the section 504 coordinator, and the school counselor. The father stated the Student was anxious about the evaluation and that "waiting for the evaluation is what makes [the Student] the most anxious and he needs to have his anxiety alleviated". The psychologist responded that the "standard window" to complete an evaluation was thirty-five school days from receipt of written consent.
15. Also on October 31, 2016, the Student's father emailed the school psychologist and copied the mother, inquiring why the school psychologist only sent one behavior rating form for the Student's evaluation instead of one for each parent. In response, the school psychologist stated he "originally planning on sending 2 but as you keep reminding me of [the mother's] ESL<sup>2</sup> status. That then brings up questions about the validity of a questionnaire filled out by her alone." The father replied to the school psychologist, stating that the mother is "an educated former nurse who has no difficulty in one on one conversation and written text. Her difficulties come when she is in a fast-paced situation where the language contains jargon and vernacular". The father asked the psychologist to send a behavior rating form for each parent to complete. Later, the mother replied, stating, "sometimes, understanding spoken word can be challenging for me" but that her "written speech is fine". She also stated she

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<sup>2</sup> English as a second language (ESL).

was confident she had valid information to provide to the District regarding the Student. The mother then requested the psychologist send a behavior rating form for her to complete.<sup>3</sup>

16. On November 1, 2016, the Student's mother emailed a District special education ombudsman and copied the father. The mother requested help "getting [the Student] adequate support in school" and forwarded the ombudsman several of the Parents' email exchanges with District staff regarding the Student's special education evaluation.
17. On November 2, 2016, the Student's mother emailed the school counselor, the father, the principal, the assistant principal, and the school psychologist, requesting a copy of the Student's educational records. The school counselor responded that she would begin to gather the documentation and that the District had forty-five days to provide the records to the Parents according to the Family Educational Rights and Privacy Act (FERPA). The mother replied, stating the Parents were gathering the information for the Student's private psychiatrist appointment and asked if she could just start with the Student's prior evaluation reports. On November 7, 2016, the school counselor replied, stating she would get the documents to the Parents by November 9, 2016.
18. Also on November 2, 2016, the special education ombudsman emailed a District special education program supervisor (program supervisor) and another District psychologist. The ombudsman stated the Parents were concerned about how the Student's special education evaluation was proceeding. The ombudsman stated the relationship between the school psychologist and the Parents was strained, and then inquired whether a different psychologist could complete the Student's special education evaluation.
19. On November 15, 2016, the Student's father emailed the principal, the assistant principal, the school psychologist, the mother, and the school counselor, stating that on December 9, 2016, the family was travelling outside of the country, due to a family emergency. The father asked that the Student's evaluation be completed prior to the family's travel date. The psychologist responded to the email, stating the Student's testing was scheduled the week of November 28, 2016. The mother replied, stating she could attend a meeting before December 9, 2016, and that after that date, she could attend meetings via telephone. The mother further stated that the father would be available to meet in person until December 20, 2016, when he would join the family out of the country. The psychologist responded to the email, stating he would have more information on December 1, 2016.
20. On November 29, 2016, the school psychologist emailed the Parents, the section 504 administrative assistant, the section 504 coordinator, the school counselor, the principal, the special education ombudsman, a District special education teacher (special education teacher 1), and the program supervisor to schedule meetings to review the results of the Student's evaluation and develop an individualized education program (IEP) for the Student. The next day, the father responded to the email, confirming the Parents wanted two separate

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<sup>3</sup> According to the Parents' complaint, the District did send Parent 1 a behavior rating form to complete.



meetings; one to review the results of the Student's evaluation, and one to develop the Student's IEP.

21. On December 6, 2016, the District notified the Parents of a December 15, 2016 meeting to review the Student's evaluation report and determine his eligibility for special education.
22. On December 8, 2016, the school psychologist emailed the Parents, the program supervisor, special education teacher 1, the principal, the section 504 administrative assistant, the special education ombudsman, and the Student's science teacher, language arts teacher, advanced math teacher, band teacher, and homeroom teacher, and attached a draft copy of the Student's evaluation report.
23. On December 14, 2016, the Student's father emailed the school psychologist, the principal, the program supervisor, special education teacher 1, the Student's general education teachers, the school counselor, and the special education ombudsman, requesting to record the Student's evaluation review meeting. The father stated the Student's mother speaks English as a second language and was diagnosed with attention deficit hyperactivity disorder, and that recording the meeting for the mother to review at home would "allow her to fully participate as a parent in [the Student's education]". The school psychologist responded to the email, stating that he did not wish to be recorded and that staff members on the Student's team have previously expressed concern about being recorded at meetings. This same day, the program supervisor also responded to the father's email, stating all members must consent to being recorded and suggested the team discuss alternative ways to meet the mother's language-related needs.
24. On December 14, 2016, the Student's father emailed the school psychologist, the principal, the program supervisor, special education teacher 1, the school counselor, and the Student's general education teachers, requesting to hold the meeting in an office equipped with a "landline" telephone so that the mother would be able to participate in the meeting from outside of the country. The school psychologist responded to the email, stating the meeting would be held in the principal's office, which had a "landline" telephone.
25. On December 15, 2016, the school psychologist, special education teacher 1, the language arts teacher, the homeroom teacher, the section 504 administrative assistant, the principal, and the Parents<sup>4</sup> met to review the results of the Student's evaluation and determined the Student was eligible to receive special education services under the category of other health impairment. The District evaluation report stated that the Student's private OT report and current writing samples were reviewed by a District OT and that the Student was observed doing a non-preferred activity of testing with and without time pressure. The report stated the Student had a "school appropriate skill set" and that no further assessments were needed in the area of OT. The report further stated that the Student was previously tested in the

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<sup>4</sup> According to the Student's evaluation summary page, the Student's mother attended the meeting via telephone and the Student's father attended the meeting in-person and declined to sign the evaluation report.

area of social/behavior and the Student's January 2015 evaluation report found the Student to be in the average range. Additionally, the report stated concerns about the Student's executive functioning and self-regulation "were addressed in the area of Study/Organizational Skills with the BRIEF-2" and that based on existing data, there is no indication of an adverse educational impact in the area of behavior/social skills. The report further stated that the Student had a communication evaluation as part of an evaluation conducted in January 2015 and was found ineligible for services at that time. The report said that the Student's written language composite was average and that the Student's scores in written expression, spelling, and writing fluency were also average. The report stated the Student's January 2015 evaluation report found the Student's written expression skills to be in the average range. The report stated the Student's writing scores were consistently in the average range for his age and that the evidence did not show an adverse educational impact. The report also stated the Student's diagnosis of ADHD has a significant impact on his school performance and academic progress because it was difficult for him to stay focused for a reasonable period of time and to sustain stamina while performing "paper-and-pencil tasks" and that those difficulties prevented the Student from meeting grade-level expectations. The evaluation report recommended the Student receive specially designed instruction in the area of study/organizational skills. The District issued prior written notice, proposing to initiate the special education eligibility category on this same day.

26. The District was on break from December 19, 2016 through January 3, 2017.
27. On December 19, 2016, the Student's mother emailed the school psychologist, the principal, the assistant principal, the program supervisor, the special education ombudsman, the school counselor, the Student's general education teachers, and special education teacher 1, requesting an IEE. The mother stated, "We do not believe that our child's writing, occupational therapy, social and emotional and communication concerns were sufficiently addressed".
28. On December 26, 2016, the Student's mother emailed the program supervisor, the father, the principal, the assistant principal, the special education ombudsman, special education teacher 1, and the Student's general education teachers. The mother attached a "corrected [private] OT evaluation which is to replace the one that was previously submitted". The mother stated the private OT evaluation now reflected the "the correct measures for [the Student's] age and not preschool measures" as erroneously indicated on the previous evaluation. On December 28, 2016, the program supervisor responded to the mother, acknowledging her request for an IEE and stated he would send a separate email response.
29. On December 30, 2016, the program supervisor emailed the Parents and attached a letter, documenting the District's response to the Parents' request for an IEE. The letter stated that the District agreed to pay for an IEE for the Student and asked the Parents to notify the program supervisor once they had selected an IEE provider. The District's letter also included a document describing the District's criteria for an IEE at public expense.

30. On January 3, 2017, special education teacher 1 emailed the Parents, the principal, a District special education program specialist (program specialist 1), the special education ombudsman, and the school psychologist. Special education teacher 1 stated that “while your request for an Individual Educational Evaluation is being processed, I’ll be continuing with the IEP process” and then proposed dates to schedule an IEP meeting. Later that day, special education teacher 1 sent a second email with a draft copy of the Student’s initial IEP attached.
31. On January 4, 2017, the Student’s mother emailed special education teacher 1, the father, the principal, program specialist 1, the special education ombudsman, the school counselor, the assistant principal, the Student’s general education teachers, and the program supervisor. The mother inquired why special education teacher 1 drafted the IEP when the IEE had not been conducted. Additionally, the mother asked why the IEP was drafted prior to a meeting and stated all members of the Student’s IEP team are “to be equal participants in developing the IEP plan”.
32. Also on January 4, 2017, the Student’s father emailed the program supervisor, the mother, the principal, and the special education ombudsman, requesting the school psychologist be “removed from the IEP team because of his history with [the Student’s] case”. Additionally, the father stated the Parents had received a draft copy of the Student’s IEP and that “it seems that [the school] is unaware that an IEE was approved for the Student”.
33. On January 5, 2017, the mother emailed the program supervisor, program specialist 1, another District special education program specialist (program specialist 2), and the Student’s father, providing the name and web address of the Parents’ preferred IEE provider.
34. On January 6, 2017, the program supervisor emailed the Parents, program specialist 1, and program specialist 2 in response to the Parents’ questions from a telephone call earlier that day. Program specialist 1 stated once the contract was in place with the Parents’ preferred IEE provider, then the IEE services could begin. Additionally, the program supervisor stated the Student’s special education teacher<sup>5</sup> would contact the Parents to schedule an initial IEP meeting. The father responded to the email, inquiring if special education teacher 1 was the Student’s IEP case manager and about the scope of the IEE. The father also asked who should be notified if the Student “needed to remain out of school for a period of time for health reasons”.
35. On January 12, 2017, the Student’s father emailed the program supervisor, stating the Parents had chosen an IEE provider and inquired what the next steps were. The next day, the program supervisor responded to the email, stating the District was in the process of contracting with the IEE provider.
36. On January 18, 2017, a District special education teacher (special education teacher 2) emailed the Parents and copied the principal. Special education teacher 2 introduced herself

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<sup>5</sup> It is unclear which special education teacher the program supervisor was identifying.

and stated she wanted to meet with the Parents to “sort out what you’d like [the Student’s] plan to look like” and suggested times to hold an IEP team meeting. In response, the mother stated the District agreed to an IEE in December 2016 and inquired about the purpose of the meeting.

37. On January 19, 2017, the Student’s mother emailed the principal, the Student’s general education teachers, the school counselor, special education teacher 1, special education teacher 2, the program supervisor, the special education ombudsman, and the father. The mother stated “for the time being [the Student] will not be coming to school” and attached a doctor’s note. The doctor’s note stated, “given [the Student’s] current situation I don’t recommend exposing him to the trigger of stress until his needs are addressed and adequate support is available to him at school”. The Student had not attended school since December 8, 2016, and did not attend school for the rest of the year.<sup>6</sup>

38. On January 20, 2017, special education teacher 2 replied to the mother’s January 18 email, stating that since the Student has qualified for special education services, the District is “obligated to create and implement an individualized education plan (IEP) for him. That’s a safeguard in place for the benefit of students.” Special education teacher 2 further stated:

“More important than staying in compliance, however is the benefit to [the Student]. Even with partial information the plan will be a very positive thing. This not only gets things moving in the right direction, it brings [the Student] to the attention of the people he will be working with in the future-special education staff. It will help immensely if we can work with [the Student] and get a sense of his strength’s and needs. As staff, reading reports only goes so far without actually working with him. The best way for us to get [the Student] the supports he needs is to get to know him and for him to get to know us”.

Special education teacher 2 also stated the IEP document would be completed as a team and that once the District received the IEE report, they could “revise the IEP with all the information considered”.

39. On January 20, 2017, the Student’s father emailed program specialist 1, inquiring about the status of the contract with the IEE provider. The father said the family had scheduled a tentative appointment with the IEE provider for the Student “with the idea that [the IEE provider] would be contracted”.

40. On January 24, 2017, special education teacher 2 emailed the Parents, the principal, the assistant principal, program specialist 1, and the science teacher, notifying them of an IEP team meeting scheduled for January 30, 2017. Special education teacher 2 stated she had not heard back from the Parents regarding dates to hold an IEP meeting and the District was obligated to have a meeting to develop the Student’s initial IEP. Special education teacher 2

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<sup>6</sup> The District’s response to this complaint contained documentation showing the District provided the Student with schoolwork to complete during the school year.

also asked the Parents to notify her if they wanted to suggest an alternate date for the IEP team meeting.

41. Also on January 24, 2017, the District invited the Parents to attend a January 30, 2017 meeting to develop the Student's initial IEP. The contact log attached to the District's notice stated the District sent an email to the Parents on January 18, 2017, and they did not respond; sent a second email to the Parents on January 20, 2017, and they did not respond; and sent a third email to the Parents on January 24, 2017, and they did not respond.
42. On January 25, 2017, the program supervisor emailed the Student's father, notifying him that the contract with the IEE provider was verbally approved and that the District and the IEE provider were finalizing the contract process.
43. On January 30, 2017, the principal, the science teacher, the language arts teacher, program specialist 1, and special education teacher 2 met to develop the Student's IEP. The Parents did not attend the meeting. The proposed January 2017 IEP stated the Student was a bright and friendly young man who is respectful, compliant, and gets along with his peers. The IEP stated the Student requires specially designed instruction in study/organizational skills to make educational progress with his same age peers. The IEP stated the Student would be in the general education setting for approximately 95% of his school day and provided for 20 minutes of specially designed instruction in the area of study/organizational skills four times a week in a special education setting. The IEP also provided for accommodations/modifications, such as extra time to complete assignments and giving the Student short, one-step directions. On this same day, the District issued prior written notice, refusing to initiate the Student's IEP because the Parents had not yet consented to the initial provision of special education services.
44. On January 30, 2017, the Student's father responded to special education teacher 2's January 24, 2017 email regarding the Student's IEP team meeting. The father stated he would attend "the meeting Wednesday, [February 1], at 8 AM". Later that evening, the father sent a second email, apologizing for missing the IEP team meeting and stated he misread the date for the meeting.
45. From February 8-10, 2017, program specialist 1, the principal, the program supervisor, and the assistant principal exchanged emails regarding assigning a new IEP case manager for the Student. The emails stated the case manager should schedule a second IEP meeting because the Parents did not attend the first one. It was later agreed that special education teacher 1 would serve as the Student's IEP case manager.
46. On March 6, 2017, special education teacher 1 emailed the Parents, the principal, and program specialist 1, stating that special education teacher 2 had resigned her position at the school and that special education teacher 1 would now serve as the Student's case manager. Special education teacher 1 stated that since neither of the Parents attended the IEP team meeting in January, another IEP team meeting was being scheduled. Special education teacher 1 then proposed dates for later in the week, to hold the IEP team meeting. The

Student's mother responded, stating none of the proposed dates worked for the Parents. The mother also inquired about the purpose of the meeting, stating, "what purpose does this meeting have since [the Student's] needs haven't been properly assessed".

47. On March 7, 2017, special education teacher 1 replied to the Student's mother, stating that the District was complying with federal regulations and inquired when the Parents could attend an IEP team meeting. On March 8, 2017, the mother inquired about the purpose of the IEP team meeting, stating, "are you saying that it is purely administrative?" The mother suggested dates she could attend an IEP team meeting and stated that "we will not be agreeing with any plans for [the Student] until we have results of the IEE and [the Student's] needs can be properly addressed". Later that day, the mother sent another email, and added the program supervisor, the section 504 coordinator, and school counselor to the email. The mother stated that "we are willing to come to a brief meeting so you can be in compliance and to hear what your plan for [the Student] is," however, "we will be unable to approve of an IEP that does not have all of the necessary information from [the Student's] IEE". The program supervisor responded to the email, stating the District was obligated to develop an IEP for the Student even though the IEE was underway and asked the Parents to contact the program supervisor or program specialist 1 with any further questions about the next steps or additional clarification.
48. Also on March 8, 2017, the Student's father emailed the Student's general education language arts teacher, notifying her that the IEE provider had begun his evaluation of the Student, and asked the language arts teacher to complete a behavior rating form as part of the IEE process. The language arts teacher responded to the email, agreeing to the request and stated she would attempt to get it done that same day.
49. On March 10, 2017, the Student's mother emailed special education teacher 1, the father, the principal, some of the Student's teachers, the program supervisor, the school counselor, the assistant principal, and the section 504 coordinator, confirming she would attend the Student's IEP team meeting scheduled for that afternoon.
50. Also on March 10, 2017, special education teacher 1 emailed the Parents, the school principal, the language arts teacher, the advanced math teacher, the science teacher, the assistant principal, and program specialist 1 a copy of the Student's January 30, 2017 draft IEP.
51. Later on March 10, 2017, the principal, the language arts teacher, special education teacher 1, program specialist 1, and the mother met to review the Student's proposed initial January 30, 2017 IEP. The IEP team then agreed to revise the proposed January 2017 IEP so that the Student would be in the general education setting for approximately 98% of his school day and provided for 30 minutes of specially designed instruction in the area of study/organizational skills four times a month in the special education setting. The March 2017 revised IEP also provided for additional accommodations/modifications, such as frequent check-ins, posting the Student's daily schedule, and modifying assignments. Later this same day, the District issued prior written notice, refusing to initiate the proposed March 2017 IEP because the Parents declined to consent to initial special education services.

52. Also on March 10, 2017, the following events occurred:

- The Student's mother responded to special education teacher 1's email regarding the draft copy of the IEP. The mother stated the Parents were "not going to sign or agree on this proposed plan" because there were "several inaccuracies" and the Parents did not have enough time to review the January 30, 2017 IEP before the meeting occurred, and additionally because the Parents wanted to wait for the results of the Student's IEE before developing the Student's IEP.
- Special education teacher 1 then responded to the mother's email and attached the proposed March 2017 IEP. Special education teacher 1 stated the revisions had been made to the proposed January 2017 IEP and that special education teacher 1 would be available to arrange an IEP team meeting if the Parents reconsidered their decision not to provide consent for the initial provision of special education services.
- That evening, the Parents responded to special education teacher 1, stating they understood the District needed to comply with federal regulations but it "doesn't make sense" to have an IEP meeting until the Student's IEE was complete. The Parents also stated the IEE provider requested that special education teacher 1 contact the IEE provider to schedule a meeting to review the results of the Student's IEE. On March 13, 2017, special education teacher 1 responded he would not be acting as the case manager, but that the Student's section 504 plan was still in effect and that the section 504 case manager would continue to work with the Parents.

53. On March 13, 2017, the Student's father emailed special education teacher 1 and copied the principal, the Student's general education teachers, program specialist 1, the school psychologist, the special education ombudsman, the program supervisor, the assistant principal, and the section 504 coordinator. The father inquired why the proposed March 2017 IEP was final and stated that the Parents "did not agree to the initial IEP". The father also stated the Parents were waiting for the results of the IEE before they would make decisions regarding the Student's special education services. Program specialist 1 responded to the email, stating that the IEP was finalized once the District issued prior written notice. Also, program specialist 1 acknowledged that the Parents did not consent to special education services and confirmed the Student was currently being served under a section 504 plan.

54. On April 10, 2017, the IEE provider sent the Parents and the District a draft copy of the Student's IEE.

55. The District was on break April 10-14, 2017.

56. On April 18, 2017, the Student's mother emailed program specialist 1, the father, the program supervisor, and the special education ombudsman, inquiring who was serving as the Student's IEP case manager and how they could file a complaint against the school psychologist. The mother stated the IEE provider needed to know who the case manager was in order to set up a meeting to review the results of the Student's IEE. This same day, program

specialist 1 responded to the email, stating that the Student did not currently have a special education case manager and that once the District received the report from the IEE provider, a school representative would contact the Parents to arrange a meeting date. Program specialist 1 also stated the Parents could contact the principal or the assistant principal regarding their concerns about the school psychologist.

57. On April 25, 2017, program specialist 1 and the IEE provider exchanged emails, scheduling a telephone conference to discuss the Student's evaluation and dates to schedule a meeting to review the results of the Student's IEE with the Parents.
58. On May 3, 2017, the IEE provider sent a letter to program specialist 1 and to the Parents and enclosed a final copy of the IEE report. The IEE report stated the Student had superior general intellectual abilities as well as above average achievement in reading and math. The report also stated the Student displayed behaviors symptomatic of ADHD and "often distracted himself into irrelevant or inconsequential tangents and that the Student displayed a very limited awareness of time and, consequently, managed it very poorly" and that this "combined with his inattention to and poor interpretation of non-verbal cues from his environment and others around him, this resulted in his being out of touch and in making erroneous assumptions or missing obvious conclusions". The report stated that while the Student did not exhibit any problems with writing mechanics, grammar, or sentence structure, the Student presented with significant problems in planning and maintaining his organization relative to writing and it may be related to his executive functioning (AD/HD). The report further stated the Student exhibited tension and inflexibility regarding perfectionism and worry about making mistakes in the testing session and reported that the Student reported he worried about his ability to perform and complete academic work. The report stated the evidence supported the District's findings that the Student was eligible to receive special education services under the category of other health impairment. The report recommended that the Student's evaluation team decide which interventions and accommodations/modifications to provide to the Student in "regard to planning and organization, social awareness and skills, physical aspects of written expression, and anxiety management related to writing".
59. On May 4, 2017, the Student's father emailed the program supervisor and the special education ombudsman, inquiring who would serve as the Student's case manager.
60. Also on May 4, 2017, the principal emailed the Parents and copied program specialist 1, the program supervisor, the section 504 administrative assistant, the school psychologist, and a District special education teacher (special education teacher 3) to schedule a meeting to review the results of the Student's IEE. The principal stated the IEE provider was available on two dates and the meeting was tentatively scheduled for May 17, 2017. The principal also stated special education teacher 3 would become the Student's case manager.
61. On May 8, 2017, the principal emailed the Parents and copied program specialist 1, the program supervisor, the section 504 administrative assistant, the school psychologist, and special education teacher 3. The principal inquired whether the Parents would be able to



attend the meeting scheduled on May 17, 2017, to review the results of the Student's IEE. The principal stated special education teacher 3 would be assisting with the meeting. This same day, the mother responded to the email, stating the Parents were not available that day and that the father would contact the IEE provider and the principal to discuss other dates. A meeting was later scheduled for May 24, 2017.

62. On May 24, 2017, the District's evaluation group, including the Student's father, met to review the results of the IEE. The mother attended the meeting via telephone. The District issued prior written notice about the results of the meeting this same day. The notice stated, "The family left the meeting and refused to engage in any review of the report because the school psychologist was present." The notice stated the District considered conducting an additional meeting with the evaluation group, the Parents, and the IEE provider, but rejected the idea due to the IEE provider's limited availability. The notice stated the evaluation group agreed to incorporate the IEE report into the District's December 2016 evaluation report and then invite the Parents to "a feedback meeting" when the report was complete. The notice further stated the IEE provider's contract with the District was complete and that the IEE provider stated he would offer the Parents a "private feedback session" at the Parents' expense.
63. On May 28, 2017, the Student's mother emailed the special education ombudsman regarding the May 24, 2017 meeting to review the Student's IEE. The mother stated the Parents requested that the school psychologist leave the meeting and when program specialist 1 denied their request, the meeting "had to be aborted". On June 14, 2017, the mother emailed the ombudsman, seeking a response to her email. The mother requested a meeting to review the results of the Student's IEE with the IEE provider present and without the school psychologist in attendance.
64. On June 16, 2017, the school psychologist emailed the Parents an invitation to attend a June 21, 2017 meeting to review the District's evaluation report incorporating the results of the Student's IEE. The District sent the Parents a written invitation on June 19, 2017.
65. On June 19, 2017, the Student's mother emailed the program supervisor, the principal, the school counselor, the special education ombudsman, the father, the assistant principal, and the District special education department's general email address. The mother stated the Parents would not be able to attend the meeting scheduled for June 21, 2017, and inquired about additional dates. The mother requested the school psychologist not attend future meetings regarding the family and stated, "This email should serve as an official request for investigation" of the school psychologist. The mother also requested the District pay the IEE provider to attend a meeting to review the results of the Student's IEE with the Parents because the previous meeting "had to be aborted" due to the school psychologist's presence. The mother requested "all records concerning [the Student]".
66. Later on June 19, 2017, program specialist 1 emailed the Parents, the program supervisor, the principal, the special education ombudsman, the assistant principal, and copied the school psychologist, stating he was responding to the Parent's email to the special education

department's general email address and wanted to provide "clarification and next steps". Program specialist 1 stated that on May 24, the IEE provider presented the results of the Student's IEE and that the purpose of the meeting scheduled for June 21, 2017, was to review the Student's revised evaluation and then develop an IEP for the Student.

67. On June 20, 2017, program specialist 1 emailed the Student's father, inquiring if the Parents were available to attend a meeting on June 21, 2017.<sup>7</sup> Program specialist 1 stated a different psychologist would present the results of the Student's IEE, and that if the meeting was not held tomorrow, the next available date to schedule the meeting would be in the fall of 2017. Later that day, the father responded to the email, stating the Parents did not have time to make arrangements to attend the meeting. Additionally, the father stated he was attempting to contact the IEE provider to discuss his availability to attend a meeting to present the results of the Student's IEE to the Parents, and inquired if the District would pay the IEE provider for this meeting.
68. On June 20, 2017, the Parents emailed the program supervisor, the school counselor, the principal, the special education ombudsman, program specialist 1, and copied the assistant principal. The Parents requested that the school psychologist not have any involvement with the family. The Parents also requested that the IEE provider be invited to attend "the IEE results meeting". Additionally, the Parents inquired when they would receive the Student's records.
69. Later on June 20, 2017, the program supervisor responded, stating that the District would accommodate the Parents' request for another psychologist to attend the meeting to review the District's amended evaluation report. The program supervisor also inquired whether the Parents would be able to attend the meeting on June 21, 2017. The program supervisor included a link for the Parents to make a records request. The father replied that he was not able to attend the June 21 meeting and suggested meeting later that week.
70. On June 21, 2017, a District legal assistant responded to the Student's mother's June 19, 2017 email requesting the Student's records. The legal assistant stated she could complete the request within two weeks.
71. On June 21, 2017, the Student's father emailed the program supervisor, the principal, the special education ombudsman, program specialist 1, and the assistant principal, stating the IEE provider was available to attend a meeting on June 22, 2017, or on June 26, 2017. The father later sent a second email, stating he was available to attend the June 26 meeting. The principal responded to the father, stating he would not be able to attend a meeting on June 26, 2017.
72. On June 21, 2017, the District completed an evaluation report, which included information from the IEE provider's report. The report stated the Student has superior general intellectual

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<sup>7</sup> Program specialist 1's email stated the meeting was "6/20/17". This is assumed to be a typographical error and the correct date for the meeting was June 21, 2017.

abilities as well as above average achievement in reading and math. The report also stated the Student's health impairment limits is alertness to classroom instruction and heightens awareness of environmental stimuli. The report stated this adversely effects the Student's ability to interpret nonverbal cues, interact socially with peers, regulate his emotions, follow directives from adults, and prevented the Student from accessing general education curriculum. The report recommended specially designed instruction in the areas of social/behavioral, writing, and study/organizational skills.

73. On June 22, 2017, the Student's mother replied to the father's June 21 email, stating she was also available to attend a meeting on June 26, 2017. Minutes later, the mother sent a second email, inquiring if another administrator was available to replace the principal at the June 26, 2017 meeting.
74. Also on June 22, 2017, special education teacher 3 emailed program specialist 1, the program supervisor, the language arts teacher, the principal, and the Parents a draft copy of a new IEP for the Student based on the District's June 21, 2017 evaluation report. Special education teacher 3 also attached an invitation to an IEP meeting scheduled for June 23, 2017 at 8:30 am.
75. Also on June 22, 2017, program specialist 1 emailed the Parents, the program supervisor, the principal, and the special education ombudsman, following a telephone conversation with the father. Program specialist 1 addressed the email to the father, stating:  
"Below are the next steps we discussed:
  - 1) Canceling tomorrow's meeting
    - a. No meeting Monday due to administrators (sic) availability.
  - 2) Evaluation feedback meeting to be scheduled:
    - a. Prospectively during the summer if staff are available
      - i. If "a" is not an option in August when staff return
  - 3) Your request that this meeting occur with the IEE provider in attendance, as you feel his contributions are valuable in the discussion of [the Student's] forward educational planning. We will review prospective funding and availability for his attendance at this meeting.
  - 4) Sending you and [the mother] a copy of the draft [District] evaluation to review."
76. On June 23, 2017, the Student's father emailed program specialist 1, the program supervisor, the special education ombudsman, the principal, the assistant principal, the language arts teacher, special education teacher 3, and the mother. The father expressed frustration that program specialist 1 misunderstood him. The father stated the Parents did not have enough time to make arrangements to attend the meeting on June 23, 2017, and that "it is not acceptable for this to be put off until August" and requested that another administrator attend a meeting in place of the principal on June 26, 2017. The father stated it was the Parents' goal to have supports in place for the Student before the beginning of the 2017-2018 school year. Program specialist 1 responded that a meeting could not be scheduled for June 26, 2017, because "the requisite staff are not available" and that staff are not contractually

obligated to work over the summer months. Program specialist 1 further stated he would contact the Student's IEP team members to see if they were available to meet this summer.

77. The District's 2016-2017 school year ended on June 23, 2017.

78. On June 29, 2017, the Student's mother replied to program specialist 1's June 23, 2017 email, stating the Student was anxious about the next school year and that the Parents wanted to know if the District would be able to support the Student during the next school year. The mother also stated the District admissions offices were closing on July 15, 2017, and requested a meeting as soon as possible.

79. On July 3, 2017, the Parents filed this complaint.

### **CONCLUSIONS**

Special Education Initial Evaluation Procedures: The documentation substantiates that the District followed procedures for conducting the Student's initial evaluation. Following a request for an initial evaluation to determine if a student is eligible for special education, a district must document the referral and: notify the student's parents of the referral; collect and examine existing school, medical, and other records in the possession of the parents and school district; and within twenty-five (25) school days after receipt of the referral, decide whether or not to evaluate the student. On September 20, 2016, the District received the Parent's request to evaluate the Student for special education services and referred the Student on that same day. On October 12, 2016, within sixteen (16) school days, staff who were familiar with the Student met with the Parents and their advocate and the District decided to initiate an evaluation of the Student.

A district is required to obtain informed parental consent before conducting an initial evaluation. Consent means that the parent has been fully informed of all information relevant to the activity for which consent is sought and agrees in writing to the activity for which consent is sought, and the consent describes the activity. The district must complete the evaluation within thirty-five (35) school days of receiving consent, unless a different time period is agreed to by the parents and documented by the district. Here, the District provided a consent form to the Parents at the October 12 meeting, which identified the areas in which the Student would be assessed and the areas where the District would only review prior existing data, and included a list of possible assessments to be conducted. On October 24, 2016, the Parents provided written consent, and within thirty-five school days on December 15, 2016, the Student's evaluation group, including the Parents, met to discuss the results of the Student's evaluation.

The purpose of an initial evaluation is to determine whether a student is eligible for special education. 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. 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. Here, the

Parents faulted the District's evaluation, alleging the Student was not appropriately evaluated in the areas of writing, occupational therapy, and social/emotional. However, the documentation indicates the District assessed the Student in the areas of writing and determined the Student's assessment scores were in the average range. The evaluation report stated that there was no evidence showing an adverse educational impact and concluded that the Student did not require specially designed instruction in writing. Additionally, the District considered the Student's private occupational therapist's report and observations of the Student's motor skills and determined the Student was operating in an appropriate range. Also, the District considered the behavior rating forms completed by the Parents and the Student's teachers in the area of social/emotional skills and determined the Student did not qualify for specially designed instruction in that area. Although the Parents disagreed with the results of the District's evaluation, the documentation shows the District followed procedures for conducting an initial evaluation of the Student. Additionally, when the Parents requested an IEE due to their disagreement with the District's December 2016 evaluation, the District agreed to pay for the IEE in order to obtain additional information.

### **CORRECTIVE ACTIONS**

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

Dated this \_\_\_\_ day of September, 2017

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.)