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OAH – SEATTLE

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
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July 12, 2019

Parent
[REDACTED]

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In re: Tacoma School District
OSPI Cause Nos. 2018-SE-0135 / 2018-SE-0145
OAH Docket Nos. 12-2018-OSPI-00650 / 12-2018-OSPI-00660

Dear Parties:

Enclosed please find the Findings of Fact, Conclusions of Law, and Orders in the above-referenced matters. This completes the administrative process regarding these cases. 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 files (including the exhibits) will be closed and sent to the Office of Superintendent of Public Instruction (OSPI). If you have any questions regarding this process, please contact Administrative Resource Services at OSPI at (360) 725-6133.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Becker".

Jacqueline Becker
Administrative Law Judge

cc: Administrative Resource Services, OSPI

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

IN THE MATTERS OF:

OSPI CAUSE NOS. 2018-SE-0135
2018-SE-0145

OAH DOCKET NOS. 12-2018-OSPI-00650
12-2018-OSPI-00660

TACOMA SCHOOL DISTRICT

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

A due process hearing in the above-entitled matters was scheduled before Administrative Law Judge (ALJ) Jacqueline Becker in Tacoma, Washington, on June 12, 2019. The Parent of the Student whose education is at issue¹ did not attend the due process hearing and was not represented by an attorney. The Tacoma School District (District) was represented by Susan Winkelman, attorney at law. Malik Gbenro, assistant general counsel, also appeared for the District.

PROCEDURAL HISTORY OF THE CASES

The Parent filed a Due Process Hearing Request (Parent's Complaint) with the Office of Superintendent of Public Instruction (OSPI) on December 3, 2018. The Parent's Complaint was assigned Cause No. 2018-SE-0135 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered on December 4, 2018. The Parent's Complaint alleged various violations of the Individuals with Disabilities Education Act (IDEA). The District filed its Response to the Parent's Complaint on December 13, 2018.

The District filed a Due Process Hearing Request (District's Complaint) with OSPI on December 14, 2018. The District's Complaint was assigned Cause No. 2018-SE-0145 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered on December 17, 2018. The District's Complaint alleged that the Parent had requested an Independent Educational Evaluation (IEE) of the Student at District expense, and the District's Complaint sought an order that the Parent is not entitled to an IEE at public expense. No response was filed by the Parent.

Prehearing conferences were held on both matters on January 2, 2019, and January 17, 2019. At the prehearing conference on January 17, 2019, the parties agreed to consolidate the two complaints. An additional prehearing conference was held on February 20, 2019, and the due process hearing was set for March 27-29, 2019. The Parent requested a continuance of the hearing on March 15, 2019, and the continuance was granted, over the District's objection, on

¹ In the interests of preserving the family's privacy, this decision does not name the student or the parent. Rather, they are identified as "Parent," "Mother," and "Student."

March 19, 2019. A Notice of Hearing, setting the due process hearing for June 12-14, 2019, was entered on April 10, 2019.

Because the Parent did not appear at the due process hearing, the Parent's Complaint was not heard and no evidence was presented as to the issues it raised. The due process hearing was held regarding the District's Complaint, as scheduled, on June 12, 2019. The decisions on the two complaints, therefore, are addressed separately below, and separate findings of fact and conclusions of law are set forth herein for each complaint.

Evidence Relied Upon for the District's Complaint

Exhibits Admitted:

District's Exhibits: D1 – D19.

Witnesses Heard (in order of appearance):

Theresa Hamilton, general education teacher
Leslie Sampson, school psychologist
Abbie Barabe, principal, [REDACTED] Elementary School
Lori Doyle-Cook, occupational therapist
Bevin Hall, behavior specialist

Due Date for Written Decisions

As set forth in the Prehearing Order of March 5, 2019, the due date for a written decision in these cases was continued to thirty (30) calendar days after the close of record, on the District's motion. The record closed at the conclusion of the hearing on June 12, 2019, so the due date for the written decision is **July 12, 2019**.

THE PARENT'S COMPLAINT - MATTER 12-2018-OSPI-00650 / 2018-SE-0135

FINDINGS OF FACT

1. The Parent was provided with notice of the due process hearing via the Notice of Hearing issued on April 10, 2019, that was mailed postage prepaid to the Mother's address on file with OAH. She was provided with a second notice of the hearing via the Notice of Reassignment of Administrative Law Judge issued on May 29, 2019, that was mailed postage prepaid to the Mother's address on file with OAH. Both notices set forth the due process hearing dates of June 12-14, 2019, in bold lettering on the first page.
2. The Parent and OAH were notified of the hearing location within the District via an email from District attorney Susan Winkelman on June 5, 2019. The email states the location as the District's Central Administration Building and provides the address.
3. The Parent communicated with OAH via email two times in the week prior to the hearing. On June 5, 2019, the Parent emailed the ALJ's assistant and stated, "[Student] has been doing

considerably better!!! Getting at least 5 stars a day on his daily progress reports. Is this something we still need to do?" (See OAH case file.)

4. The Parent did not submit witness or exhibit lists, or proposed exhibits, at any time. The Notice of Hearing of April 10, 2019, states at paragraphs 8-10 that witness and exhibit lists, and proposed exhibits, must be filed by 5:00 p.m. on June 5, 2019.

5. On June 10, 2019, the Parent again emailed the ALJ's assistant and stated that she was ill, and that she "hadn't gotten anything together." She did not request a continuance of the due process hearing. (See OAH case file.)

6. The Parent failed to appear at the due process hearing.

7. The April 10, 2019, Notice of Hearing states, at paragraph 7, entitled "Failure to Appear":

A party who fails to appear at any stage of the proceedings, including the hearing and prehearing conference, may be held in default in accordance with Revised Code of Washington (RCW) 34.05.440 and .434. If the party failing to appear at any stage of the proceeding including the hearing and prehearing conferences is the Appellant, the matter may be dismissed. If the party failing to appear is not the Appellant, the matter may proceed without that party.

(Emphasis in original.)

8. The May 29, 2019 Notice of Reassignment of ALJ contains the same language regarding failure to appear in paragraph 6, entitled "Notice of Potential Default."

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings 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 pursuant to these statutes, 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. See *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Since the Parent is the party seeking relief in this case, she has the burden of proof. Neither the IDEA nor OSPI regulations specify the standard of proof required to meet a party's burden of proof in special education hearings before OAH. Unless otherwise mandated by statute or due process of law, the U.S. Supreme Court and Washington courts have generally held that the burden of proof to resolve a dispute in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 98-102, 101 S. Ct. 999 (1981); *Thompson v. Department of Licensing*, 138 Wn.2d 783, 797, 982 P.2d 601 (1999); *Hardee v. Department of Social & Health Services*, 172 Wn.2d 1, 256 P.3d 339 (2011). Therefore, the Parent's burden of proof in this matter is preponderance of the evidence.

3. The Parent is in default due to her failure to appear for the due process hearing on the Parent's Complaint. RCW 34.05.440.

ORDER

The Parent is in default and is not entitled to any relief. Therefore, this matter, OAH Docket No. 12-2018-OSPI-00650 / OSPI Cause No. 2018-SE-0135, is **DISMISSED**.

THE DISTRICT'S COMPLAINT, MATTER 12-2018-OSPI-00660 / 2018-SE-0145

ISSUE

The issue addressed in the due process hearing was whether the District's reevaluation of the Student, dated November 16, 2018, is appropriate and, if not, whether the District should pay for an independent educational evaluation of the Student.

FINDINGS OF FACT

1. The Student has attended school in the District since September of 2018. He attended kindergarten at [REDACTED] Elementary School during the 2018-19 school year and will start first grade in the fall of 2019. D11 p.3; (Barabe).²

2. Prior to attending school in the District, the Student attended preschool in the Seattle School District. He was referred for a special education evaluation on March 13, 2017, while attending [REDACTED] in Seattle. D11 p.3. That evaluation determined that the Student was eligible for special education and related services under the category of Developmental Delays. D1 p.3; D11 p.3.

3. While in preschool in Seattle, the Student attended a developmental self-contained program for children with a wide range of disabilities. The Individualized Education Program (IEP) developed for the Student by the Seattle School District, which is dated June 6, 2018, provided services for the Student in the areas of social/emotional/behavioral, cognitive/preacademics, communication, and occupational therapy. D3. The IEP recommended that the Student be placed in a general education classroom, with special education support, when he entered kindergarten. D3 p. 20; D11 p. 3.

4. The Student had a very difficult time adjusting to a general education kindergarten classroom at [REDACTED] Elementary in the District. His behavior included constantly eloping (i.e. leaving unexcused) from the classroom, hitting, screaming, using profanity, and failing to follow directions. (Barabe). He was unable to remain seated for more than approximately thirty seconds

² "D" refers to the referenced District exhibit. No verbatim report of the proceedings is available at the time this order is being written, so citations to specific locations of testimony in the transcript cannot be provided. However, witnesses who provided testimony that is relied upon are identified.

at a time. (Hamilton). His classroom teacher, Ms. Hamilton,³ noted his academic skills to be at the very low range of those typically exhibited by kindergarteners, in that he could recognize and name only a few letters, could not count past ten, was unable to copy letters from the board, and struggled to write his name. (Hamilton).

5. The Student also had difficulty using the restroom by himself, and always carried a blanket. The school principal, Ms. Barabe,⁴ became concerned that the Student might be on the autism spectrum and was also concerned about his unsafe behaviors. She determined that the June 6, 2018 IEP from the Seattle School District was not meeting the Student's needs, and requested that the Parent consent to a reevaluation of the Student. (Barabe).

6. The District provided the Mother with prior written notice proposing to reevaluate the Student, and she consented to the reevaluation on October 5, 2018. D9 p.2; D11 p.2. The Mother also consented to a functional behavioral assessment (FBA) on November 9, 2018. D10 p.1.

7. The reevaluation was performed in the fall of 2018, primarily by school psychologist Rosetta Harrilal,⁵ and is dated November 16, 2018. D11.

8. The reevaluation included a review of existing data, an eligibility decision, a summary, and IEP recommendations. D11. The areas of evaluation include medical-physical, general education, classroom observation, cognitive, academic, adaptive, social/emotional/behavioral, communication, fine motor, and an autism spectrum assessment. *Id.* The Parent did not request any additional areas of evaluation. (Barabe).

9. The reevaluation was performed in small sections and over short timeframes due to the Student's need for frequent breaks. He was permitted to engage in "preferred activities" between testing sessions. (Hamilton.)

10. The reevaluation is signed by nine evaluation team members. Those members include a general education teacher, a special education teacher, the Mother, and a speech/language pathologist. D11 p.7.

11. The evaluation concluded that the Student remained eligible for special education and related services under the category of Developmental Delay, and recommended support in the

³ Ms. Hamilton holds a Bachelor of Arts degree in elementary education from Central Washington University. She is certificated to teach K-8, has been a teacher for 13 years, and has taught kindergarten in the District for 11 years. (Hamilton.)

⁴ Ms. Barabe holds a Bachelor of Science degree in elementary education from Washington State University. She also holds a principal credential and a master's degree in leadership from Pacific Lutheran University. She has taught kindergarten, and first, second and fourth grades, and has been the principal of Manitou Park Elementary for two years. (Barabe.)

⁵ Ms. Harrilal was on medical leave at the time of the due process hearing and was unavailable to testify. School psychologist Leslie Sampson testified at the hearing regarding the methodology, results and appropriateness of the Student's evaluation.

areas of social/emotional/behavioral, cognitive/preacademics, speech/language, and fine motor. It also determined that he qualified for related services of speech/language and occupational therapy. D11 pp.3-6, 23.

12. The medical-physical portion of the reevaluation was performed by Angela Radonski, RN, and makes no significant findings. D11 p.8.

13. The general education portion of the reevaluation includes an assessment summary written by Ms. Hamilton, as well as a classroom observation by Ms. Harrilal. It concludes that the student has trouble staying focused in class and following directions, that his behaviors are challenging, and that he is unable to get any work done without the support of the para educator. D11 pp.9-10.

14. The cognitive portion of the reevaluation was conducted by Ms. Harrilal. She administered the Wechsler Nonverbal Scales of Ability (WNV) to the Student. The Student's full scale score of 81 is in the 10th percentile and places him in the low average range of cognitive ability. D11 pp.10-11.

15. The academic portion of the reevaluation was conducted by Ms. Harrilal. She administered the Bracken Basic Concepts Scale Third Edition, and the Woodcock-Johnson Test of Achievement (WJ-IV). D11 pp.11-12. The Student was determined to be in the very low range for mathematics, and the below average range for written language. His standard score of 48 on the School Readiness Composite indicated that his readiness for kindergarten was very delayed. D11 pp. 11-13.

16. The adaptive portion of the reevaluation was conducted by Ms. Harrilal. The Vineland-3 test was administered to the Student, and the Adaptive Behavior Composite (ABC) was completed by Ms. Hamilton. The Student was determined to be functioning at a below average level in all areas rated by his teacher. D11 pp.13-14.

17. The social/emotional/behavioral portion of the reevaluation was conducted by Ms. Harrilal. The Behavior Assessment System for Children, Third Edition (BASC-3) was completed by the assistant principal, Ms. Hamilton, the para educator, and the Mother. There was significant variation among the raters. All areas were rated to be in the average range by the Mother. School staff rated as "clinically significant" the following areas: hyperactivity, aggression, anxiety, depression, withdrawal, atypicality, and adaptability. D11 p. 16. Based on these ratings, the reevaluation recommends that the Student continue to receive specially designed instruction in social/emotional/behavioral skills. *Id.*

18. The communication portion of the reevaluation was performed by speech/language pathologist (SLP) Rebecca Bird.⁶ Ms. Bird administered the following assessments: the Receptive One-Word Picture Vocabulary Test, Fourth Edition (ROWPVT-4), the Expressive One-Word Picture Vocabulary Test, Fourth Edition (EOWPVT-4) and the Oral Written Language Scales, Second Edition (OWLS-2). D11 p. 17. The Student was able to work for only short periods of time on the assessments before he needed a play break. Ms. Bird also observed the Student in his

⁶ No evidence regarding Ms. Bird's training or credentials was presented at the due process hearing.

classroom. The Student scored in the below average range on the two picture vocabulary tests, and his score on the OWLS-2 indicated he is severely delayed in overall language skills. D11 p.18. Ms. Bird opined that it is likely the results obtained are an accurate representation of the Student's communication skills and needs. D.11 p. 17. Based on these results, the Student qualified for support in the area of communication.

19. The fine motor portion of the reevaluation was conducted by Lori Doyle-Cook,⁷ occupational therapist (OT). Ms. Doyle-Cook attempted to evaluate the Student on at least five occasions, but his cooperation was inconsistent. D11 p.19. She was able to administer the Schooldes Pediatric Fine Motor Assessment, Third Edition, and also observed the Student in his classroom. Ms. Doyle-Cook determined that the Student has significant fine motor delays and has not yet defined his hand dominance. He qualifies for occupational therapy (OT) as a related service. *Id.* Ms. Doyle-Cook believes the assessment is accurate and that the Student's delayed fine motor skills are having an adverse impact on his progress in school. (Doyle-Cook.)

20. Ms. Doyle-Cook did not attend the reevaluation meeting on November 16, 2018, and did not sign the reevaluation report. She attempted to contact the Mother to explain the results of the fine motor assessment, but was unable to reach her. Ms. Doyle-Cook has not been made aware of the Mother having any concerns about the fine motor assessment. (Doyle-Cook.)

21. As set forth in the "Other" section of the reevaluation, Autism Spectrum Rating Scales (ASRS) of the Student were completed by Ms. Hamilton and the Mother. D11 p. 20. Ratings on this scale indicate the extent to which the Student's behavior characteristics are similar to the behaviors of children diagnosed with an autism spectrum disorder, and how closely the Student's symptoms match the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, criteria for an autism spectrum disorder. D11 p.21. Ms. Hamilton's rating placed the Student in the "very elevated" score range, while the Mother's rating placed him in the average range. *Id.*

22. The FBA of the Student was performed by Bevin Hall,⁸ behavior specialist. D12; (Hall.) The assessment consisted of the following: observations of the Student at school; interviews with school staff; rating scales performed by school staff; and input from the Student's mother and grandmother. D12; (Hall.)

23. The FBA sets forth numerous recommendations for the IEP team, including a recommendation that a behavior intervention plan (BIP) be developed. D12. A draft of the FBA was shared with the Mother during the reevaluation meeting on November 16, 2018, and the Mother asked several questions, which Ms. Hall answered. No one on the reevaluation team expressed any concerns about the FBA or its findings. (Hall.)

⁷ Ms. Doyle-Cook holds a Bachelor of Science degree in occupational therapy and is a licensed occupational therapist. She also holds an Educational Staff Association certificate which allows her to provide support services in the school setting. She has been an occupational therapist for thirty years. (Doyle-Cook.)

⁸ Ms. Hall holds a Bachelor of Arts degree in gender studies, and race and ethnic studies, from Whitman College. She has held an alternative certification in general education since 2011; she is certificated to teach general education and holds a special education endorsement. She is currently pursuing a master's degree in behavior analysis in order to become a board certified behavior analyst. (Hall.)

24. A draft of the reevaluation report was also shared with the Mother and grandmother at the reevaluation meeting. They both asked questions. The Mother did not express disagreement with the results of the reevaluation and did not express any concerns regarding the areas that were assessed (nor did the grandmother). (Barabe.)

25. The reevaluation makes no recommendation as to what school the Student should attend, but it does state, "The team recommended that Student receive these skills in a more structured program with a higher level of adult support and a smaller number of students. Parent was in agreement with this placement in a K-1 setting." D11 p. 23.

26. Ms. Hamilton agrees with the eligibility decision and the findings of the reevaluation because they are consistent with her observations of the Student as his classroom teacher. (Hamilton.) Ms. Hamilton has no concerns regarding how the reevaluation was conducted and does not believe any additional areas needed to be assessed. *Id.* Ms. Barabe also agrees with the results and has no concerns regarding how the reevaluation was conducted. (Barabe.)

27. The Mother requested an independent educational evaluation of the Student at public expense on December 1, 2018, as part of the relief she requested in the Parent's Complaint. The District denied the request on December 13, 2018. D17 p.1; District Complaint.

28. The basis for the Mother's request for an IEE is unclear and the record regarding the basis for the request is not developed. The Parent's Complaint references multiple concerns, but only references the reevaluation once by asserting, "They did not want to follow his IEP and immediately wanted to re-evaluate him, so they could send him to another school." Parent's Complaint p.1.

29. The Mother did not appear at the due process hearing. She was provided with notice of the hearing as set forth above in the Findings of Fact pertaining to matter OAH Docket No. 12-2018-OSPI-00650 / OSPI Cause No. 2018-SE-0135.

CONCLUSIONS OF LAW

Jurisdiction, Burden of Proof and Default

1. The Office of Administrative Hearings 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 pursuant to these statutes, 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. *See Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Since the District is the party seeking relief in this case, it has the burden of proof. Neither the IDEA nor OSPI regulations specify the standard of proof required to meet a party's burden of proof in special education hearings before OAH. Unless otherwise mandated by statute or due process of law, the U.S. Supreme Court and Washington courts have generally held that the burden of proof to resolve a dispute in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91,

98-102, 101 S. Ct. 999 (1981); *Thompson v. Department of Licensing*, 138 Wn.2d 783, 797, 982 P.2d 601 (1999); *Hardee v. Department of Social & Health Services*, 172 Wn.2d 1, 256 P.3d 339 (2011). Therefore, the District's burden of proof in this matter is preponderance of the evidence.

3. The Parent is in default due to her failure to appear for the due process hearing on the District's Complaint, and the hearing proceeded without her participation. RCW 34.05.440.

The IDEA

4. The IDEA and its implementing regulations provide federal funding 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 *Board of Education of Hendrick Hudson Central School District 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, 458 U.S. at 206-207 (footnotes omitted). In order for a school district to provide a free and appropriate public education (FAPE), it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Rowley*, 458 U.S. at 200-201.

5. 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 . . .

Andrew F. v. Douglas County Sch. Dist. RE-1, 580 U.S. ____, 137 S. Ct. 988, 999-1000 (2017).

6. 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); WAC 392-172A-05105(2); and 34 CFR §300.513.

Independent Educational Evaluations (IEE)

7. Parents have a right to obtain an IEE if they disagree with a school district's evaluation of their child, under certain circumstances. WAC 392-172A-05005(1); 34 CFR 300.502(a)(1). An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district, at district expense. WAC 392-172A-05005(c)(i); 34 CFR 300.502(b). If a parent requests an IEE, a district must either ensure that an IEE is provided at public expense without unnecessary delay or initiate a due process hearing within 15 calendar days to show that its evaluation is appropriate. WAC 392-172A-05005(c).

Evaluations and Reevaluations

8. A school district is required to follow the requirements for evaluations set forth in WAC 392-172A-03020, which 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 300.304.

9. The district is also required to follow the requirements pertaining to review of existing data for evaluations and reevaluations as set forth in WAC 392-172A-03025, which provides:

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 (1) 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

See also 34 CFR 300.305.

10. Likewise, the district is required to follow the requirements for evaluation reports set forth in WAC 392-172A-03035, which provides:

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.

The November 16, 2018 Reevaluation

11. The District provided the Parent with prior written notice of the reevaluation and the Mother signed the reevaluation notification/consent on October 5, 2018. Accordingly, the prior written notice provision of WAC 392-172A-03020(1) was met.

12. As set forth above, a "group of qualified professionals" must conduct the evaluation, and assessments and other evaluation materials must be administered by "trained and knowledgeable personnel." WAC 392-172A-03020(2) and (3)(iv). The reevaluation was conducted by a group of qualified professionals. The education, training, and experience of the individuals who participated in the reevaluation provided the qualifications necessary to conduct the reevaluation. The District offered more than sufficient evidence to establish those qualifications.

13. The District demonstrated that it used a variety of assessment tools and strategies to gather relevant information about the Student. A multitude of standardized assessments were administered to the Student by a variety of professionals, in a manner that made allowance for the Student's very short attention span. Information was gathered from the Parent and other sources. The District therefore complied with WAC 392-172A-03020(2)(a).

14. No single measure or assessment was the sole criterion for determining the Student's eligibility for special education, and technically sound instruments were used to assess cognitive,

behavioral, and developmental factors. The District therefore complied with these requirements of WAC 392-172A-03020(2)(b).

15. The District used assessments and measures that are valid and reliable as required by WAC 392-172A-03020(3)(a)(iii).

16. The assessments and other evaluation materials were administered by trained and knowledgeable personnel in accordance with instructions provided by the producers of those assessments and evaluation materials as required by WAC 392-172A-03020(3)(a)(iv) and (v). There was more than sufficient evidence from members of the reevaluation team to establish their training and experience in the use of those assessment tools, and the manner in which the tools were administered.

17. The record establishes that the Student was assessed in all areas related to his suspected disabilities, and the reevaluation is sufficiently comprehensive to identify all of the Student's special education and related service needs.

18. The review of existing data pertaining to the Student was comprehensive and met the requirements of WAC 392-172A-03025.

19. The District drafted and provided the Mother with a reevaluation report that contained all the required elements set forth in WAC 392-172A-03035.

20. Although Ms. Doyle-Cook did not sign the reevaluation report as required by WAC 392-172A-03035(1)(f), this is a minor procedural violation of the IDEA and does not affect the validity of the reevaluation. The law is clear that "not all procedural flaws require a finding of denial of IDEA rights." *Ford v. Long Beach Unified Sch. Dist.*, 291 F.3d 1086, 1089 (9th Cir. 2002)(denying a request for an IEE at public expense based upon minor deficiencies that did not affect the validity of the district's evaluation). *See also Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 887, 892 (9th Cir. 2001). In no way did the failure of Ms. Doyle-Cook to sign the reevaluation report amount to a denial of rights under the IDEA, and it does not render the reevaluation inappropriate.

21. To the extent the Mother alleges that the reevaluation was conducted for an improper reason, i.e. to allow the District to send the Student to a different school, the evidence does not support this assertion. The Mother consented to the reevaluation and did not express disagreement with the results, including the recommendation that the Student attend a more structured program with a higher level of adult support. An IEE is not the appropriate method by which to address a placement issue. If the Mother disagrees with the Student's placement, that disagreement is properly addressed via input to the Student's IEP, which is required to include the anticipated frequency, *location*, and duration of special education and related services that will be provided to the Student. WAC 392-172A-03090(1)(j)(emphasis added).

22. The District has established by a preponderance of the evidence that it complied with the evaluation and reporting procedures set forth in WAC 392-172A-03020, -03025, and -03035 when it conducted the November 16, 2018 reevaluation of the Student. The reevaluation was appropriate. The Parent is therefore not entitled to an independent educational evaluation at public expense.

ORDER

The District's request for relief is **GRANTED**. The Parent is not entitled to an independent educational evaluation of the Student at public expense.

Signed at Seattle, Washington on July 12, 2019.



Jacqueline Becker
Administrative Law Judge
Office of Administrative Hearings

Petition to Vacate Default

Any party who is held in default may file a written motion requesting that the order be vacated and stating the grounds relied upon pursuant to RCW 34.05.440(3). The motion must be filed with the Office of Administrative Hearings within seven (7) days of the date of mailing the order of default.

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



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cc: Administrative Resource Services, OSPI