



STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
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MAILED
APR 19 2019
SEATTLE-OAH

April 19, 2019

Parent
[REDACTED]

Sheri Mortimer, Special Education Director
[REDACTED] School District

Gregory L. Stevens, Attorney at Law
Stevens Clay PS
421 W. Riverside, Suite 1575
Spokane, WA 99201-0402

In re: [REDACTED] School District
OSPI Cause No. 2019-SE-0028
OAH Docket No. 02-2019-OSPI-00701

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,

COURTNEY E. BEEBE
Administrative Law Judge

cc: Administrative Resource Services, OSPI
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator

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

MAILED
APR 19 2019
SEATTLE-OAH

IN THE MATTER OF:

OSPI CAUSE NO. 2019-SE-0028

PATEROS SCHOOL DISTRICT

OAH DOCKET NO. 02-2019-OSPI-00701

**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 March 28, 2019 at 9:30 a.m. The Parent of the Student whose education is at issue¹ appeared *pro se*. The [REDACTED] School District ("District") was represented by Gregory Stevens, attorney at law. The following is hereby entered:

STATEMENT OF THE CASE

The District filed a due process hearing request on February 12, 2019. The first prehearing conference was held February 26, 2019 at 9:30 a.m. The District appeared. The Parent did not appear after providing notice and attempts to contact her. The prehearing conference was continued to March 6, 2019 at 10:00 a.m. The District appeared. The Parent did not appear after providing notice and attempts to contact her. A Prehearing Order was issued on March 7, 2019, providing notice for a telephonic due process hearing on March 28, 2019 at 9:30 a.m.

At the first prehearing conference the due date for the written decision was continued to thirty (30) days post close of record, pursuant to a motion by the District. See Order of Continuance dated February 27, 2019 and Prehearing Order of March 7, 2019. The hearing record closed on March 28, 2019. The due date for the written decision is April 27, 2019.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Parent Exhibits: No exhibits submitted.

District Exhibits: D-1 and D-2.

The following witnesses testified under oath. They are listed in order of their appearance: Holly Weston, District School Psychologist; the Parent; and Sheri Mortimer, District Special Education Director. District Principal Greg Goodnight attended, but did not testify as a witness.

¹ 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., "Parents," "Mother," "Father," "Student," or "Sibling."

ISSUES

Whether the District's January 23, 2019, evaluation 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 7, 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 ten (10) year-old male who enrolled in fourth grade at ██████ Elementary School in the District on November 20, 2018. (D-2, p.1.) The Student previously attended a ██████ and intermittently attended two public schools in ██████ (Testimony of Holly Weston²; D-2, p.1.) The Parent primarily homeschooled the Student prior to enrollment at the District. (Testimony of Weston; D-2, p.1.) Upon enrollment, the Parent informed the District that the Student needed special services due to diagnosed disabilities. (D-2, p.1.)

2. The Parent consented to an evaluation ("Evaluation") of the Student on November 20, 2018, and the District provided the Parent with prior written notice of the Evaluation and the procedures therefore. (Testimony of Weston; D-1, p.1.) The evaluation team ("Evaluation Team") consisted of Holly Weston, school psychologist and Sheri Mortimer, special education teacher, as well as a school counselor, elementary school principal, general education teacher, and the Parent. (Id.; D-2, p.5.) The District met with the Parent for an hour prior to administering any tests, and then a second time after the first testing session. (Testimony of Weston.) The District conducted the Evaluation within thirty-five (35) days of parental consent by completing it on January 23, 2019. (Testimony of Weston; D-2, pp.2-10.)

3. The Evaluation Team "relied heavily on the information provided by [the Parent]." (D-2, p.1.) According to the Parent, the Student received an "Independent Education Plan" when he attended public kindergarten in ██████ (D-1, p.1.) The Parent provided the District with a private evaluation report from the Seattle Children's Hospital Autism Center completed in 2014 when the Student was five years old.³ (Testimony of Weston; D-2, p.1.) The 2014 Seattle Children's Hospital Autism Center evaluation report contained a diagnosis of Autism Spectrum Disorder and Unspecified Anxiety Disorder. (Id.) Specifically, the report stated: "[the Student's] diagnosis and its impact on his educational performance indicate that special education eligibility as a student with co-morbid mental health and Autism Spectrum Disorder is appropriate." (Id.) The Parent also provided the District with information about resources she used when homeschooling. (D-2, p.1.) The Parent also reported that the Student was diagnosed with Post-Traumatic Stress

² This final order is prepared without the benefit of a written transcript of the testimony. Accordingly, when citing to the testimony of a witness the first such citation will be "Testimony of (first, last name)." All subsequent citations to the same witness's testimony will be "Testimony of (last name)."

³ The 2014 evaluation report from Seattle Children's Hospital is not part of the record.

Disorder (PTSD) and Reactive Attachment Disorder (RAD). (D-2, p.1.) The Evaluation Team considered the information from the 2014 Seattle Children's Hospital Autism Center evaluation report and the other information provided by the Parent when conducting the Evaluation. (Testimony of Weston; D-2, p.1.)

4. The District received limited records from the Student's previously attended schools. (Testimony of Weston; D-2, p.1.) The Student's records contained outdated information and did not include a previous evaluation or IEP. (*Id.*)

5. Ms. Weston⁴ administered three assessments to evaluate the Student in the areas of suspected disability: Pre-Academic / Academic Achievement, Social / Emotional Behavior, and Intellectual Development. (Testimony of Weston; D-2, pp.1-10.)

6. Ms. Weston administered the Kaufman Assessment Battery for Children 2nd Edition, Normative Update (KABC-II, NU) to measure the Student's cognitive ability. (Testimony of Weston; D-2, pp.2-3.) Ms. Weston is trained to administer and interpret the results of the KABC-II, NU and administered the assessment in accordance with the producer's instructions and for the purpose for which the measures are valid and reliable. (*Id.*) The test was administered in the Student's native language and in a non-discriminatory manner. (*Id.*) The Student scored in the "Above Average to Upper Extreme" range of intelligence with an intelligence quotient score of 130. (Testimony of Weston; D-2, pp.2-3.) Ms. Weston concluded that the Student "would be able to achieve at the above average range or near the 98th percentile on areas of academic achievement." (*Id.*)

7. Ms. Weston also administered the Kaufman Test of Educational Achievement, Third Edition (KTEA-3). (Testimony of Weston; D-2, p.4.) Ms. Weston is trained to administer and interpret the results of the KTEA-3 and administered the assessment in accordance with the producer's instructions and for the purpose for which the measures are valid and reliable. (*Id.*) The test was administered in the Student's native language and in a non-discriminatory manner. (*Id.*) The Student scored average in the areas of Letter Word Recognition (Grade Equity 6.5), Math Concepts & Applications (Grade Equity 3.5), and Written Expression (Grade Equity 2.7). (Testimony of Weston; D-2, p.4.) The Student scored high in the area of Reading Comprehension (Grade Equity 9.0). (*Id.*) The Student scored below average in the area of Math Computation, placing him in the 2.8 Grade Equity. (*Id.*) Ms. Weston concluded that the scores:

*"meet the severe discrepancy criterion in the Math Concepts and Applications, Math Computation, and Written Expression. Math Computation is within the below average range and significantly below grade level. Although his Written Expression and Math Concepts & Applications scores are actually within the average range, his skills are well below his current grade placement of 4th grade and are significantly delayed in regard to the severe discrepancy criterion." (*Id.*)*

⁴ Ms. Weston earned a bachelor's degree in applied developmental education with a minor in special education from Eastern Washington University. (Testimony of Weston.) Ms. Weston also earned a Master's of Science in School Psychology from Eastern Washington University. (Testimony of Weston.) Ms. Weston has been State of Washington certified school psychologist since 2005. (Testimony of Weston.) Ms. Weston has conducted hundreds of special education evaluations over a fourteen-year period. (Testimony of Weston.)

8. Based on the information provided by the Parent as well as the severe discrepancy criterion, the District identified that the Student's mood regulation and behavior may adversely affect his educational performance and evaluated the Student for an emotional / behavioral disability. (Testimony of Weston; D-2, p.5.)

9. Ms. Weston administered the Behavior Assessment Scale for Children, Third Edition (BASC-3) to identify the Student's behavioral and emotional strengths and weaknesses. (Testimony of Weston; D-2, pp.5-7.) Ms. Weston is trained to administer and interpret the results of the BASC-3 and administered the assessment in accordance with the instructions and for the purpose for which the measures are valid and reliable. (Testimony of Weston.) The test was administered in the Student's native language and in a non-discriminatory manner. (*Id.*) Ms. Weston also interviewed the Parent and the Student's teachers at the District, and observed the Student in the general education classroom and during recess and lunch breaks. (Testimony of Weston.) The Parent completed the BASC-3 Parent Rating Scale. (Testimony of Weston; D-2, p.5.) Ms. Weston did not request the Student's previous teachers at the various schools the Student attended in [REDACTED] complete the Teacher Rating Scale portion of the BASC-3 because the Student's attendance at the previous schools was too brief to assist in producing a reliable result. (Testimony of Weston.) Instead, Ms. Weston relied on the information from the Parent because she was the Student's most recent educator. (*Id.*)

10. The results of the BASC-3 showed that the Student fell into the 99th percentile in the areas of Externalizing Problems, Internalizing Problems, and Behavioral Symptoms Index, which are demonstrations of "clinically significant" deficits. (Testimony of Weston; D-2, pp.5-6.) The Student's adaptive skills composite scale score of 30 revealed "clinically significant" deficits in adaptive skills, such as adapting to changing situations and performing daily tasks in a safe and efficient manner. (*Id.*) Ms. Weston concluded from the assessment that the Student suffered from an emotional / behavioral disability demonstrated by rule-breaking behavior, difficulty with mood regulation, aggression, difficulty transitioning, and hyperactivity. (*Id.*)

11. The District also conducted a Functional Behavior Assessment ("FBA") by observing the Student in the classroom, reviewing the Parent's information about the Student's behavior, and reviewing the 2014 Seattle Children's Hospital Autism Center evaluation report. (Testimony of Weston; D-2, pp.11-12.) Ms. Weston, School Psychologist, Crystal Ewing, General Education Teacher, Sheri Mortimer, Special Education Teacher, Principal Michael Hull, and the Parent met on January 23, 2019 to review the results ("FBA Team"). (*Id.*)

12. The FBA identified that the Student was bright and gifted with positive interactions with his peers. (*Id.*) However, the team also noted that on one occasion the Student was "non-compliant" by attempting to leave school grounds and running from staff. (*Id.*; Testimony of Sheri Mortimer.) The team also identified that the Student engaged in two instances of "extreme non-compliance." (*Id.*) During the first instance, the Student left a classroom, assaulted staff by kicking, hitting, spitting, and attempting to bite during a period of thirty (30) minutes. (*Id.*) The second instance consisted of the Student refusing to follow directions, throwing materials in the classroom, and assaulting staff and the Parent. (*Id.*)

13. The FBA Team identified that the Student's non-compliant behavior was preceded by a teacher's corrections on behavior with peers present and transitions to non-preferred activities in non-preferred settings. (*Id.*; Testimony of Mortimer.)

14. The FBA Team concluded that “when [the Student] is told to transition to a non-preferred activity, he will engage in non-compliant refusal behavior that escalates into extreme non-compliance and unsafe behavior, such as assault on staff, in order to escape the non-preferred tasks or correction and gain power/control/attention of adults.” (D-2, p.12.) The FBA Team recommended the following behavioral management techniques: “provide warning of transitions; pre-teach non-verbal cues; teach appropriate response to staff; provide clear choices and consequences; use of restraint for assault on staff or destruction of property; time out room; and token economy for positive behavior to earn access to preferred activities.” (Testimony of Weston; D-2, pp.11-12.)

15. The District's assessments as administered were sufficiently comprehensive to identify all the Student's suspected disabilities and related-services needs because the assessments were relevant and relied heavily on the information provided by the Parent. (Testimony of Weston.) The District did not request that the Parent obtain additional information or an IEE. (Testimony of Mortimer.)

16. The Evaluation Team made an eligibility determination that the Student was eligible for specially designed instruction in the areas of written expression and math. (Testimony of Weston; D-2, p.8.) The Evaluation Team also made a determination that the Student had an emotional / behavior disability that “impacts his behavior management in the educational setting” and concluded that the Student was eligible for specially designed instruction in the area of behavior management. (Testimony of Weston; D-2, p.8.)

17. After meeting on January 23, 2019, and reviewing the Evaluation and FBA, the Evaluation Team and FBA Team members, including the Parent, signed the Evaluation and FBA. (Testimony of Weston; Testimony of Mortimer; D-2, pp.10 and 12.) The District sent the Parent a prior written notice⁵ on January 23, 2019 providing notice of the eligibility determination. (Testimony of Weston.)

18. After the completion of the Evaluation, the Evaluation Team sought to complete a BASC-3 Teacher Rating Scale with the Student's current teachers at the District because the Student had been enrolled at the District long enough that the Student's teachers may have information that would assist in further developing the Student's Individualized Education Program. (Testimony of Weston.) The Parent declined to consent to allowing a BASC-3 Teacher Rating Scale. (*Id.*)

19. The Parent agrees with the District's eligibility determination and that the Student suffers from an emotional / behavioral disability that impacts his ability to learn. (Testimony of Parent.)

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

⁵ The prior written notice is not part of the record. However, the parties do not dispute that the District issued and the Parent received the District's prior written notice.

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.

3. *Rowley, supra*, 458 U.S. at 206-207 (footnotes omitted). For a school district to provide 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.

4. 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, ___ U.S. ___, 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., ___ F.3d ___, 2017 U.S. App. LEXIS 9359, at 22 (9th Cir. 2017).

5. 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 under the IDEA Regulations⁶

6. If the parent of a student eligible for special education disagrees with a school district's evaluation, the parent has the right to obtain an IEE, which is an evaluation conducted by a qualified examiner not employed by the school district. 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. 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. WAC 392-172A-05005; see *also* 34 CFR §300.502.

7. 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 . . ." The group must not 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. WAC 392-172A-03020; see *also* 34 CFR §300.304.

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. Assessments must be administered by "trained and knowledgeable personnel" and "in accordance with any instructions provided by the producer of the assessments." 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. WAC 392-172A-03025 concerns the review of existing data for evaluations. It provides that evaluations must review existing evaluation data on the student and identify what additional data is needed to determine whether the student meets eligibility criteria. *Id.*; see *also* 34 CFR §300.305. Another regulation, WAC 392-172A-03040, provides that upon completing the assessments, a group of qualified professions and the parent must determine whether the student is eligible for special education. In interpreting evaluation data to determine eligibility, the district must draw upon information from a variety of sources, including parent and teacher input. A student must not be found eligible if the determinant factor is a lack of appropriate instruction in reading or math, or limited English proficiency. *Id.*; see *also* 34 CFR §300.306.

10. WAC 392-172A-03035 concerns evaluation reports. It requires that they 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

⁶ 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.

recommended special education and related services the student needs. *Id.*; see also 34 CFR §300.304-.306.

11. 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).

12. As discussed above, the District has shown that it drew on a variety of sources (assessments, observations, prior evaluations, and the Parent's input) as well as the Student's behavior, when interpreting the evaluation data. Additionally, the District carefully documented the information and sources in the Evaluation report. The District, then, complied with the requirements of WAC 392-172A-03040.

13. Districts must identify a student's specific learning disability and “may include the use of: (1) a severe discrepancy between intellectual ability and achievement; or (2) a process based on the student's response to scientific, research-based intervention; or (3) A combination of both within a school district,” WAC 392-172A-03045.

14. The student's parent and a group of qualified professionals must determine whether the student is eligible for special education services in a specific learning disability category. WAC 392-172A-03050. This group must include a general education classroom teacher and “at least one individual qualified to conduct individual diagnostic examinations of students, such as school psychologist, speech language pathologist, or remedial reading teacher.” *Id.* This group

. . . may determine that a student has a specific learning disability if:

(1) the student does not achieve adequately for the student's age or meet the state's grade level standards when provided with learning experiences and instruction appropriate for the student's age in one or more of the following areas: . . . (c) written expression; . . . (g) mathematics calculation; (h) mathematics problem solving.

(2)(a) The student does not make sufficient progress to meet age or state grade level standards in one or more of the areas identified in subsection (1) of this section when . . . the group finds that the student has a severe discrepancy

between achievement and intellectual ability in [mathematics calculation or mathematics problem solving.

WAC 392-172A-03055.

15. A school district that uses a severe discrepancy model must use the OSPI's published discrepancy tables "for the purpose of determining a severe discrepancy between intellectual ability and academic achievement." WAC 392-172A-03065. "Where the evaluation results do not appear to accurately represent the student's intellectual ability or where the discrepancy between the student's intellectual ability and academic achievement does not appear to be accurate upon application of the discrepancy tables, the evaluation group . . . may apply professional judgment in order to determine the presence of a specific learning disability." WAC 392-172A-03070.

16. District personnel charged with the task of evaluating a student "must ensure that a student who is suspected of having a specific learning disability is observed in the student's learning environment, including a general education classroom setting, to document the student's academic performance and behavior." WAC 392-172A-03075(1). A member of the evaluation team must:

- (a) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or
- (b) Have at least one member of the evaluation group conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and parental consent is obtained.

WAC 392-172A-03075(2).

17. When a student is suspected of having a specific learning disability, the documentation of the determination must contain a statement that the student has a specific disability, the basis for the determination, the relevant behaviors, and any educationally relevant medical findings. WAC 392-172A-03080(1)(a) through (d). Additionally the documentation must contain a statement regarding the student's eligibility through a severe discrepancy model and a discussion of the student's pattern of strengths and weaknesses, as well as any determination regarding emotional disturbance. *Id.* at (e)(i) and (ii).

18. A student is eligible for special education if the Student has been evaluated and determined to need special education because of having an "emotional / behavioral disability" or autism. WAC 392-172A-01035(1)(a).

19. 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.*

20. Autism “means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely impacts a student’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities, stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.” WAC 392-172A-01035(2)(a)(i). If a student’s educational performance is primarily adversely impacted by a emotional / behavioral disability, then autism does not apply. WAC 392-172A-01035(2)(a)(ii).

Analysis

21. The issue presented in this case is whether the District’s Evaluation of the Student is appropriate. The Parent has asserted generally that the District’s Evaluation of the Student was not appropriate, but Parent agrees that the Student is eligible for special education services and suffers from an emotional / behavioral disability. Regardless, the Parent has requested an IEE at public expense and District has the burden to show that the Evaluation is appropriate.

22. The District has shown that the District gathered a group of qualified professionals for the evaluation of the Student: a school psychologist, general education teacher, special education teacher, principal, and a school counselor. The District used three assessment tools and conducted an FBA. The District’s evidence and testimony establishes that the Evaluation Team used a number of strategies, including observation, meeting with the Parent, and reviewing the 2014 Seattle Children’s Hospital evaluation, to gather relevant functional, developmental and academic information about the Student. The assessments administered by Ms. Weston were technically sound and properly used to assess the contribution of cognitive, behavioral, physical and developmental factors.

23. Ms. Weston, based upon her experience and training as a school psychologist, credibly testified that she administered the assessments in accordance with the producer’s instructions and in the manner for which the assessments are intended. Ms. Weston credibly testified that she administered the three tests in a non-discriminatory manner and in the Student’s native language. The evidence in the record also shows that the assessments were sufficiently comprehensive to identify all of the Student’s special education and related services needs and that the Student was assessed in all areas related to the Student’s suspected disabilities.

24. Notably, the District followed the procedures of WAC 392-172A-03000 *et seq.*, in regards to severe discrepancy criteria when making its eligibility determination. Additionally, the District used available information from the variety of sources in interpreting the Evaluation data to determine whether the Student was eligible for special education.

25. The Parent implied that Ms. Weston could have used the Woodcock-Johnson assessment instead of the KABC-II, NU, to measure cognitive ability. However, the Parent did not offer any evidence, expert or otherwise, that the KABC-II assessment was not appropriate.

26. The Parent alleged that the District did not review data from the Student's prior teachers in [REDACTED] and therefore did not meet its obligations under WAC 392-172A-03040. The Parent did not provide this data as part of the record and could not describe how the data would have impacted the District's eligibility determination. Ms. Weston credibly testified that any information from the Student's prior teachers would not have been helpful given the Student's brief school attendance. Certainly, WAC 392-172A-03040 does not establish an obligation to review incomplete, outdated, or unhelpful data when more recent, complete and helpful data is available. Notably, the Evaluation Team did review all the information provided by the Parent, who was the Student's most recent and longest acting primary teacher, regarding the Student's diagnoses and educational experience, including the 2014 Seattle Children's Hospital Autism Center evaluation.

27. Based on the record, it must be concluded that the District has shown by a preponderance of the evidence that it conducted an appropriate evaluation of the Student. The Parent, then, is not entitled to an independent educational evaluation at public expense.

28. 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 [REDACTED] School District's January 23, 2019, evaluation of the Student is appropriate. The Parent, therefore, is not entitled to an independent educational evaluation at public expense.

Signed on April 19, 2019.



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.



Parent



Sheri Mortimer, Special Education Director
School District



Gregory L. Stevens, Attorney at Law
Stevens Clay PS
421 W. Riverside, Suite 1575
Spokane, WA 99201-0402

cc: Administrative Resource Services, OSPI
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator

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.

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.

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.

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.

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.

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.
