



**MAILED**  
Jun 26, 2019  
OAH – SEATTLE

STATE OF WASHINGTON  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
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June 26, 2019

Parent



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In re: Tacoma School District  
OSPI Cause No. 2019-SE-0014  
OAH Docket No. 01-2019-OSPI-00683

Dear Parties:

Enclosed please find the Findings of Fact, Conclusions of Law, and Order in the above-referenced matter. This completes the administrative process regarding this case. Pursuant to 20 USC 1415(i) (Individuals with Disabilities Education Act) this matter may be further appealed to either a federal or state court of law.

After mailing of this Order, the file (including the exhibits) will be closed and sent to the Office of Superintendent of Public Instruction (OSPI). If you have any questions regarding this process, please contact Administrative Resource Services at OSPI at (360) 725-6133.

Sincerely,

A handwritten signature in cursive script that reads "Courtney E. Beebe".

COURTNEY E. BEEBE  
Administrative Law Judge

cc: Administrative Resource Services, OSPI

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STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION

IN THE MATTER OF:

OSPI CAUSE NO. 2019-SE-0014

TACOMA SCHOOL DISTRICT

OAH DOCKET NO. 01-2019-OSPI-00683

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER**

A telephonic hearing in the above-entitled matter was held before Administrative Law Judge (“ALJ”) Courtney E. Beebe on May 1, 2019, at 9:00 a.m. The Parent of the Student whose education is at issue<sup>1</sup> appeared with her representative Gregory McBroom, attorney at law. The Tacoma School District (“District”) was represented by Susan Winkelman, attorney at law. Malik Gbenro, District Representative, also attended. The following is hereby entered:

**STATEMENT OF THE CASE**

The District filed a due process hearing request on January 22, 2019. The Prehearing Conference was continued on February 8, 2019, February 25, 2019, and March 4, 2019, to allow for settlement. The Prehearing Conference was held on March 11, 2019, and a Prehearing Order was issued on March 12, 2019. As set forth in the Prehearing Order, the written decision due date was continued to thirty (30) days post close of record, pursuant to a motion by the District. See Order of Continuance dated February 8, 2019 and Prehearing Order of March 12, 2019. The District timely filed its closing brief on May 24, 2019 before 5:00 p.m. as ordered. The Parent filed her brief on May 24, 2019, after 5:00 p.m. and therefore the Parent’s brief is considered filed the next business day, May 28, 2019 (May 27, 2019 was the memorial day holiday). The record, therefore, closed on May 28, 2019 and the decision is due on June 27, 2019.

**EVIDENCE RELIED UPON**

The following exhibits were admitted into evidence:

Parent’s Exhibits<sup>2</sup>: P-1, P-2, P-3, P-4, P-5, P-6, P-7, P-8, P-11, P-12, P-13, P-14, P-15, P-16, P-18, P-20, P-21, P-22, P-24, P-27 page 2 only, P-28, P-29, P-30, P-31, P-32, P-33, P-34, P-35, P-36, P-37, P-38, P-39, P-49.

<sup>1</sup> In the interest of preserving family privacy, the names of all family members of the Student are omitted from this decision. Instead, they are identified as, e.g., “Parent,” “Uncle,” and “Student.”

<sup>2</sup> The Parent’s exhibits include duplicate pages, organized out of page order and copied upside down. The Parent’s exhibits are marked with exhibit and page numbers that are inconsistent with the exhibit index on pages 2 and 3 of the Exhibit List filed on April 24, 2019. The Exhibit List reflects a list of 47 submitted exhibits, but the Parent submitted 49 exhibits prior to the hearing. The Parent submitted Exhibit 50 at the hearing. (Tr., pp.96-98, 102.)

District Exhibits: D-1, D-2, D-3, D-4.

The following exhibits were not admitted into evidence:

Parent's Exhibits: P-9, P-10, P-17, P-19, P-23, P-25, P-26, P-27 (except for page 2), P-40, P-41, P-42, P-43, P-44, P-45, P-46, P-47, P-48, P-50.

The following witnesses testified under oath. They are listed in order of their appearance: Venessa Christensen, Early Learning Instructional Facilitator; Dr. Dajana Kurbegovic, School Psychologist; Corinne Watson, Special Education Teacher; Student's Uncle; Student's Parent.<sup>3</sup>

## ISSUES

Whether the District's January 8, 2019, reevaluation of the Student was appropriate, and if not, whether the Parent is entitled to an independent educational evaluation ("IEE") at public expense. See Prehearing Order of March 12, 2019.

## FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness and plausibility of the evidence has been considered and weighed. To the extent a Finding of Fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted has been determined more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue.

1. The Student is a four-year old preschool student that began receiving early intervention services in 2016 at [REDACTED] Elementary School in the District. (P-1, p.7.)<sup>4</sup>
2. The District evaluated the Student for special education services in October 2017 using the Behavioral Assessment Scale for Children, Third Edition ("BASC-3"). The Parent's portion of the BASC-3 rating scale reflected multiple clinically significant social emotional / behavioral scores. (P-1; P-6.) However, the District's school psychologist's rating scale reflected that the Student scored in the average to low average range in the area of social emotional / behavioral. (P-6, p.9.) As a result of the October 2017 evaluation, it was determined that the Student qualified for special education services due to developmental delay in the areas of social emotional / behavioral. (D-3, p.5; P-1, p.7.) The evaluation recommended that the Student receive specially designed instruction ("SDI") in only the area of social emotional / behavioral.
3. The District implemented an Individualized Education Program ("IEP") for the Student on November 6, 2017, to address the Student's social emotional / behavioral developmental delay. (P-1, p.7.)

<sup>3</sup> The [REDACTED] is the Guardian of the Student and is referred to throughout as the "Parent."

<sup>4</sup> In 2016 and 2017, the Student received medical and physical diagnoses of: "speech delay, developmental delay, feeding difficulties, functional constipation, and sensory processing difficulty." (D-3, p.5; P-6.) Special education assessments performed in 2017 in the areas of communication, adaption, receptive and expressive language, fine motor and sensory processing revealed the Student to have average to low average skills. (D-3, p.5; P-6.)



4. Beginning in August 2018 the Student attended preschool in Corinne Watson's classroom. (Tr., p.106.) Ms. Watson<sup>5</sup> is a special education teacher and peer inclusion teacher for the District. (Tr., pp.105-106.) Beginning in August 2018, Ms. Watson tracked the Student's performance in six areas of learning using the TS GOLD<sup>6</sup> evaluation tool. (Tr., p.108.) At the end of September 2018, Ms. Watson compared the Student's social emotional / behavioral performance to the goals in the November 6, 2017 IEP and was of the opinion that the Student had met the goals. (Tr., p.107.)

5. Ms. Watson conferred with Venessa Christensen<sup>7</sup>, District Early Learning Instructional Facilitator. (Tr., pp.29-32,108.) Ms. Christensen had observed the Student regularly in the classroom since implementation of the November 6, 2017 IEP. (Tr., pp.28-29.) During the 2018-2019 school year, Ms. Christensen observed the Student in Ms. Watson's classroom weekly and stayed in contact with Ms. Watson to provide guidance on instruction of the Student. (Tr., p.29.) Ms. Christensen observed the Student to be an average preschooler and agreed with Ms. Watson that the Student's IEP goals should be reviewed in October 2018 because the Student had met the social emotional / behavioral goals in the IEP. (Tr., p.30.)

6. The District proposed reviewing the Student's IEP goals because she had made significant progress. (D-1, p.1; P-1, pp.1-7; Tr., pp.31, 108.) On October 16, 2018, the District issued, and the Parent received, an invitation to attend a meeting to review the Student's November 6, 2017 IEP. (D-1, pp.1-2.)

7. IEP team members Ms. Christensen, Ms. Watson, the Parent, and the Student's Uncle, convened on October 25, 2018, to review the November 6, 2017 IEP. (D-1, p.4; Tr., pp.31, 107, 108, 146-149, 158-160.) At the meeting the Parent expressed concerns about the Student's writing and social interactions. (*Ids.*) The Parent did not express concerns about the Student's cognitive skills, medical diagnoses, communication, anxiety, or fine motor skills. (D-1, pp.13-14.)

8. The IEP team revised the IEP goals, proposing two goals for the Student in the area of social emotional / behavioral deficits: 1) follow three-step instructions given by adults, and 2) improve social skills in expressing her own choice. (D-1, p.7; Tr., pp.30-33, 64.) The IEP Team established five accommodations for the Student: 1) breaks available when frustration level escalates; 2) give short, concise directions; 3) positive reinforcement for social skills and choosing

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<sup>5</sup> Ms. Watson earned an Associate's degree in early childhood education and special education, as well as a Bachelor's degree in early childhood education. (Tr., pp.105-106.) Ms. Watson is certificated to teach in the State of Washington and is currently obtaining a Master's degree in special education. (*Id.*) Ms. Watson has fifteen years of teaching experience in Texas, California, and Washington. (*Id.*)

<sup>6</sup> Teaching Strategies ("TS") Gold is an evaluation tool used nationwide by early learning programs to evaluate six areas of student achievement. (Tr., pp.34-35.) Teachers use the tool by entering data and observations into the program on a daily to weekly basis. (*Id.*)

<sup>7</sup> Ms. Christensen has a Bachelor's degree in elementary and special education from Pacific Lutheran University and has worked for the Tacoma School District since 1996. (Tr., pp.26-28.) She is certificated by a national board in early childhood education and has worked as a special education facilitator since 2013. (*Id.*) Ms. Christensen has worked in the field of early learning since 2010, and has worked with children with disabilities for twenty-three (23) years. (*Id.*)



calming choices; 4) provide an area for sensory breaks to calm down and become refocused; and 5) use of sound filtering headphones. (D-1, p.8; Tr., pp.30-33, 64.) The proposed IEP established that the Student would continue to receive SDI for thirty minutes four (4) times per week to address her social emotional / behavioral developmental delay. (D-1, p.10; Tr., pp.30-33, 64.)

9. The District issued a Prior Written Notice (“PNW”) to the Parent on October 25, 2018. (D-1, pp.13-14; Tr., pp.32.) Notably the Parent and other members of the IEP Team agreed to reconvene in late November 2018 to discuss “the possibility of exiting [the Student] from special education. [The Parent] requested that [the IEP team] discuss [the Student’s] fine motor skills at the team meeting in November.” (D-1, pp.13-14.) Ms. Watson and Ms. Christensen agreed that re-evaluating the Student in November 2018 would be consistent with District’s early intervention goal: to ensure that students receive services that allow for exit from special education to attend kindergarten with the general student population. (Tr., pp.32-33.)

10. On October 29, 2018, the District issued a Notice of Meeting to the Parent, as well as to Ms. Watson, Ms. Christensen, Dr. Dajana Kurbegovic, District School Psychologist, and the District’s speech and language pathologist, occupational therapist, and principal. (D-2, p.1; Tr., p.74.) The purpose of the meeting, scheduled for November 27, 2018, was to discuss 1) reevaluation of the Student, and 2) the Parent’s speech / language and occupational therapy concerns, as well as the Student’s progress. (*Id.*)

11. Ms. Watson and Ms. Christensen thereafter implemented the October 25, 2018 IEP goals. (Tr., pp.35, 108.) The Student performed well and achieved the new goals quickly. (*Id.*)

12. At the November 27, 2018, meeting, the attendees reviewed and considered TS Gold data, the Parent’s input, medical records, the most current evaluation and November 6, 2017 IEP, classroom observations, and previous speech and occupational therapy screening information. (Tr., pp.34-35, 66, 108, 161-166.) The meeting attendees also agreed to discuss the possibility of a “504 plan” for the Student. (*Id.*)

13. The Parent “brought in medical paperwork to inform the team and for educational planning. These medical records [were] documented . . . [The Parent] requested the following accommodations: noise-cancelling headphones and access to a water bottle throughout the day. She also noted multiple medical diagnoses and that [the Student] wears glasses.” (D-2, p.3; Tr., pp.162-163.)

14. Each member discussed their opinions, assessments to date, and screening results. (Tr., pp. 33, 109.) Ms. Watson expressed her opinion that a reevaluation was appropriate based on her observations of the Student and the TS Gold data, and informed the group that she believed the Student had achieved the October 25, 2018, IEP goals and was doing well in all areas. (Tr., p.109.) Ms. Christensen agreed that, based on her observations of the Student and the data and information provided by the Parent, it was appropriate to proceed with a reevaluation of the Student. (Tr., pp.33-34.) Dr. Kurbegovic agreed that the student was doing well and that a reevaluation was appropriate. (Tr., pp.65-67.)

15. The District issued a PWN on November 27, 2018, seeking to reevaluate the Student because the Student had made significant progress in the area of social emotional / behavioral disability and may no longer require special education. (D-2, p.3; Tr., pp.33-34, 66.)

16. The Parent consented to a reevaluation of the Student on November 27, 2018. (D-3, pp.3-4; Tr., pp.35, 67, 161-162.) The Parent consented to a reevaluation that would include: review of existing data, medical-physical information, classroom observation and social emotional / behavioral assessments. (D-3, p.3.) The Parent expressed a desire to have the Student reevaluated in the areas of speech and language and occupational therapy concerns, but the team decision was that reevaluation in those areas was not warranted. (Tr., pp.67-68.) The parent did not indicate on the consent form that testing in any other area except for social emotional / behavioral was warranted. (D-3, pp.3-4.)

17. The reevaluation team ("Reevaluation Team") consisted of Sarah Wiseman and Rhonda Rychtarik, School Nurses, Leslie Sampson, District Representative, the Parent, Rebecca Owens, District Representative, Dr. Kurbegovic, Ms. Watson, Ms. Christensen, and the Student's Uncle. (D-3, p.1.)

18. On December 10, 2018, the Parent provided the Reevaluation Team with additional medical / physical information. (D-3, pp.9-10; Tr., pp.161-163.) The information included chart notes from the Student's physician Dr. Tompkins, showing that the Student was diagnosed with anxiety and sensory issues in March 2018 and December 2018. (P-16; P-18.) The school nurse, Rhonda Rychtarik, provided the Reevaluation Team with a written summary of the Student's medical / physical information. (D-3, p.9.) The summary noted that the Student had historically received multiple medical diagnosis including: "sensory processing difficulties, hyperkinesia of childhood with developmental delay, general anxiety disorder, speech delay, expressive language delay, feeding difficulties (picky eater; oral aversion); non-life-threatening allergies to soy and strawberries and functional constipation." (*Id.*) The District had previously reviewed the historical medical information when it developed the November 6, 2017 IEP. (P-1.)

19. At the time of the Reevaluation the Student received medical treatment for constipation, a nebulized albuterol for wheezing, regular doses of melatonin to assist with sleeping, and antihistamine for daily allergies. (*Id.*) The Student also received speech therapy and occupational and feeding therapy at Mary Bridge Children's Hospital at a rate of 2 to 4 times per month, which was expected to cease in mid-December 2018. (*Id.*) The Student received regular counseling services outside of school for generalized anxiety and wears glasses to assist with farsightedness. (*Id.*) The Student's gastroenterologist provided the Student with a care plan to treat the Student's constipation and it included "access to bottled water and unrestricted bathroom use during her school day." (*Id.*) The Student is also followed by a developmental specialist. (*Id.*)

20. Dr. Kurbegovic discussed the medical information provided by the Parent prior to the November 27, 2018 meeting and on December 10, 2018, as well as the medical / physical information the District obtained from the Student's providers, with school nurse Ms. Rychtarik prior to January 8, 2019. (D-3, p.16; Tr., pp. 70-71, 73.) Dr. Kurbegovic considered the medical information when making the eligibility determination and noted that the diagnoses did not implicate the Student's ability to access education in the general education classroom environment. (Tr., p.79.)

21. As part of the Reevaluation, Dr. Kurbegovic<sup>8</sup> administered a BASC-3 assessment to evaluate the Student's social emotional and behavioral strengths and weaknesses. (D-3, pp.11-13; Tr., pp.72-74.) Dr. Kurbegovic is trained to administer and interpret the results of the BASC-3 and administered the assessment in accordance with the producer's instructions and for the purpose for which the measures are valid and reliable. (Tr., p.75) The test was administered in the Student's native language and in a non-discriminatory manner. (*Id.*)

22. The Parent, the Student's 2017-2018 school year teacher, and Ms. Watson completed BASC-3 parent and teacher rating scales. (D-3, pp.11-13; Tr., p.74; 165.) Ms. Watson and Ms. Christensen regularly observed the Student and did not observe the Student exhibiting anxious behaviors. (Tr., pp.38, 67, 112.) Ms. Watson's and Ms. Christensen's rating scales did not reflect any areas of concern regarding the Student's social emotional / behavioral performance. (Tr., pp.38, 67, 112; D-3, pp.11-13.) Notably, the Student's prior teacher's rating scale showed that the Student had only one at-risk or moderate concern regarding somatization, i.e. a sensitivity to physical pain and ailments. (*Id.*)

23. The Parent's rating scale was markedly more diverse than the teachers' rating scales, showing areas of concern in "hyperactivity, aggression, depression, attention problems, withdrawal, and adaptive skills specifically in activities of daily living." (Tr., pp.74-75.) The Parent's rating scale, however, focused on areas of concern outside the school setting that did not have an adverse impact on the Student in the educational environment. (D-3, p.13; Tr., p.76; 164-166.)

24. Dr. Kurbegovic observed the Student in the classroom on November 26, 2018 and January 7, 2019. (D-3, p.10; Tr., p.72.) She observed the Student exhibiting typical behavior and interacting with her peers appropriately. (*Id.*) Dr. Kurbegovic did not observe any behaviors of educational concern. (*Id.*) The results of the BASC-3 showed that the Student "was performing in the average range and there were no concerns in comparison to other peers in a school setting." (D-3, p.12; Tr., p.74.)

25. Although the Reevaluation team initially deemed communication and occupational therapy screenings unnecessary, the screenings were performed. Ms. White, the District's speech and language pathologist, screened the Student in the area of communication and concluded that the Student had no areas of concern. (D-3, p.13; Tr., p.76.) The District's occupational therapist also screened the Student and concluded that she demonstrated age appropriate fine motor skill and no need of occupational therapy. (D-3, pp.13-14, Tr., pp.76-77.)

26. The District completed the Reevaluation of the Student on January 8, 2019, within thirty-five (35) days of receiving parental consent. (D-3, p.8; Tr., p.79.) The assessments administered were sufficiently comprehensive to identify all the Student's suspected disabilities and related-services needs because the assessments were relevant to the Student's identified needs and relied on the information provided by the Parent, Ms. Watson and Ms. Christensen, as well as TS

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<sup>8</sup> Dr. Kurbegovic earned an educational specialist Bachelor's degree from Seattle University in 2013 and obtained an ESA certificate from the State of Washington. Dr. Kurbegovic is certified nationally as a school psychologist and obtained her Ph.D. in 2016 from the University of Washington. Dr. Kurbegovic has worked as a school psychologist for six years.



Gold data, speech and language screenings, occupational therapy screenings, and medical / physical data. (D-3, p.16; Tr., pp.74-75.)

27. On December 19, 2018, the District issued a Notice of Meeting for a Reevaluation Team meeting on January 8, 2019. (D-3, pp.1-2.) Of the individuals invited, only the school nurses Sarah Wiseman and Rhonda Rychtarik did not attend. (D-3, p.8; Tr., p.74.) The Parent attended the Reevaluation meeting. (Tr., p.228.)

28. At the meeting, Dr. Kurbegovic led a discussion of the data and assessments with the other team members. (Tr., p.77.) It was the opinion of each of the Reevaluation team members, except for the Parent and the Student's Uncle, that the Student no longer qualified for special education. (Tr., p.36, 67, 77-78, 109-110.) The Parent was provided an opportunity to discuss the information available and share her opinion. (Tr., p.228.)

29. Dr. Kurbegovic produced a reevaluation report ("Reevaluation Report") on January 8, 2019, that reflected the existing data reviewed, summaries of screenings, assessments, and medical / physical information, as well as the assessments performed. (D-3, pp.5-6; Tr., p.78.) The Reevaluation Report included the Reevaluation Team's eligibility determination:

Teaching ratings and student observations at school indicate appropriate social/emotional/behavioral abilities at this time. [The Student's] social/emotional/behavioral functioning looks diverse outside of the school setting, as there are significant concerns per grandparent/guardian report, and [the Student] is followed medically. However there is no adverse impact in an educational environment and [the Student] no longer requires specially designed instruction (SDI) at school per team decision made 01/08/2019, and she is being exited from special education.

(D-3, p.6.)

30. All the members of the Reevaluation Team, except for the school nurses, Ms. Wiseman and Ms. Rychtarik, signed the Reevaluation Report. (D-3, p.8.) The Parent signed the Reevaluation Report, but noted that she was "taking [it] to review with the doctor." (D-3, p.8; Tr., pp.227-228.)

31. On January 14, 2019, the Parent submitted a written request for an Independent Educational Evaluation ("IEE"). (P-7, p.1.)

32. After receiving the Parent's IEE request, the District issued a PWN on January 14, 2019, stating that the Student no longer met the eligibility criteria for developmental delay or any other category and that there was no current adverse educational impact such that she would be eligible for SDI. (D-3, p.16; Tr., pp.78-79.) The District continued to implement the Student's health plan, allowing her unrestricted access to the bathroom and access to her water bottle, as well as the class water fountain and Dixie cups. (D-3, p.16; Tr., pp.127, 147-148; 192.) Additionally, the Student has access to sound filtering headphones while in the classroom and riding the school bus. (D-3, p.16; Tr., p.142.)

33. After January 14, 2019, the Parent gave the Reevaluation Report to the Student's developmental specialist, but she did not dispute the results or provide any recommendations. (Tr., pp.231-232.) The Parent also submitted the Reevaluation Report to the Student's physician, Dr. Tompkins, and he also did not dispute the results or provide any additional recommendations. (*Id.*)

## CONCLUSIONS OF LAW

### The IDEA

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

2. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

*First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.*

*Rowley, supra*, 458 U.S. at 206-207 (footnotes omitted). For a school district to provide a free and appropriate public education ("FAPE"), it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Rowley*, 458 U.S. at 200 - 201.

3. The Supreme Court recently clarified the substantive portion of the *Rowley* test quoted above:

*To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . [H]is educational program must be appropriately ambitious in light of his circumstances . . .*

*Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Endrew F.* standard as follows:

*In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can "make progress in the general education curriculum," 137 S. Ct. at 994 (citation*

omitted), taking into account the progress of his non-disabled peers, and the child's potential.

*M.C. v. Antelope Valley Union High Sch. Dist.*, 852 F.3d 840, (9<sup>th</sup> Cir. 2017), cert. denied 583 U.S.\_\_\_\_, 138 S.Ct.556 (2017).

4. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief, in this case the District. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

#### **Applicable Law: IEEs and Evaluations<sup>9</sup>**

5. Special education programs are extended to include students of preschool age, including students receiving early intervention services. RCW 28A.155.070.

6. Districts must reevaluate students for eligibility for special education when "the parent or teacher requests a reevaluation." WAC 392-172A-03015. Reevaluations must be completed within thirty-five (35) school days of the date of the parent providing written consent. *Id.* Districts must conduct a reevaluation of a student before determining that a student is no longer eligible for special education services. WAC 392-172A-03030(1).

7. To be appropriate, a school district's evaluation must be sufficiently comprehensive to identify all of the student's special education and related service needs. WAC 392-172A-03020; *see also* 34 CFR §300.304. When a school district conducts a special education evaluation, a "group of qualified professionals selected by the school district" must use a "variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent . . . ." *Id.* The group cannot use "any single measure or assessment as the sole criterion" for determining eligibility or educational programming. The group must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical and developmental factors." *Id.*

8. School districts must also ensure that assessments are selected and administered to avoid discrimination based on race or culture, and are administered in the student's native language or mode of communication. "Trained and knowledgeable personnel" must administer the assessments and do so "in accordance with any instructions provided by the producer of the assessments." *Id.* Students must be assessed "in all areas related to the suspected disability" and the evaluation must be "sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified." *Id.*

9. Washington Administrative Rule 392-172A-03025 concerns the review of existing data for evaluations. It provides that evaluators must review existing evaluation data on the student and identify what additional data is needed to determine whether the student meets eligibility criteria. *See also* 34 CFR §300.305.

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<sup>9</sup> The Washington regulations on IEEs and evaluations are lengthy. The most pertinent provisions of the regulations at issue in this case are summarized here. The full text of the cited Washington regulations is attached as an Addendum to the decision.



10. After the “administration of assessments and other evaluation measures,” the parent of the student and qualified professionals “determine whether the student is eligible for special education and the educational needs of the student.” WAC 392-172A-03040(1)(a). When interpreting evaluation data,

*. . . each school district must:*

*(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student’s physical condition, social or cultural background and adaptive behavior; and*

*(b) ensure that information obtained from all of these sources is documented and carefully considered.*

WAC 392-172A-03040(3).

11. An emotional / behavioral disability means:

*a condition where the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student’s educational performance:*

*(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.*

*(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.*

*(C) Inappropriate types of behavior or feelings under normal circumstances.*

*(D) A general pervasive mood of unhappiness or depression.*

*(E) A tendency to develop physical symptoms or fears associated with personal or school problems.*

WAC 392-172A-01035(e)(i).

12. A “social or emotional” developmental delay means the inability to “develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors.” WAC 392-172A-01035(2)(d)(ii)(D). A “communication” developmental delay means “the ability to effectively use or understand age-appropriate language including vocabulary, grammar and speech sounds.” *Id.* at (2)(d)(ii)(B).

13. Speech and language and occupational therapy services may be provided as related services or as SDI, “if the student requires those therapies as specially designed instruction and meets the eligibility requirements which include a disability, adverse educational impact, and need for [SDI].” WAC 392-172A-01035(1)(d).

14. A reevaluation report must include: a statement of whether the student has a disability that meets eligibility criteria; a discussion of the assessments and review of data that supports the

eligibility conclusion; a discussion of how the disability affects the student's progress in the general education curriculum; and the recommended special education and related services the student needs. WAC 392-172A-03035; see also 34 CFR §300.304-.306.

15. If the parent of a student eligible for special education disagrees with a school district's reevaluation, the parent has the right to obtain an IEE, which is an evaluation conducted by a qualified examiner not employed by the school district. WAC 392-172A-05005; see also 34 CFR §300.502. If a parent requests an IEE at public expense, the district must provide the parent with certain information on obtaining IEEs, and must either initiate a due process hearing within 15 days to defend the appropriateness of its evaluation, or else ensure that a publicly-funded IEE is provided without unnecessary delay. *Id.* If the district initiates a hearing, and the final decision is that the district's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. *Id.*

16. "The IDEA does not prescribe substantive goals for an evaluation, but provides only that it be 'reasonably calculated to enable the child to receive educational benefits.'" *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175, 1185 (W.D. Wash. 2002). Minor procedural defects in a district's reevaluation, where the validity of the evaluation overall is not impacted, does not warrant the award of an independent education evaluation at public expense. See, *Ford v. Long Beach Unified Sch. Dist.*, 291 F.3d 1086, 1089 (9<sup>th</sup> Cir. 2002); *RZC v. Northshore Sch. Dist.*, 3 IDELR 139 (9<sup>th</sup> Cir. 2018); *W.G. v. Bd. Trustees of Target Range Sch. Dist.*, 960 F.2d 1479, 1484 (9<sup>th</sup> Cir. 1992); and *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1129 (2003).

### **Analysis**

17. The issue presented is whether the District's Reevaluation of the Student is appropriate, or whether the Parent is entitled to an IEE at public expense. The Parent raises a number of procedural challenges to the Reevaluation and also generally asserts that the District's Reevaluation of the Student was not appropriate.

### ***Absence of the School Nurse at the January 8, 2019 Reevaluation Meeting***

18. The Parent argues that because the school nurse did not attend the January 8, 2019, Reevaluation Team meeting, the Reevaluation is inappropriate. The District asserts that there is no requirement for the school nurse to attend a Reevaluation meeting, and even so, the nurses absence did not impact the validity of the Reevaluation.

19. WAC 392-172A-03020 requires that the District gather a group of "qualified individuals." There is no specific requirement that a reevaluation team include a nurse or other medical or health professional. Regardless, the Reevaluation Team included a number of qualified individuals, including the school nurse Ms. Rychtarik.

20. Nevertheless, WAC 392-172A-03020 requires a reevaluation team to consider the information provided by the parent and WAC 392-172A-03025 requires the reevaluation team review of medical / physical data in order to discern whether a student suffers from a medical or physical condition that adversely effects the student's educational performance. It follows, then, that when the parent submits medical / physical information, the information should be reviewed

by the school nurse and the Parent should have the opportunity to discuss the information with the reevaluation team as part of the reevaluation process.

21. The District admits that the school nurse was not present at the January 8, 2019 Reevaluation Team meeting. However the nurses' absence cannot be said to render the Reevaluation inappropriate because 1) the Reevaluation Team considered and discussed all the medical information provided by the Parent, and 2) there is no evidence the Student suffers from a medical or physical condition that impacts the Student's ability to learn in a general education environment.

22. The Reevaluation Report and the testimony of Dr. Kurbegovic establish that at the January 8, 2019, meeting the Reevaluation team reviewed, discussed and considered the historical and current medical / physical information provided by the Parent. Additionally, Dr. Kurbegovic reviewed the medical / physical information with the school nurse Ms. Rychtarik prior to the January 8, 2019 meeting, and the school nurse did not identify any medical or physical condition that impacted the Student's ability to learn in a general education environment. The Reevaluation Report contains the school nurse's summary of the medical / physical data gathered. Notably, Ms. Watson and Ms. Christensen both credibly testified that the Student's medical needs are addressed by a health plan that includes making water available, unrestricted access to a restroom, and sound filtering headphones.

23. Moreover, the Parent took advantage of an opportunity to have the Student's private medical professionals review the Reevaluation Report between January 8, 2019 and January 14, 2019. The Student's medical professionals did not dispute the Reevaluation results or recommend any specially designed instruction that would benefit the Student.

24. While it is helpful for a medical professional or school nurse to be present at a reevaluation meeting for the benefit of the reevaluation team, the facts of this case show that the absence of the school nurse at the January 8, 2019 Reevaluation meeting did not effect the validity of the reevaluation or the eligibility determination.

25. Notably, the District followed all the procedures of WAC 392-172A-03000 *et seq.*, and used all available information from variety of sources when interpreting the reevaluation data to determine whether the Student was eligible for special education. It must be concluded that the Reevaluation is appropriate.

### ***Other Procedural Challenges***

26. The Parent also asserts that 1) the District did not inform her of her right to an IEE at public expense, 2) that the District sent her the January 14, 2019 PWN by an inappropriate method, and 3) that the Reevaluation is inappropriate because she did not assent to it when she signed the Reevaluation Report.

27. The Parent claims that the District never informed her of her right to an IEE at public expense. Certainly WAC 392-172A-05005 provides that "each school district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation by be obtained and the agency criteria applicable for independent educational evaluations." However, there no requirement that the District inform a



parent of the right to an IEE, only that the District must provide a copy of the procedural safeguards notice one time per year or upon request of the parent. WAC 392-172A-05015. Regardless, Exhibit D-3, p.16 and P-7, p.1, show that the Parent knew she could request an IEE and that she made the request with in six days of the January 8, 2019, Reevaluation Meeting. Additionally, the District provided to the Parent all requested information and issued the PWN on January 14, 2019, as required by WAC 392-172A-05010.

28. The Parent also asserts that the District placed the January 14, 2019, PWN in the Student's backpack and that communicating the eligibility determination with her in that fashion was not appropriate. The Parent does not identify any statute or rule that prohibits the District from issuing a prior written notice in this fashion and the Parent admitted she received the PWN on January 14, 2019.

29. Finally, the Parent asserts that even though she signed the Reevaluation Report, she did not assent to its validity and wanted time to discuss the results with the Student's health care providers. Again, there is no provision that renders a reevaluation inappropriate because a Parent does not agree with the results or the ultimate eligibility determination. Additionally, there is no statute or rule that requires the District to wait for a parent to obtain a health care provider's second opinion before issuing a prior written notice or making an eligibility determination. Regardless, in this case the District provided the Parent with that opportunity after the January 8, 2019 meeting and only issued the PWN when the Parent made a request for an IEE on January 14, 2019.

30. The Parent has not identified any procedural requirement that the District failed to follow. Therefore, the Parent has not shown that the Reevaluation was inappropriate.

#### ***Validity and Appropriateness of the Assessments Performed***

31. The District argues that the assessments performed in the Reevaluation of the Student are sufficiently comprehensive to identify the Student's special education and related service needs, and therefore the Reevaluation is appropriate. The Parent disagrees, arguing that the results of the assessments that were performed are inconsistent with the Parent's observations and information from the Student's medical providers.

32. Since October 2017, the District only identified social emotional / behavioral, communication, and occupational therapy (sensory function performance) as suspected areas of disability. During the Reevaluation the District performed speech and language and occupational therapy screenings that ultimately showed that the Student performs at an age appropriate level. To assess the Student's social emotional / behavioral concerns, Dr. Kurbegovic administered the BASC-3 assessment in accordance with the producer's instructions and in the manner for which the assessment is intended. Dr. Kurbegovic credibly testified that she administered the BASC-3 in a non-discriminatory manner and in the Student's native language. The Parent and the Student's teachers participated in the BASC-3 rating scale and Dr. Kurbegovic considered the information as part of the BASC-3 assessment.

33. The record reflects that the Reevaluation Team used a variety of assessment tools and strategies, including observation, meeting with the Parent, reviewing medical / physical and other health information, discussing TS Gold data, and performing the BASC-3 assessment, to gather relevant functional, developmental and academic information about the Student in the areas of

suspected disability. Based on the carefully documented and considered information in the record, it must be concluded that the District met its burden and has shown that the Reevaluation at issue is sufficiently comprehensive to identify all of the Student's special education and related services needs as required by WAC 392-172A-03020.

34. Additionally, the record reflects that on January 8, 2019, the Reevaluation Team met and reviewed and carefully considered the existing evaluation data, medical / physical information, assessment results, and the Parent's concerns, as required by WAC 392-172A-03025. Finally, consistent with the information presented, assessment results, and Reevaluation Team opinions, the Reevaluation Team appropriately made its determination that the Student was not eligible for special education services as required by WAC 392-172A-03040(1)(a).

35. The Parent argues that the Student should have been assessed in the area of cognitive function, communication abilities, and occupational therapy (sensory function). As discussed above, the Student was assessed in the area of communication and occupational therapy (sensory function). Therefore the record shows that the Reevaluation appropriately addressed the Parent's identified areas of concern in regards to communication and occupational therapy.

36. Regarding cognitive function, it is notably that the District evaluated the Student in the area of cognitive function in October 2017 and determined that the Student did not qualify for special education services in this area. During the Reevaluation at issue here, the Parent and other Reevaluation Team members did not identify the Student's cognitive function as an area of concern. The Parent did not provide any medical / physical information from the Student's health care providers that identified cognitive function as an area of concern that impacted the Student's ability to benefit from a general education setting. The Reevaluation, then, appropriately did not include cognitive function assessments because cognitive function.

37. The Parent also believes that the BASC-3 is not a valid and reliable assessment of the Student's social emotional / behavioral performance. The Parent, however, does not have training and expertise in the area of special education and therefore her opinion amounts to a reflection of her disagreement with the Reevaluation Team's conclusions and the results of the BASC-assessment. When compared to Dr. Kurbegovic's testimony based on her experience and education, the Parent's opinion is given lesser weight.

38. The Parent submitted documentary evidence that the Student's physician, Dr. Tompkins, administered the Pediatric Evaluation of Disability Inventory (PEDI) test nearly a year prior, and the PEDI results are inconsistent with the BASC-3 assessment and the occupational therapy screening results. Notably, the Parent submitted Dr. Tompkins chart notes to the Reevaluation Team and the information was considered and discussed at the January 8, 2019 Reevaluation meeting. Dr. Tompkins's chart notes about the March 9, 2018 PEDI test show that Student suffered from "significant sensory issues," but did not identify the specific sensory issues or the impact on the Student's ability to learn. In his chart notes from December 18, 2018, Dr. Tompkins stated that he believed that the Student continued to suffer from sensory and anxiety issues that impacted the Student's ability to learn. However, the chart notes do not reflect how Dr. Tompkins assessed the Student, how the Student's sensory and anxiety function impacts her ability to learn, or recommend any specific educational services.



39. It must be noted that Dr. Tompkins's chart notes are hearsay evidence that, while admitted, cannot support a finding of fact because he did not appear and testify under oath subject to cross-examination. Also, importantly, the Parent also consulted with Dr. Tompkins after the Reevaluation meeting, but she offered no evidence that Dr. Tompkins disagreed with the Reevaluation results. As a result, it cannot be concluded that the Reevaluation was inappropriate simply because the results of the BASC-3 assessment and occupational therapy screenings are inconsistent with Dr. Tompkins's chart notes.

40. On balance then, it must be concluded that the District has shown by a preponderance of the evidence that it met the requirements of WAC 392-172A-03020 and 03025 and that the January 8, 2019, Reevaluation was appropriate. The Parent is not entitled to an independent educational evaluation at public expense.

41. All arguments made by the parties have been considered. Arguments not specifically addressed herein have been considered, but are found not to be persuasive or not to substantially affect a party's rights.

### ORDER

The Tacoma School District's January 8, 2019, Reevaluation of the Student is appropriate. The Parent, therefore, is not entitled to an independent educational evaluation at public expense.

Signed on June 26, 2019.



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COURTNEY E. BEEBE  
Administrative Law Judge  
Office of Administrative Hearings

### Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.



CERTIFICATE OF SERVICE

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein. *lan*

Parent



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Elementary, Director, Student Services  
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cc: Administrative Resource Services, OSPI

## Addendum

### **392-172A-03020 Evaluation procedures.**

(1) The school district must provide prior written notice to the parents of a student, in accordance with WAC 392-172A-05010, that describes any evaluation procedures the district proposes to conduct.

(2) In conducting the evaluation, the group of qualified professionals selected by the school district must:

(a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

(i) Whether the student is eligible for special education as defined in WAC 392-172A-01175; and

(ii) 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, or for a preschool child, to participate in appropriate activities;

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education and for determining an appropriate educational program for the student; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Each school district must ensure that:

(a) Assessments and other evaluation materials used to assess a student:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are 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 so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education. Use of professional judgment shall be documented in the evaluation report;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(d) If necessary as part of a complete assessment, the school district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's educational performance.

(e) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(f) Assessments of students eligible for special education who transfer from one school district to another school district in the same school year are coordinated with those students' prior and

subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(g) In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

(h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

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### **392-172A-03025 Review of existing data for evaluations and reevaluations.**

As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must:

(1) Review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based, local, or state assessments, and classroom-based observations; and

(c) Observations by teachers and related services providers.

(2)(a) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

(i) Whether the student is eligible for special education services, and what special education and related services the student needs; or

(ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum; and

(b) The present levels of academic achievement and related developmental needs of the student.

(3) The group described in this section may conduct its review without a meeting.

(4) The school district must administer such assessments and other evaluation measures as may be needed to produce the data identified in subsection (2) of this section.

(5)(a) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs, the school district must notify the student's parents of:

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the student continues to be a student eligible for special education, and to determine the student's educational needs.

(b) The school district is not required to conduct the assessment described in this subsection (5) unless requested to do so by the student's parents.

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### **392-172A-03030 Evaluations before change in eligibility.**

(1) Except as provided in subsection (2) of this section, school districts must evaluate a student eligible for special education in accordance with WAC [392-172A-03020](#) through [392-172A-03080](#) before determining that the student is no longer eligible for special education services.

(2) A reevaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under WAC [392-172A-02000](#) (2)(c).

(3) For a student whose eligibility terminates under circumstances described in subsection (2) of this section, a public agency must provide the student with a summary of the student's



academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

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**392-172A-03035 Evaluation report.**

(1) The evaluation report shall be sufficient in scope to develop an IEP, and at a minimum, must include:

(a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;

(b) A discussion of the assessments and review of data that supports the conclusion regarding eligibility including additional information required under WAC 392-172A-03080 for students with specific learning disabilities;

(c) How the student's disability affects the student's involvement and progress in the general education curriculum or for preschool children, in appropriate activities;

(d) The recommended special education and related services needed by the student;

(e) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;

(f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group must include a separate statement representing his or her conclusions.

(2) Individuals contributing to the report must document the results of their individual assessments or observations.

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**392-172A-03040 Determination of eligibility.**

(1) Upon completion of the administration of assessments and other evaluation measures:

(a) A group of qualified professionals and the parent of the student determine whether the student is eligible for special education and the educational needs of the student; and

(b) The school district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(2)(a) A student must not be determined to be eligible for special education services if the determinant factor is:

(i) Lack of appropriate instruction in reading, based upon the state's grade level standards;

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(b) If the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.

(3) In interpreting evaluation data for the purpose of determining eligibility for special education services, each school district must:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

(b) Ensure that information obtained from all of these sources is documented and carefully considered.

(4) If a determination is made that a student is eligible for special education, an IEP must be developed for the student in accordance with WAC 392-172A-03090 through 392-172A-03135.

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**392-172A-05005 Independent educational evaluation.**

(1)(a) Parents of a student eligible for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's evaluation subject to subsections (2) through (7) of this section.

(b) Each school district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and

the agency criteria applicable for independent educational evaluations as set forth in subsection (7) of this section.

(c) For the purposes of this section:

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

(2)(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district.

(b) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the school district must either:

(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense without unnecessary delay, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(3) If the school district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the school district may ask for the parent's reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.

(5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in (a) of this subsection, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

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