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MAILED

DEC 17 2016

OAH - SEATTLE

December 17, 2016

Parents



Maureen Lyden, Director, Special Programs  
East Valley School District  
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Spokane Valley, WA 99216-3716

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In re: East Valley School District  
OSPI Cause No. 2016-SE-0032  
OAH Docket No. 03-2016-OSPI-00043

RECEIVED

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Superintendent of Public Instruction  
Administrative Resource Services

Dear Parties:

Enclosed please find the Findings of Fact, Conclusions of Law, and Order in the above-referenced matters. 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,

MATTHEW D. WACKER  
Administrative Law Judge

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

MAILED

DEC 17 2016

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION OAH - SEATTLE

IN THE MATTER OF:

EAST VALLEY SCHOOL DISTRICT

OSPI CAUSE NO. 2016-SE-0032

OAH DOCKET NO. 03-2016-OSPI-00043

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

A due process hearing in the above matter was held before Administrative Law Judge (ALJ) Matthew D. Wacker in Spokane Valley, Washington, on November 3, 2016. The Parents of the Student whose education is at issue<sup>1</sup> appeared and represented themselves without an attorney (*pro se*). The East Valley School District (hereafter the District) was represented by Gregory Stevens, attorney at law. Also present for the District was Maureen Lyden, District director of special programs. The following is hereby entered:

**STATEMENT OF THE CASE**

*District's Complaint*

The District filed a Due Process Hearing Request (hereafter the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on March 24, 2016. The Complaint was assigned Cause No. 2016-SE-0032, and forwarded to the Office of Administrative Hearings (OAH) for assignment of an ALJ. On March 25, 2016, the District's Complaint was assigned OAH Docket No. 03-2016-OSPI-00043, and ALJ Matthew D. Wacker was assigned as the presiding ALJ pursuant to a Scheduling Notice entered March 25, 2016. Multiple prehearing conferences were scheduled, some of which were held and others continued, pursuant to the orders of record in this matter. Ultimately, by Prehearing Order entered October 20, 2016, the due process hearing was set for November 3, 2016.

*Due Date for Decision and Order*

The due date for a written decision in the above matter was continued to thirty (30) calendar days after the close of the hearing record, pursuant to the joint motion of the Parties. See Order Continuing Prehearing Conference and Striking Due Process Hearing entered April 13, 2016. At the conclusion of the hearing, the District moved for additional time to provide the parties an opportunity to file written closing arguments by close of business day, November 17, 2016. The District's motion was granted. The record of the due process hearing closed effective November 17, 2016 with the filing of the parties' written closing arguments. Therefore,

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<sup>1</sup> In the interests of preserving the family's privacy, this decision does not name the parents or student. Instead, they are each identified as "Parents," "Mother," "Father," and/or "Student."

the due date for a written decision in the above matter is **DECEMBER 17, 2016**, or thirty calendar days from the close of record.

### **EVIDENCE RELIED UPON**

The following exhibits were admitted into evidence:

Parents Exhibits: [Parents' proposed exhibits P1 – P2 were *excluded* on the District's objection because they were not exchanged five business days prior to the due process hearing.]

District Exhibits: D1 – D13.

The following witnesses testified under oath. They are listed in order of their appearance:

Tristan Fitzgerald, District school psychologist,  
Andrea Siler, District speech language pathologist,  
Danelle McLachlan, District occupational therapist  
Paula Cavaness, District teacher,  
The Mother of the Student at issue,  
The Father of the Student at issue.

### **ISSUE AND REMEDY**

The issue for the due process hearing is whether the District's evaluation of the Student was appropriate, and if not, whether the Parents' requested remedy of an independent educational evaluation is appropriate.

See Prehearing Order entered October 20, 2016.

### **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.

#### *General Background*

1. The Student was enrolled in the West Valley School District (WVSD) for kindergarten during the 2014-2015 school year.
2. The Student was evaluated by the WVSD during March 2015 to determine if she was eligible to receive special education and related services under the Individuals with Disabilities

Education Act (IDEA). While all the details of the WVSD evaluation are not available,<sup>2</sup> it did determine the Student was eligible for special education and related services under the IDEA. Based on the WVSD evaluation, an individualized education program (IEP) was developed which provided the Student with 40 minutes per month of speech-language services as a related service to support development of her social skills. The IEP also provided for some amount of occupational therapy services for the Student. Exhibit D4p7, p10.<sup>3</sup>

3. The Student transferred to the East Valley School District (the District) for first grade during the 2015-2016 school year. Her first day in the District was November 10, 2015. Testimony of Mother. The District accepted WVSD's 2015 evaluation and implemented WVSD's IEP for the Student.

4. The Student was enrolled in the Washington Academy of Arts and Technology (WAAT). WAAT is a Parent Partnership Program offered by the District as an Alternative Learning Experience (ALE) program.<sup>4</sup> As a student enrolled in WAAT, the Student received all of her core academic instruction at home from the Parents using approved curricular materials. In addition to receiving her core academic instruction at home, the Student had access to and attended elective and enrichment courses at a District building. Elective and enrichment courses included music, art, physical education, dance, and remedial classes. Testimony of Mother; Testimony of Fitzgerald; Exhibit D4p5.

5. As part of the WAAT, the District assigned the Student a mentor teacher, Pamela Foster, a District general education teacher. It was Ms. Foster's responsibility to monitor whether the Student was making progress in the WAAT program, and to offer assistance to the Parents providing the Student's core instruction at home. Testimony of Fitzgerald. The Student has established a relationship with Ms. Foster such that she feels comfortable with Ms. Foster. Testimony of Mother. The Parents believe Ms. Foster is the only teacher at the District who knows the Student well. Testimony of Father.

#### *The District's Reevaluation of the Student*

6. In February 2016, the District requested consent from the Parents in order to conduct a reevaluation of the Student and clarify her educational needs and services. The District identified the following areas for reevaluation: a review of existing data; social; fine motor; general education; behavior; and communication. Exhibit D1p.1

7. On February 22, 2016, the Mother provided the Parents' consent for the reevaluation. The Mother also identified one additional area for reevaluation: adaptive. Exhibit D1p2.

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<sup>2</sup> The March 2015 WVSD evaluation of the Student was not offered by either party for this due process hearing.

<sup>3</sup> Citation to the exhibits is by exhibit number and page number. For example, citation to Exhibit D4p7 is a citation to the District's Exhibit D4 at page 7.

<sup>4</sup> See generally Washington Administrative Code (WAC) 392-121-182, Alternative learning experience requirements.

8. The District assigned Tristan Fitzgerald as the Student's reevaluation case manager. Testimony of Fitzgerald; Exhibit D4p1.

9. Mr. Fitzgerald is employed by the District as a school psychologist. Mr. Fitzgerald has a Master's Degree in Counselling/School Psychology from the University of Idaho. He is certificated as a school psychologist by Washington State, and has 11 years' experience as a school psychologist. Mr. Fitzgerald conducted some of the assessments for the Student's reevaluation, coordinated with other District staff to conduct the remaining assessments, and drafted the reevaluation report. Testimony of Fitzgerald.

10. Mr. Fitzgerald knew the Student was enrolled in the District's Parent Partnership Program, and had the opportunity to informally observe the Student while she was participating in her elective/enrichment courses for approximately 45 minutes. But his observation was not conducted specifically for the Student's reevaluation. Testimony of Fitzgerald.

11. Mr. Fitzgerald collected input from Ms. Foster and relevant academic information to evaluate the Student in the area of general education and adaptive behavior. The Student was rated as average to above average in terms of her attendance, punctuality, preparation with required materials, class participation, positive interactions with staff and performance on tests and quizzes. The Student was rated as low average to below average in her ability to focus and attend in class, work independently, complete assignments, and interact positively with peers. Ms. Foster noted the Student reads well, is eager to please, and appears happy when attending enrichment classes. Ms. Foster noted the Student tends to talk too much and at times about inappropriate topics, and may complete less homework than expected. Testimony of Fitzgerald; Exhibit D4p5.

12. The Student's Scholastic Reading Inventory (SRI) mid-year, first grade assessment score was 175. The average range for first graders is 100-299. The District's goal for the end of first grade is an SRI score of 190. Exhibit D4p5.

13. Ms. Foster rated the Student as average and at grade-level in all core academic areas. She was making adequate progress as expected for a first-grade student. The Student is able to read a second-grade-level text fluently. Exhibit D4p5.

14. It was noted that the Student benefits from accommodations for loud or noisy environments like the school cafeteria at lunch.

15. The Student was assessed in the areas of social/emotional and adaptive behavioral performance in the school setting using the Behavior Assessment System for Children, Second Edition (BASC-2). Ms. Foster completed the BASC-2 teacher rating scales. The Student had a clinically significant score in only one area; behaviors related to anxiety. She had elevated scores related to hyperactivity and depression. All other areas of assessed were in the average range and considered typical for the Student's age, including adaptive skills where she demonstrated average adaptability, social skills, leadership, study skills and functional communication. The assessment concluded that educational supports available to all students are available to accommodate any concerns for the Student related to anxiety and hyperactivity/inattention. Testimony of Fitzgerald; Exhibit D4p6.

16. The Student was assessed in the area of communication by Andrea Siler. Ms. Siler is employed by the District as a speech-language pathologist (SLP). Ms. Siler holds a Bachelor's Degree Communication Disorders. She is certificated as an SLP by Washington State. Exhibit D11. Ms. Siler has a Certificate of Clinical Competence (CCC) as an SLP. Exhibit D4p8.

17. As part of her assessment, Ms. Siler reviewed the Student's prior evaluation and IEP from WVSD, and the Student's school file with the District. Ms. Siler also administered two standardized assessment tools in accordance with the instructions and purposes designed by the producers of the assessment tools, conducted informal probes of the Student's language skills using a picture reading book, and assessed the Student's conversational skills. Ms. Siler did not contact any staff or counselors at WVSD, but this is not something she would ordinarily do as part of a reevaluation. Testimony of Siler; Exhibits D4p7, D11pp1-2.

18. On February 26, 2016, Ms. Siler administered the Listening Comprehension and Oral Expression Scales of the Oral and Written Language Scales, Second Edition (OWLS-2) to the Student. This was the first time Ms. Siler had met the Student.

19. Results of the OWLS-2 reflected the Student's oral language skills are within normal limits. The Student's lowest standard score on the OWLS-2 subtests was at the 32<sup>nd</sup> percentile. To qualify for speech-language services, students typically have scores at or below the 7<sup>th</sup> percentile. In conjunction with the results of the OWLS-2, Ms. Siler's informal probes and conversation with the Student support a conclusion that the Student's oral language skills are within normal limits. Exhibits D4p7, D11.

20. On March 4, 2016, Ms. Siler administered the Goldman-Fristoe Test of Articulation 2 (GFTA-2) to the Student. The Student earned a standard score of 95, which correlates to the 17<sup>th</sup> percentile. To be considered eligible for speech therapy services, students would be expected to score at or below the 7<sup>th</sup> percentile. Based on this assessment, Ms. Siler opined that speech articulation could possibly be an area to revisit in the future to confirm that the Student continued to develop correct speech sounds within normal limits for her age. Ms. Siler concluded that the Student's speech was clear and intelligible. Testimony of Siler; Exhibit D4p7.

21. Based upon her assessment of the Student, Ms. Siler's concluded the Student did not have a speech disorder and did not require specially designed instruction (SDI) or any related service in the form of speech-language therapy. Testimony of Siler; Exhibit D4p7.

22. The Student was assessed in the area of fine motor control by Danelle McLachlan. Ms. McLachlan is employed by the District as an occupational therapist (OT). Ms. McLachlan holds a Bachelor's Degree in Biology and a Master's Degree in Occupational Therapy from Eastern Washington University. She is a registered and licensed occupational therapist (OTR/L). Testimony of McLachlan; Exhibit D12p2.

23. As part of her assessment of the Student, Ms. McLachlan reviewed the Student's file, clinically observed her, consulted with school staff, including teachers, and administered a standardized assessment tool – the Wide Range Assessment of Visual Motor Abilities (VMA). Exhibits D4p10, D12. Ms. McLachlan selected the VMA because it was the same tool used by

WVSD one year earlier to assess the Student. This allowed Ms. McLachlan to compare her evaluation of the Student with the earlier evaluation.<sup>5</sup>

24. The VMA is an individually administered test that uses goal directed activities to measure a wide array of motor skills. The Student's score placed her at the 86<sup>th</sup> percentile, demonstrating above-average motor skills for her age and gender. Based upon this score, the Student did not qualify for school-based occupational therapy services. No further testing was indicated at that time. It took approximately 30 minutes for Ms. McLachlan to administer the VMI to the Student. This was sufficient time for Ms. McLachlan to administer the test and obtain a valid result. Testimony of McLachlan.

25. Ms. McLachlan administered and used the VMA in accordance with the instructions of the producers of the assessment tool. Ms. McLachlan opined that her assessment of the Student was a valid and reliable assessment of the Student's abilities and functions in the area of fine motor skills. Exhibits D4p10, D12p2.

26. The Parents were provided written notice of a meeting to consider the results of the District's reevaluation of the Student and determine whether the Student was eligible for special education and related services. The meeting was set for March 4, 2016, at 1:15 p.m. Exhibit D2.

27. On March 4, 2016, the Mother of the Student attended the reevaluation meeting as one member of the reevaluation team. Also present were Mr. Fitzgerald, Ms. Siler, Ms. Foster, a special education teacher, and Paula Cavaness. Ms. Cavaness is a certificated teacher with the District who attended the meeting as the District's administrative designee. An occupational therapist was excused from attending the meeting with the Mother's agreement. Exhibit D4p4; Testimony of Fitzgerald.

28. The Mother reported to the team that the Student struggled at home with worries about what happened at school, the Student did not understand things at school, and would not ask for help at school. One of the teachers at the meeting, whose identity is not clear, reported that the Student would not ask for help at school but presented as happy with no concerns noted. The team concluded that although there was little to no impact during the school day, the Student's frustration may build up over the course of the school day and be "let out at home." The Mother recalls there was a lot of discussion at the meeting about the Student's social/emotional behavior. Testimony of Mother; Exhibit D4p1.

29. At the meeting the Mother also shared concerns that the Student had a short attention span, was "hyperactive," has difficulty adapting at home, was inflexible in her thinking, and had difficulty relating to others. Testimony of Mother; Exhibit D4p5.

30. During the meeting the Mother also shared that some of the Student's behaviors relating to hyperactivity and depression are likely related to specific dynamics occurring in the family over recent weeks. Exhibit D4p6.

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<sup>5</sup> There does not appear to be any identification of the results of the VMI administered by the WVSD in March 2015 in the evidence of record herein.

31. After consideration of the results of the District's reevaluation, the team, with two dissenting members, determined that the Student was not eligible to receive special education and related services because she was performing in the average range in the areas of fine motor, communication and social behavioral skills. She was able to access and make progress in the general education curriculum and setting without SDI and support. Exhibit D4pp1-2

32. The Mother did not agree with the team's conclusion the Student was not eligible for special education and related services. The Mother indicated she was unwilling to dismiss the Student from services, as the Student's IEP was a guarantee of service and support for the Student, especially should the Student enroll in a program in the future which offered less flexibility and support. Testimony of Mother; Exhibit D4p4, p12.

33. The Mother also told the team there was a pending evaluation of the Student by the Social Security Administration (SSA). The Mother was encouraged to share the results of the SSA evaluation with the team.<sup>6</sup>

34. Ms. Cavaness, the District's administrative designee at the reevaluation meeting, also initially dissented from the team's conclusion the Student no longer qualified for special education and related services. Ms. Cavaness dissented because she wanted to support the Mother's desire to continue special education for the Student. On March 7, 2016, Ms. Cavaness prepared a written statement regarding her dissent. In it, Ms. Cavaness opined it was clear to her that the Student depended upon the support she received through special education and related services to maintain the gains she had achieved. Ms. Cavaness offered two options for providing that support. First, through a once-per-month consult model where providers would review the skills the Student had learned and confirm that the Student's success has continued. Second, moving the Student to a 504 plan.<sup>7</sup> This was Ms. Cavaness' preferred option. Testimony of Cavaness; Exhibits D5, D13.

35. After learning more about special education services, Ms. Cavaness subsequently changed her opinion and supported the reevaluation team's determination that the Student did not qualify for special education and related services under the IDEA. Ms. Cavaness endorsed a Section 504 plan for the Student. At the time she changed her opinion regarding the Student's eligibility for special education and related services, Ms. Cavaness was unaware the Parents had requested an independent educational evaluation (IEE) of the Student at District expense.<sup>8</sup> Testimony of Cavaness; Exhibits D6, D13p2.

36. On March 7, 2016, the District sent the Parents a Prior Written Notice (PWN). That PWN informed the Parents that the District was proposing to discontinue the Student's eligibility

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<sup>6</sup> The evaluation of the Student by SSA has since been completed. But as of the time of the due process hearing, the Parents had still not shared the SSA evaluation with the District.

<sup>7</sup> Section 504 is part of the Rehabilitation Act of 1973, 29 U.S.C. 794. It is a civil rights law intended to prevent discrimination on the basis of a handicap or disability in any program or activity receiving federal financial assistance.

<sup>8</sup> See Exhibits D9, D10.



category and IEP. It informed the Parents that the Student no longer qualified for or was in need of SDI in the area of social/behavioral skills or related service areas of speech therapy and occupational therapy. The PWN set out the team's rationale for the eligibility decision. It noted that the Mother had indicated at the reevaluation meeting that an additional assessment conducted by the Social Security Administration (SSA) might relate to the Student's function in a school or home environment, and that the Parents had been encouraged to share the SSA assessment with the District. Exhibit D8.

37. On or about March 16, 2016, the Parents requested an IEE at the District's expense. On March 16, 2016, the District requested a due process hearing under the IDEA to show its reevaluation of the Student was appropriate.

38. There was conflicting testimony given by the Mother and Ms. Siler at the due process hearing. The Mother testified that during their first contact, Ms. Siler stated she had too many students on her SLP caseload and didn't want to add another student - apparently referring to the Student - and that Ms. Siler encouraged her to find an outside SLP service provider for the Student. Then when the Mother took the Student to be assessed by Ms. Siler as part of the reevaluation in February 2016, Ms. Siler told her the Student looked happy, and would probably not need services, but that Ms. Siler would see how the Student did during her assessment. Ms. Siler testified she does not recall telling the Mother that she had too many students, or encouraging the Mother to find an outside service provider. As discussed later in the following Conclusions of Law, it is not necessary to resolve this conflicting testimony in order to rule on the issue in this matter.

## CONCLUSIONS OF LAW

### *Jurisdiction and Burden of Proof*

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 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).

### *The Individuals with Disabilities Education Act*

3. 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).

#### *Procedural Compliance with the IDEA*

4. Procedural safeguards are essential under the IDEA:

Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.

*Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9<sup>th</sup> Cir. 2001).

5. Procedural violations of the IDEA amount to a denial of FAPE only if they:

- (i) impeded the child's right to a free appropriate public education;
- (ii) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- (iii) caused a deprivation of educational benefits.

20 USC §1415(f)(3)(E)(ii); see WAC 392-172A-05105(2).

#### *Evaluation and Reevaluation of Students*

6. The administrative regulations governing evaluations and reevaluation of students are found at WAC 392-172A-03000 through 392-172A-03040.<sup>9</sup>

7. WAC 392-172A-03000(3)(a) requires a school district to obtain informed parental consent prior to conducting any reevaluation of a student eligible for special education services. After consideration of the evidence in this matter, it is concluded the District obtained the informed consent of the Parents. The District sent the Parents notice that it intended to reevaluate the Student, informed the Parents of the areas to be assessed as part of the reevaluation, and provide the Parents an opportunity to identify any additional areas for assessment, which the Parents did.

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<sup>9</sup> There are additional regulations regarding evaluation of students suspected of having specific learning disabilities, but that issue has not been raised by either party herein.

8. WAC 392-172A-03005 is applicable and provides in relevant part that:

Reevaluation timelines.

...

(3) Reevaluations shall be completed within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent;

(b) Thirty-five school days after the date the refusal of the parent was overridden through due process procedures or agreed to using mediation; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, within the time frames in subsection (2) of this section.

9. The Parents provided written consent for the Student's reevaluation on February 22, 2016. The reevaluation was completed with the reevaluation meeting on March 4, 2016. This is clearly within 35 calendar days, much less 35 school days.

10. WAC 392-172A-03020 provides:

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.

*See also* 34 CFR §300.303.

11. It is concluded that the reevaluation team provided the Parents with prior written notice that described the reevaluation procedures the team proposed to use. The Parents signed the Reevaluation Notification/Consent on February 22, 2016.

12. It is concluded that the team conducted the reevaluation using a group of qualified professionals. The education, training, and experience of the individuals who participated in the Student's reevaluation provided the necessary qualifications to conduct the reevaluation. The District has offered more than sufficient evidence of those qualifications, and the Parents have not raised any substantial challenge to that evidence.

13. It is concluded that the group of qualified professionals who conducted the Student's reevaluation used a variety of assessment tools and strategies to gather relevant information about the Student. The reevaluation team used multiple standardized assessment tools appropriate to the areas to be reevaluated. The reevaluation team members reviewed relevant records from the Student's time at WVSD. Team members gathered information about the Student's functioning at school and home from the Parents and District staff, including importantly Ms. Foster, who the Parents acknowledge was the one District staff person the Student knew and with whom the Student had developed a comfortable relationship. Team members also conducted informal observations of the Student either before or during the reevaluation.

14. It is concluded that the reevaluation team did not use any single measure as the sole criterion to determine the Student's eligibility. The team relied upon multiple standardized assessments, observations, and review of relevant educational records.

15. It is concluded that the reevaluation team used technically sound instruments or measures for the Student's reevaluation that were valid and reliable. There is simply no evidence of record to conclude otherwise, while at the same time the District presented more than sufficient direct evidence from the District members of the reevaluation team that the instruments or tools selected to reevaluate the Student were valid and reliable.

16. It is concluded that the assessments and other evaluation materials were administered by trained and knowledgeable personnel in accordance with instructions provided by the producer(s) of those assessments and evaluation materials. As concluded above, there was more than sufficient evidence from District members of the reevaluation team to establish their training and experience in the use of those assessment tools, and the manner in which they were administered.

17. One of the principle arguments raised by the Parents is that the reevaluation of the Student was not appropriate because the time spent by the District members of the reevaluation team in conducting the composite assessments was not sufficient. This argument was raised specifically with respect to how much time Ms. Siler and Ms. McLachlan spent conducting their respective parts of the reevaluation. However, the Parents' belief that District members of the reevaluation team somehow short-changed the Student or invalidated the results of their assessments by not taking the necessary time must be weighed against the opinions of those educated, trained, and certificated professionals. The Parents offered no evidence from a witness equally or better qualified by education, training, and experience to contest the otherwise credible testimony of the District members of the reevaluation team. It is concluded that the Parents' argument is not compelling.

18. A student must be assessed in all areas related to the suspected disability. WAC 392-172A-03200(3)(e), above. The reevaluation team proposed reevaluating the Student in multiple areas of suspected disability and provided notice of those areas to the Parents when it sought their consent for the reevaluation. The Parents identified one additional area for reevaluation: adaptive behavior. The team accepted the input and evaluated the Student's adaptive behavior. It is concluded based on the evidence of record that the Student was reevaluated in all areas of suspected disability as of the time the reevaluation was conducted. It is similarly concluded that the reevaluation was sufficient comprehensive to identify all of the Student's special education and related service needs.

19. After careful consideration of the Parents' arguments and the evidence of record, it is concluded that the District's reevaluation of the Student meets the procedural requirements under WAC 392-172A-03020.

20. WAC 392-172A-03025 is relevant and provides in part:

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.

21. The Student received all of her core academic instruction at home, and attended class at the District for only elective and enrichment courses. Mr. Fitzgerald was able to observe the Student for, albeit, a limited amount of time while she attended such a course at the District. More importantly, Ms. Foster, the Student's assigned mentor teacher for the WAAT program had the opportunity to observe the Student as well. It was Ms. Foster, whom the Parents acknowledged had developed a comfortable relationship with the Student, who best knew the

Student. The reevaluation team also reviewed the Student's mid-year Scholastic Reading Inventory (SRI) score as part of the reevaluation process. It is concluded that the reevaluation of the Student met the requirements of WAC 392-172A-03025.

22. Another of the Parents' principle arguments was that District members of the reevaluation team did not know the Student well enough to produce a valid or accurate reevaluation. As a preliminary matter, there is no requirement in the applicable regulations that otherwise trained and qualified professionals assessing or evaluating a student for special education must be familiar with the student. In the case of an initial or first evaluation of a student suspected of having a disability, it would be unlikely that those trained professionals would know or necessarily be familiar with such a student. It would be up to the informed judgment of the professional conducting the assessment or evaluation to determine how much familiarity with the subject student would be necessary in order to ensure valid and reliable assessment results. None of the District members of the reevaluation team raised any question or concern that they did not have sufficient familiarity with the Student such that it would negatively impact the validity or reliability of their assessments.

23. WAC 392-172A-03035 is relevant and provides in part:

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.

24. After review of the evidence of record, it is concluded that the reevaluation report meets the applicable requirements of WAC 392-172A-03035. The report included a statement that the Student was not eligible for special education. It discussed the assessments and reviewed the data that supported the team's conclusion. It discussed how the Student's involvement and

progress in the general education curriculum was not impacted by any disability. And the professional members of the team signed the reevaluation report, either certifying their agreement with the report, or including a separate statement as Ms. Cavaness did. Finally, the report reflects the team's determination the Student did not qualify for special education.

25. Another argument raised by the Parents should be addressed. The Parents raised the issue of whether the reevaluation of the Student was compromised by Ms. Siler. The Mother in particular expressed her concerns that somehow Ms. Siler's communication assessment of the Student was biased or unfair. The Mother's belief was based on Ms. Siler's alleged statements to her that Ms. Siler had too many students on her caseload already and did not want to add any more, Ms. Siler's encouragement to find an outside SLP service provider for the Student, and Ms. Siler's alleged statement that the Student would probably not require any services.

26. Assuming solely for the sake of analysis that all of Ms. Siler's alleged statements are true does not change the ultimate conclusion that the reevaluation of the Student was legally appropriate. Even were all these statements true, it would be concluded that the statements, standing alone, are insufficient evidence or proof that Ms. Siler *intentionally* compromised the validity of her communication assessment. Absent more compelling evidence, which the Parents have not offered, such a conclusion simply requires too great a leap of faith. The Parents have not, for example, offered any testimony by an individual qualified by education, training, and experience to show how Ms. Siler's communication assessment was compromised or invalid. While Ms. Siler may have felt overwhelmed with her caseload and hoped the Parents found another SLP, that is a far cry from proving Ms. Siler intentionally compromised the assessment to avoid adding to her caseload. The Parents' suspicion, without more, is just that.

27. Another argument raised by the Parents should be addressed. The Parents assert that they were not provided an opportunity to provide their parental input for the reevaluation. The evidence does not support this assertion. The Parents were provided the opportunity to identify additional areas for the reevaluation, and did so. The Parents were provided notice of the reevaluation meeting, and the Mother attended the meeting. The reevaluation report contains multiple references to the Mother's input during the reevaluation meeting. While the Parents may have desired even more parental input, it cannot be concluded as a matter of law based upon the evidence of record that they were so denied an opportunity to provide their input that it resulted in a procedural violation of the IDEA.

28. After consideration of all the evidence of record and the parties' arguments, it is concluded that the March 2016 reevaluation of the Student was appropriate. Accordingly, the Parents' request for an IEE at District expense should be denied.


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**ORDER**

The District's March 2016 reevaluation of the Student was appropriate. The Parents' request for an independent educational evaluation of the Student is DENIED.

Signed at Seattle, Washington on December 17, 2016.



**MATTHEW D. WACKER**  
Administrative Law Judge  
Office of Administrative Hearings

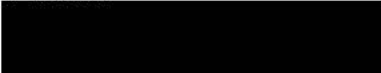
**Right To Bring A Civil Action Under The IDEA**

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. *mdw*

Parents



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