

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

IN THE MATTER OF:

OSPI CAUSE NO. 2020-SE-0076

OAH DOCKET NO. 05-2020-OSPI-01057

LAKE WASHINGTON SCHOOL DISTRICT

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

A videoconference hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Jason Kinn on August 6 and September 18, 2020. The Parent of the Student whose education is at issue<sup>1</sup> appeared and represented herself. The Lake Washington School District (the District) was represented by Sarah Johnson, attorney at law. Paul Vine of the District was also present throughout the hearing.

### ISSUE

Whether the District's evaluation of the Student conducted on March 20, 2020 was appropriate and, if not, whether the Parents are entitled to an independent educational evaluation at public expense.

### PROCEDURAL HISTORY

The District filed a due process hearing request on May 7, 2020. Prehearing conferences were held on May 19, June 4 and June 25, 2020. The Parent received notice of the prehearing conferences but did not appear. The District appeared for the prehearing conferences.

At the June 4, 2020 prehearing conference, the District moved that the decision deadline be set at 30 days after the close of record, and this motion was granted.

In the Third Prehearing Conference Order, the Office of Administrative Hearings (OAH) notified the parties that the hearing would take place on August 6, 2020. OAH mailed this prehearing conference order to the parties on July 1, 2020.

The hearing was held on August 6 and September 18, 2020. The record was kept open to allow the parties to file written closing arguments. The parties did so, and their arguments were

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<sup>1</sup> The names of the Parent and the Student are omitted from this decision.

considered. The record closed on October 19, 2020. Accordingly, the due date for the written decision is **November 18, 2020**.

### **EVIDENCE RELIED UPON**

District Exhibits D-1 – D-6 and Parent Exhibits P-1, P-6 and P-7 were admitted.

The following witnesses testified under oath: (a) Katherine Tom, school psychologist, Finn Hill Middle School; (b) Seth Hayden, speech language pathologist, Finn Hill Middle School; (c) Nova Frank, Student's special education teacher, Finn Hill Middle School; (d) Gretchen Stuenkel, occupational therapist, Finn Hill Middle School; (e) Parent; (f) Aileen Hammar, former special education teacher at Seattle Children's Hospital, former teacher of Student, and current consultant to Parent.

### **FINDINGS OF FACT**

#### ***The Student***

1. The Student was born in [REDACTED], was [REDACTED] at the time of the February and March 2020 re-evaluation, and is [REDACTED] now. He is diagnosed with autism spectrum disorder and cerebral palsy.<sup>2</sup> Seth Hayden, the speech language pathologist who worked with him in the 2019-20 school year testified that:

Student is an amazing kid. He's – you know, the first thing I think of Student is just he's this positive, motivated, engaging – just wonderful child who easily engages with peers and adults. He has a wonderful sense of humor. The kind of kid that could joke with me more – on a more mature level than other students.<sup>3</sup>

Nova Frank, the special education teacher who worked with him four out of six periods every school day that year testified that:

He's a great student. Just a joy to work with. A really positive kid. And he likes to learn. He's very eager to learn. And he does learn well. He tends to forget what he learns. So if he learns a skill, he needs a lot of repetition to – to keep the skill.<sup>4</sup>

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<sup>2</sup> Exhibit P-1 at 1.

<sup>3</sup> Tr. at 162.

<sup>4</sup> Tr. at 241.

### ***The Student's history with special education services***

2. In March 2011, when the Student was [REDACTED], Seattle Public Schools found the Student eligible for special education based on an orthopedic impairment.<sup>5</sup>
3. On April 30, 2014, in the context of a re-evaluation done by Seattle Public Schools, the Student's special education category changed from "orthopedic impairment" to "multiple disabilities."<sup>6</sup>
4. In September 2015, the Student entered the Edmonds School District. He was placed in the intensive support classroom. He continued to receive the special education and related services recommended in the evaluation completed by Seattle Public Schools.<sup>7</sup>
5. In April 2017, the Edmonds School District re-evaluated the Student. The 2017 re-evaluation team determined that the Student would continue to receive special education services under the category of "multiple disabilities." The 2017 team recommended that the Student receive specially designed instruction in: (a) reading; (b) written language; (c) math; (d) self-advocacy skills; (e) executive functioning skills; (f) speech skills; (g) fine motor skills, and; (h) gross motor skills. He also qualified for the related services of speech language pathology (SLP) consultation, audiology, and assistive technology, and the supplementary aid/service of SLP consultation.<sup>8</sup>
6. In September 2018, the Student entered the District. He completed fifth grade at Frost Elementary in June 2019 and started sixth grade at Finn Hill Middle School in the District in September 2019.<sup>9</sup> At the time of the re-evaluation at issue, the Student was in sixth grade at Finn Hill.<sup>10</sup>
7. The Student's teacher in his self-contained special education classroom in the 2019-20 school year was Nova Frank. In addition to working with the Student on reading, writing and math, she also worked with him on adaptive and social skills. The Student had a one-to-one paraeducator for four and a half hours per day. The Student was in Ms. Frank's classroom four out six class periods. (His other two classes were adaptive physical education and a general education elective.) Ms. Frank has been teaching since 2002. Prior to starting her teaching career, she earned a juris doctorate from the Georgetown Law Center. In 2018, she earned a special education certificate through Seattle University. She has a special education endorsement.<sup>11</sup>

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<sup>5</sup> Exhibit D-2 at 1.

<sup>6</sup> *Id.* at 1.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> Exhibit P-1 at 2.

<sup>11</sup> Tr. at 237-40, 263.

### ***Communication between the Parent and the District related to the re-evaluation***

8. On February 4, 2020, the Parent gave the District her verbal consent to re-evaluate the Student. The District sent her a copy of the Procedural Safeguards via e-mail. The District gave a re-evaluation consent document to the Student to bring home for the Parent to sign.<sup>12</sup>

9. On February 18, 2020, Katherine Tom, the school psychologist at the Student's middle school, e-mailed the Parent. She asked the Parent if March 20, 2020 at 3:15 would work for the Student's re-evaluation team meeting. The Parent confirmed that that date and time would work for her.<sup>13</sup>

10. On February 20, 2020, the Parent signed the re-evaluation notification/consent document and suggested additional areas that needed to be considered.<sup>14</sup> She wrote "please add vision orientation & mobility given new power wheelchair" and "please add social/emotional (need to work on social boundaries)."<sup>15</sup>

11. On February 26, 2020, Ms. Tom e-mailed the Parent to acknowledge the Parent's suggestion to add "social/emotional" and "vision/orientation and mobility" to the Student's re-evaluation. She wrote:

I think it's a good idea to add social/emotional, and will give an additional rating scale to you and Mrs. Frank related to this. I consulted with our Physical Therapist, and she said wheelchair orientation is part of what she will look into for the evaluation, so I do not think there is an additional individual we need involve to achieve this.

Please let me know if you have any questions!<sup>16</sup>

12. The Parent did not suggest to the District that the Student needed to be evaluated in the area of "cognitive" or any other area.<sup>17</sup>

13. The notification/consent re-evaluation document was updated to include the originally suggested items and the Parent's additions. The updated notification/consent identified the areas that would be addressed in the re-evaluation: (a) review of existing data; (b) audiology;

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<sup>12</sup> Exhibit D-3 at 2-3.

<sup>13</sup> Exhibit D-1.

<sup>14</sup> Exhibit D-3 at 2, 38. The first page of what the Parent signed, showing the areas that the District originally proposed (without "social/emotional" and "vision/orientation and mobility") is not in the record. Tr. at 90-91.

<sup>15</sup> *Id.* at 38.

<sup>16</sup> Exhibit D-1 at 1.

<sup>17</sup> *Id.*; Exhibit D-3 at 3, 38 (Parent agreeing to an assessment without "cognitive"); Tr. at 67-69 (Ms. Tom's testimony regarding Parent's concerns expressed at re-evaluation meeting)

(c) general education teacher report; (d) social/emotional; (e) communication; (f) gross motor; (g) medical-physical; (h) vision; (i) adaptive; (j) behavior; (k) academic; (l) fine motor; and (m) student observation.<sup>18</sup>

14. On March 17, 2020, the District sent a Notice of Meeting to the Parent. The time and date of the meeting was the same as Ms. Tom and the Parent had earlier agreed on – March 20, 2020 at 3:15 p.m. The Notice of Meeting informed the Parent of who was invited to attend: the Parent, the school psychologist, the special education teacher, the administrator or designee, the speech language pathologist, the occupational therapist, Melissa Young (the deaf and hard of hearing contract specialist) and Gina Hemenway (the “teacher special services vision/orientation mobility.”)<sup>19</sup>

### **February - March 2020 Assessment**

15. The District conducted the re-evaluation of the Student for special education services in February and March, 2020.<sup>20</sup> This was his triennial re-evaluation.<sup>21</sup>

16. Katherine Tom is the school psychologist at Finn Hill middle school who was responsible for re-evaluating the Student for special education and related services. Ms. Tom is certificated through the Office of Superintendent of Public Instruction (OSPI). She earned a bachelor’s degree in psychology from the Ohio State University. She also earned an educational specialist degree in school psychology from the University of Cincinnati. She has done about 60 special education evaluations a year since 2014. She started working at Finn Hill at the start of the 2019-20 school year.<sup>22</sup>

17. The Evaluation Summary is found at D-3, pages 6-9. It opens with a review of existing data.<sup>23</sup> Ms. Tom performed this review by reading the input that the Parent had provided and by reading the previously completed special education evaluations.<sup>24</sup> There is no evidence that the Parent provided input regarding the need to assess the Student in the areas of communication or cognitive before the re-evaluation began.

18. The Areas of Evaluation document with the description of the assessments and their results is found at exhibit D-3, pages 10-32. Those areas corresponded with the areas outlined

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<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 1. The notice did not specifically name Ms. Tom (school psychologist), Ms. Frank (special education teacher), Mr. Hayden (speech language pathologist), or the administrator / designee. It used their titles instead.

<sup>20</sup> Exhibit D-3.

<sup>21</sup> Tr. at 34.

<sup>22</sup> Tr. at 30-33.

<sup>23</sup> Exhibit D-3 at 6.

<sup>24</sup> Tr. at 38.

in the notice: (a) review of existing data<sup>25</sup>; (b) audiology<sup>26</sup>; (c) general education teacher report<sup>27</sup>; (d) social/emotional<sup>28</sup>; (e) communication<sup>29</sup>; (f) gross motor<sup>30</sup>; (g) medical-physical<sup>31</sup>; (h) vision<sup>32</sup>; (i) adaptive<sup>33</sup>; (j) behavior<sup>34</sup>; (k) academic<sup>35</sup>; (l) fine motor<sup>36</sup>, and; (m) student observation.<sup>37</sup>

19. In the area of **audiology**, Melissa Young, teacher of the deaf and hard of hearing, conducted an assessment of the Student on February 27, 2020.<sup>38</sup> Ms. Young contracts with the district.<sup>39</sup> She reviewed the information in the 2017 audiological evaluation that reported that the Student presented with normal hearing in his right ear and borderline normal with mild hearing loss in his left ear. Ms. Young observed the Student in the classroom. He participated in class without difficulty. Ms. Young concluded that the current accommodations to address the Student's mild hearing loss should continue.<sup>40</sup>

20. At the time of the March 2020 assessment, the Student was in a **general education** classroom about 15% of the time. As part of the assessment, Amy Wishon, the Student's general education teacher, provided input about his performance in her class. She reported concerns about his fine motor skills.<sup>41</sup>

21. In the area of **social/emotional**, Ms. Tom assessed the Student using standardized behavior rating scales, specifically the Behavior Assessment for Children, Third Edition (BASC-3). The BASC-3 is a comprehensive assessment tool used to evaluate behavioral and emotional functioning. The Student's special education teacher, Ms. Frank, completed the scales and Ms. Tom assessed them.<sup>42</sup> Ms. Frank is very familiar with the BASC-3 scales.<sup>43</sup> Ms. Tom is qualified to administer and interpret the BASC-3. As a school psychologist, she administers this assessment about 30 times per year. She followed the instructions from the test producer in administering and assessing the BASC-3.<sup>44</sup>

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<sup>25</sup> Exhibit D-3 at 10-32 (throughout the Areas of Evaluation).

<sup>26</sup> *Id.* at 11-12.

<sup>27</sup> *Id.* at 13-14.

<sup>28</sup> *Id.* at 15-17.

<sup>29</sup> *Id.* at 24-26.

<sup>30</sup> *Id.* at 29-30.

<sup>31</sup> *Id.* at 10-11.

<sup>32</sup> *Id.* at 12-13.

<sup>33</sup> *Id.* at 14-15.

<sup>34</sup> *Id.* at 17-21.

<sup>35</sup> *Id.* at 21-24.

<sup>36</sup> *Id.* at 26-28.

<sup>37</sup> *Id.* at 30-31.

<sup>38</sup> *Id.* at 11.

<sup>39</sup> Tr. at 41.

<sup>40</sup> Exhibit D-3 at 11-12, 39-40.

<sup>41</sup> *Id.* at 13-14.

<sup>42</sup> *Id.* at 15-16.

<sup>43</sup> Tr. at 254.

<sup>44</sup> Tr. at 54-55.

22. The District provided the BASC-3 parent scales to the Parent to fill out. After sending the scales out to the Parent, Ms. Tom called to remind the Parent, and the Parent told Ms. Tom that she would check for the BASC-3 assessment. By the meeting date, the Parent told Ms. Tom in an e-mail regarding the BASC-3, "Thank you for proceeding as is."<sup>45</sup> Ms. Tom interpreted that to mean that the Parent did not intend to fill out the BASC-3 parent rating scale. The Parent did not complete the parent rating scale for the BASC-3.<sup>46</sup>

23. The problem scales in the BASC-3 are hyperactivity, aggression, conduct problems, anxiety, depression, somatization, attention problems, learning problems, atypicality, and withdrawal. The adaptive scales in the BASC-3 are adaptability, social skills, leadership, study skills, activities of daily living and functional communication. The Student scored in the "at-risk" range for the externalizing problems composite, the school problems composite and the behavioral symptoms index. Ms. Tom concluded that he might benefit from increasing his social/emotional or behavior skills and that he might benefit from the implementation of strategies to support him in these areas.<sup>47</sup> Ms. Tom concluded that the results of the Student's BASC-3 were valid and reliable.<sup>48</sup>

24. Ms. Tom's conclusion based on the BASC-3 – that the Student might benefit from increasing his social/emotional or behavior skills – is consistent with the testimony offered by the Parent at the time of the hearing. The Parent testified:

My observations for Student now [in September 2020] are that he really struggles socially, especially when meeting people outside of the school environment or in the community. He has difficulty interacting with peers in a nonfamiliar environment. He will ask very odd questions, and sometimes very inappropriate and unsafe questions relating to knowing social appropriateness.<sup>49</sup>

25. In the area of **communication**, licensed speech language pathologist (SLP) Seth Hayden conducted the assessment of the Student. Mr. Hayden earned a master's degree in speech language pathology from the University of Washington in 2009. He has a Certificate of Clinical Competence, which is more than is required to work in a Washington school. He was in his eleventh year of working for Lake Washington School District in 2019-20. He has been the SLP lead for two years. In his role as an SLP, he both evaluates students for eligibility for special education and provides direct services to students. He does between 25 and 35 evaluations a year.<sup>50</sup>

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<sup>45</sup> Tr. at 53.

<sup>46</sup> *Id.*

<sup>47</sup> Exhibit D-3 at 16.

<sup>48</sup> Tr. at 57, 254.

<sup>49</sup> Tr. at 351.

<sup>50</sup> Tr. at 158-61.

26. Mr. Hayden was at Finn Hill three days a week during the 2019-20 school year. He provided speech language services to the Student (working with him on his articulation skills) during the 2019-20 school year. He and the Student spent one 20-minute session together each week. Mr. Hayden was also familiar with him through a weekly cooking class that Mr. Hayden taught and the Student participated in. Typically Mr. Hayden would see the Student in his classroom and in the hallways every day he was at Finn Hill.<sup>51</sup> He was aware that the Student was diagnosed with autism spectrum disorder.<sup>52</sup> He has significant experience working with students who have been diagnosed with autism; he typically works with 10 to 20 students a year who are on the autism spectrum.<sup>53</sup>

27. From this experience of interacting with the Student, and based on his knowledge about speech language pathology, Mr. Hayden formulated an opinion about the Student's abilities in the social aspect of language, also known as speech pragmatics:

He demonstrated to me pragmatic skills in conversation that were better than most of his typically developing peers in the middle school. He – you know, he did – he would do all the things that you want students to do. He would greet you. He would ask you questions about yourself. He would, you know, retain information that he knows about you and follow up the next time and ask questions.<sup>54</sup>

28. Pragmatic language skills, such as where to stand and what to do with your body when talking to somebody, were a regular part of the curriculum in Ms. Frank's class in the 2019-20 school year.<sup>55</sup>

29. Based on his experience with and observations of the Student, Mr. Hayden determined that articulation was the only area of communication that required assessment. Other areas of communication skills (besides articulation) are pragmatics, voice and fluency and basic receptive and expressive language skills. Mr. Hayden determined that the Student did not have suspected disabilities in these other subareas of communication. Mr. Hayden's conclusion was bolstered by his review of the 2017 assessment done by the Edmonds School District. Edmonds had assessed the Student using the Test of Expressive Language, the Language Processing Test and the Phono Articulation Test. The Student scored slightly below normal limits in the Test of Expressive Limits, within normal limits on the Language Processing Test, and significantly lower on the Phono Articulation Test. These 2017 assessment results showed that, like Mr. Hayden's personal observations in the 2019-20 school year, the Student did not have a suspected disability in expressive or receptive language or other areas beside articulation.<sup>56</sup>

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<sup>51</sup> Tr. at 162-64, 230.

<sup>52</sup> Tr. at 208.

<sup>53</sup> Tr. at 211.

<sup>54</sup> Tr. at 165.

<sup>55</sup> Tr. at 248.

<sup>56</sup> Tr. at 170-72.



30. The District assessed the Student in the communication subarea of articulation. Mr. Hayden looked at the Student's progress in school. During the 2019-20 school year, the Student made "incredible progress" since his last evaluation in articulation. That is because the Student knows what is expected of him, can recall prior instruction and self-correct, and practices the correct oral movements on his own.<sup>57</sup>

31. Mr. Hayden had no problems understanding the Student's speech. Although the Student still made some occasional errors in articulation, the nature of those errors did not influence overall intelligibility.<sup>58</sup> The student's teacher, Ms. Frank, agreed – she explained that his intelligibility is typical for a sixth grade student, and that he is close to 100 percent intelligible.<sup>59</sup>

32. To conduct the speech language part of the re-evaluation, Mr. Hayden reviewed the re-evaluation from the Edmonds School District conducted in 2017. He also assessed the Student using the Arizona Articulation and Phonology Scale, Fourth Revision (the Arizona).<sup>60</sup> Mr. Hayden chose the Arizona because a cohort of about 40 other speech language pathologists within the Lake Washington School District determined that it was the most appropriate tool for assessing articulation skills. Mr. Hayden is trained to administer and score the Arizona, and has given it about 15 to 20 times a year during his eleven years of experience. The Arizona is standardized and nationally normed. Mr. Hayden administered it according to instructions.<sup>61</sup> Mr. Hayden concluded that the results of the Student's Arizona are valid and reliable.<sup>62</sup>

33. Mr. Hayden also has experience in administering the Goldman-Fristoe Test of Articulation, 3<sup>rd</sup> Edition (Goldman-Fristoe) and its predecessor. However, the District no longer uses the Goldman-Fristoe because, in the opinion of the District's SLPs, the test is not accurate. It gives too much weight to a student's inability to properly make prevocalic and vocalic Rs, and this makes scores so low that they do not correspond with the real-life intelligibility of a child like the Student, who sometimes (but not always) makes those minor errors with Rs.<sup>63</sup>

34. On the Arizona, the Student's word articulation total score was in the 34<sup>th</sup> percentile. For this measure, Mr. Hayden showed the Student a picture and the Student had to name the item in the picture in one word. The Student demonstrated errors with the vocalic R in the medial position in two words, and also used the F sound for the voiceless T-H in the final position of one word. The Student scored in the 25<sup>th</sup> percentile in sentence articulation. He made one additional error when articulating sentences. He used the P-W sound for the P-L sound, as in "pwane." These scores are both "within normal limits" on the severity range.<sup>64</sup>

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<sup>57</sup> Tr. at 166.

<sup>58</sup> Tr. at 166-67.

<sup>59</sup> Tr. at 249.

<sup>60</sup> Exhibit D-3 at 24-25.

<sup>61</sup> Tr. at 174-76.

<sup>62</sup> Tr. at 179.

<sup>63</sup> Tr. at 200-02.

<sup>64</sup> Exhibit D-3 at 24-25; Tr. at 176-177.

35. Although the minor articulation errors that the Student made may be more prevalent in younger children, these errors sometimes persist beyond that.<sup>65</sup> The Student could work on these remaining errors through ongoing therapy or through working on them on his own, which he is capable of doing.<sup>66</sup>

36. Mr. Hayden did not talk with the Parent before March 20, 2020 – the date of the re-evaluation meeting.<sup>67</sup>

37. Mr. Hayden also reviewed the Student’s annual goals in speech and language, which were to pronounce /l/ and /l/ blends and “th” correctly to identified percentages. The Student was making good progress on both of these goals, especially the /l/ and /l/ blends.<sup>68</sup> He would still sometimes substitute a “d” sound for a “th” sound (as in, “dare” for “there”), but that did not affect his intelligibility.<sup>69</sup>

38. In addition to reviewing the prior evaluation, frequently observing and working with the Student in the 2019-20 school year, and assessing the Student using the Arizona, Mr. Hayden also analyzed a 50-utterance speech and language sample from the Student. He recorded it and went back and listened for articulation. The Student readily spoke about a subject the Student was interested in, so Mr. Hayden was able to review his articulation in the course of a typical conversation. When he went back to listen, Mr. Hayden was able to understand 100 percent of the words.

The process of gathering the speech sample also provided another datum that the Student did not have a suspected disability in expressive or receptive language or pragmatics, because the Student was able to understand the prompt and answer appropriately and intelligibly, and his pragmatics were socially appropriate for a middle school student.<sup>70</sup>

39. Mr. Hayden concluded that:

[Student] no longer presents with significant delays in his articulation skills at this time and therefore his articulation skills do not adversely impact his ability to access and benefit from his education environment to his fullest potential. It is recommended that specially designed instruction in speech and language therapy be discontinued at this time.<sup>71</sup>

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<sup>65</sup> Tr. at 210.

<sup>66</sup> Tr. at 212.

<sup>67</sup> Tr. at 207.

<sup>68</sup> Exhibit D-3 at 25-26.

<sup>69</sup> Tr. at 185-86.

<sup>70</sup> Exhibit D-3 at 25; Tr. at 180-83.

<sup>71</sup> Exhibit D-3 at 26.

40. In the area of **gross motor**, physical therapist Janelle Pinski assessed the Student. Ms. Pinski earned a master's degree in physical therapy from the University of Washington in 2002. She has worked with the Student for the past two school years during weekly physical therapy sessions – on his wheelchair training and transfers, mat work, and functional mobility, among other skills.<sup>72</sup>

41. For the March 2020 assessment, Ms. Pinski reviewed the Student's records, used the Lake Washington School District physical therapy functional assessment (LWSD PT functional assessment), got a report from the Student's teacher, and observed the Student in the classroom herself. The LWSD PT functional assessment is a checklist for the level of assistance that the Student requires to complete mobility tasks that are naturally called for at school. Ms. Pinski assessed and wrote about areas of gross motor ability – general mobility, classroom mobility, gym mobility, bathroom mobility, and the Student's mobility when using an adapted tricycle.<sup>73</sup> Ms. Pinski concluded that, while the Student has made progress in the area of gross motor, he continued to demonstrate a need for school physical therapy services as specially designed instruction to fully access his education. Ms. Pinski specifically considered the impact of the Student's new wheelchair on his mobility.<sup>74</sup>

42. In the area of **medical-physical**, Ms. Tom reviewed the Student's medical records from the Edmonds School District's 2017 re-evaluation, a Re-Evaluation Health History and Parent Input form completed by the Parent, and a District health specialist evaluation that had been completed about a year earlier, on April 30, 2019.<sup>75</sup> Ms. Tom consulted with Karen Walker, the school nurse at Finn Hill in 2020, about the Student's April 2019 health specialist evaluation. Ms. Walker confirmed it was still accurate.<sup>76</sup>

43. In the health evaluation form that she submitted to Ms. Tom, the Parent identified many current health conditions for the Student, including asthma and mild chronic lung disease, bowel problems since birth, cerebral palsy since birth, autism diagnosed at age 3, attention deficit and attention deficit hyperactivity disorder since age 5, vision concerns, and sleep concerns. The Parent identified medications that the Student was taking and reported that the Student was receiving occupational therapy, physical therapy and speech therapy.<sup>77</sup>

44. In the area of **vision**, Gina Hemenway performed a functional vision evaluation of the Student and prepared a report.<sup>78</sup> Ms. Hemenway is a vision specialist in the District.<sup>79</sup> She is a certificated teacher of students with vision impairment, a certificated teacher of students with

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<sup>72</sup> Exhibit D-5 ¶¶ 1-5.

<sup>73</sup> Exhibit D-3 at 29-30.

<sup>74</sup> *Id.*

<sup>75</sup> Exhibit D-3 at 14.

<sup>76</sup> Tr. at 40-41.

<sup>77</sup> Exhibit D-3 at 10-11; Tr. at 40.

<sup>78</sup> Exhibit D-3 at 12; Tr. at 337.

<sup>79</sup> Tr. at 42.

hearing impairments, and a special education teacher. She has earned a master's degree and has 38 years of experience.<sup>80</sup> During the 2019-20 school year, she provided direct services to the Student for half an hour a month.<sup>81</sup>

45. For the functional visual evaluation, Ms. Hemenway assessed the Student's ability to see text, to see objects far away, and to see the materials on his laptop. She also administered the Visual Efficiency Scale, which assesses functioning of visual behaviors and response to items of increasing complexity in size, detail and interpretation. This assesses the connection between the eye and the Student's cognition. Ms. Hemenway determined that the Student has trouble in the area of scanning, which permeated the evaluation. Ms. Hemenway made recommendations based on the concern about the Student's scanning.<sup>82</sup>

46. In the area of **adaptive**, the District assessed the Student using standardized behavior rating scales, specifically the Adaptive Behavior Assessment System, Third Edition (ABAS-3).<sup>83</sup> Ms. Tom was the assessor; she is trained in administering and interpreting the results of the ABAS-3. In her six-year career as a school psychologist, she has administered the ABAS-3 about 60 times.<sup>84</sup>

47. Conducting the ABAS-3, Ms. Tom gave rating scales to the Student's Parent and the Student's special education teacher, Ms. Frank, and assessed their responses. She chose these two people because the Parent was very familiar with the Student, and Ms. Frank was also familiar with him because he spent most of his school time in her class.<sup>85</sup> Ms. Frank is very familiar with the ABAS-3, having completed the associated scale for many students, and she had been working with the Student for about five months prior to completing the ABAS-3 scale.<sup>86</sup>

48. The ABAS-3 is a norm-referenced assessment of adaptive skills, including conceptual, social and practical skills. The result of the ABAS-3 for the Student was a composite score in the extremely low range.<sup>87</sup> The assessor determined that the Student "would likely benefit from continuing to increase his adaptive behavior skills and the implementation of strategies to support him in this area."<sup>88</sup> Ms. Tom concluded that the results of the ABAS-3 for the Student were valid and reliable.<sup>89</sup>

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<sup>80</sup> Tr. at 337.

<sup>81</sup> Tr. at 346.

<sup>82</sup> Exhibit D-3 at 12-13.

<sup>83</sup> *Id.* at 14.

<sup>84</sup> Tr. at 48.

<sup>85</sup> Tr. at 49, 251.

<sup>86</sup> Tr. at 251-52.

<sup>87</sup> Exhibit D-3 at 14-15.

<sup>88</sup> Exhibit D-3 at 15.

<sup>89</sup> Tr. at 51, 253.

49. In the area of **behavior**, the District evaluated the Student via teacher input about his current behavior in the classroom (from Ms. Frank) and standardized behavior rating scales, specifically the Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2).<sup>90</sup> Ms. Tom administered the BRIEF-2 and assessed its results.<sup>91</sup> Ms. Frank is very familiar with the BRIEF-2 scales.<sup>92</sup> Ms. Tom has administered the BRIEF-2 about 30 times. She chose the BRIEF-2 because it is norm-referenced and the BRIEF-2 is an appropriate tool to measure executive functioning in children.<sup>93</sup> She followed the instructions of the test producer in administering and assessing the BRIEF-2.<sup>94</sup>

50. The Parent and Ms. Frank completed the scales for the BRIEF-2. The BRIEF-2 is designed to measure the impact and severity of executive functioning issues in children, including those with autism. Ms. Tom selected the Parent and Ms. Frank to fill out the scales because of their familiarity with him.<sup>95</sup> After scoring and comparing the scales received from the Parent and Ms. Frank, Ms. Tom concluded:

Based on this information, [Student] might benefit from increasing his behavior regulation in the school setting, as this area fell in the potentially clinically elevated range based on teacher responses. One area fell in the clinically elevated range in the school setting and might indicate the need for intervention, which was self-monitoring, or being aware of the effect that his behavior has on others. Other areas that fell in the potentially clinically elevated range in the school setting, indicating more difficulty than typical peers, were the following: inhibit, emotional control, working memory, and organization of materials.<sup>96</sup>

51. In the area of **academic**, the District assessed the Student using the Styer-Fitzgerald Program for Functional Academics Assessment (the Styer-Fitzgerald), which is a curriculum-based measure. It measures a student's functional ability to read, write and do math. For example, the math portion of the Styer-Fitzgerald assesses a student's time telling skills, money skills, and ability to use schedules. Ms. Frank, the Student's teacher, was the assessor. She had used the Styer-Fitzgerald with many students previously, and she administered it in accordance with the instructions.<sup>97</sup>

52. Using the Styer-Fitzgerald, Ms. Frank made several findings in each of the functional academic subareas of reading, writing and math.<sup>98</sup> She concluded that "[Student]'s disabilities

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<sup>90</sup> Exhibit D-3 at 17-19.

<sup>91</sup> Exhibit D-3 at 17; Tr. at 57.

<sup>92</sup> Tr. at 254.

<sup>93</sup> Tr. at 58.

<sup>94</sup> Tr. at 59.

<sup>95</sup> Exhibit D-3 at 17-19; Tr. at 59.

<sup>96</sup> *Id.* at 19.

<sup>97</sup> *Id.* at 21-24; Tr. at 256-59.

<sup>98</sup> Exhibit D-3 at 21-24.

impede his access to the general education curriculum, and he continues to require specially designed instruction in math, writing and reading.”<sup>99</sup>

53. As part of its assessment of the Student in the area of academic, the District specifically considered the impact of the Student’s use of speech-to-text to access academic materials and to do academic work. The Student is able to use speech-to-text to write. He needs help signing into the computer because of limited use of his left hand, but once he is logged in he is able to use e-mail and search the internet.<sup>100</sup>

54. In the area of **fine motor**, occupational therapist Gretchen Stuenkel performed the assessment in February 2020. Ms. Stuenkel earned a master’s degree in occupational therapy from the University of Washington. At the time of the assessment she had been supporting the student with therapy sessions since September 2019.<sup>101</sup>

55. Ms. Stuenkel used the Educational Assessment of School Youth (EASY), the Test of Visual Perceptual Skills 4<sup>th</sup> edition (TVPS-4) and structured observation. Ms. Stuenkel is trained and knowledgeable in administering the EASY and TVPS-4. She administered those assessments according to their instructions.<sup>102</sup>

56. The EASY is a school-based assessment used to guide structured observations and interviews.<sup>103</sup> Ms. Stuenkel chose to use the EASY because it is school-based and because it provides a broad overview of the Student’s fine motor, technology use and self-help skills.<sup>104</sup>

57. Ms. Stuenkel chose the TVPS-4 because visual perception is closely tied to fine motor skills. Knowing where strengths in visual perception lie can be used to the Student’s advantage when learning and practicing new skills, such as driving a power wheelchair. The TVPS-4 is a standardized, individually administered assessment of two-dimensional visual perception skills.<sup>105</sup>

58. After conducting the EASY and the TVPS-4, Ms. Stuenkel concluded that:

[Student] presents with fine and visual motor skill deficits. He demonstrates challenges with sustained attention and focus to tasks as well as with flexibility in thinking and can sometimes be hard to redirect. He will continue to benefit from occupational therapy services to address his motor skill development, provide

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<sup>99</sup> *Id.* at 24; Tr. at 261.

<sup>100</sup> Exhibit D-3 at 23.

<sup>101</sup> Exhibit D-4 ¶¶ 1-4.

<sup>102</sup> Exhibit D-4 ¶¶ 7, 11.

<sup>103</sup> Exhibit D-3 at 26.

<sup>104</sup> Exhibit D-4 ¶ 6.

<sup>105</sup> *Id.* ¶ 10.

adaptations, and assistive technology in order to maximize his ability to participate in his special education program.<sup>106</sup>

59. There is a section of the Areas of Evaluation document titled “**Observation.**” On March 5 and March 11, 2020, school psychologist Ms. Tom, who had the overall responsibility for coordinating the District’s evaluation, observed the Student in his classroom for about a half hour each of the two times. Ms. Tom recorded her observations.<sup>107</sup>

60. The Areas of Evaluation also discuss the area of **cognitive.**<sup>108</sup> This was not one of the District’s proposed areas of evaluation for March 2020, and the Parent did not suggest that it should be when she consented to the re-evaluation.<sup>109</sup> So the re-evaluation team reviewed the Student’s cognitive abilities by reviewing the file, specifically the cognitive assessment performed by the Edmonds School District as part of its evaluation of the Student in 2017. The Edmonds School District administered the Differential Ability Scales – 2<sup>nd</sup> edition, a standardized norm-referenced assessment instrument, to the Student. The result provided a reliable measure of his then-current cognitive development.<sup>110</sup>

61. The team discussed the possibility that the Student might have a higher level of cognitive performance than previously determined. The team decided that it would consider a new cognitive assessment prior to the Student’s next triennial re-evaluation.<sup>111</sup> The decision not to perform a new assessment in February and March 2020 was a deliberate one by the re-evaluation team. Ms. Tom testified:

I also didn’t feel as if new cognitive assessment results would necessarily provide team – the team information that would be needed in order to identify his needs and assist him with his educational programming, because as part of this evaluation process, we – we completed a multifaceted evaluation, and I felt that we had – we had collected data across – in the areas of suspected disability to evaluate his needs to where I felt like we were able to appropriately identify what those were.<sup>112</sup>

62. There is no evidence in the record that the Parent disagreed with this approach before the March 20, 2020 re-evaluation meeting or during that meeting.<sup>113</sup>

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<sup>106</sup> Exhibit D-3 at 28.

<sup>107</sup> Exhibit D-3 at 30-31; Tr. at 64-65.

<sup>108</sup> Exhibit D-3 at 20-21.

<sup>109</sup> *Id.* at 2-3, 38.

<sup>110</sup> *Id.* at 20-21.

<sup>111</sup> Exhibit D-2 at 6; exhibit D-3 at 20-21; Tr. at 70.

<sup>112</sup> Tr. at 61-62, 85.

<sup>113</sup> See Exhibit D-3 at 2-3, 38 (Parent giving consent to re-evaluation without new cognitive testing); Tr. at 67-70 (Ms. Tom’s testimony regarding Parent’s expressed concerns and areas of discussion at the March 20, 2020 re-evaluation meeting).

### **March 20, 2020 re-evaluation team meeting**

63. On March 20, 2020, the Student's re-evaluation team met.<sup>114</sup> The following participants were present (via video conference, due to the then-new COVID-19-related school closure)<sup>115</sup>: (a) Parent; (b) Katherine Tom, school psychologist; (c) Victor Scarpelli, Finn Hill principal; (d) Nova Frank, special education teacher; (e) Seth Hayden, speech language pathologist; (f) Gretchen Stuenkel, occupational therapist; (g) Melissa Young, teacher of the deaf and hard of hearing, and (h) Gina Hemenway, teacher of students with vision impairment.<sup>116</sup> Mr. Scarpelli arrived after the meeting began.<sup>117</sup> Janelle Pinski, physical therapist, was not available to participate in the video conference, although she spoke with the Parent earlier that day, March 20, 2020. Although the participants had the evaluation summary on March 20, 2020, nobody signed the evaluation summary. The plan was to have the participants sign it when school resumed.<sup>118</sup>

64. The re-evaluation team determined that the Student was eligible to receive special education and related services under the category of "multi-disabilities." The team determined that this was the appropriate category because the Student had two or more disabling conditions that caused such severe educational problems that he required intensive programming that could not be accommodated in special education for only one of the impairments.<sup>119</sup>

65. The team recommended specially-designed instruction in the areas of (a) reading; (b) writing; (c) functional math; (d) adaptive behavior; and (e) social/emotional. The team also found the Student qualified for the related services of occupational therapy and physical therapy. The team also recommended the supplementary aid/service of consultation with the district vision specialist and with deaf/hard of hearing support staff. The team did not recommend speech/language services going forward.<sup>120</sup>

66. During the meeting on March 20, 2020, the Parent had questions about "standard scores," "percentile ranks," and other questions regarding statistics.<sup>121</sup> She expressed disagreement with the team's determination to discontinue speech and language services. She did not express disagreement with any other area of the evaluation report. No other members of the team expressed any disagreement or concerns with the evaluation report. The Parent did not request that any other areas be assessed. She did not request evaluation for the Student in

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<sup>114</sup> Exhibit D-2 at 1.

<sup>115</sup> There is no evidence that COVID-19 impacted the re-evaluation in any other way – other than the fact that the March 20, 2020 meeting was held by videoconference. The assessments were all complete by the time the schools closed. See Exhibit D-3.

<sup>116</sup> Exhibit D-2 at 5-6.

<sup>117</sup> Tr. at 81-82.

<sup>118</sup> Exhibit D-2 at 5-6.

<sup>119</sup> *Id.* at 2.

<sup>120</sup> *Id.* at 2-3, 5; Tr. at 66-67

<sup>121</sup> Tr. at 187.



speech language pragmatics, expressive or receptive language, or higher level language skills.<sup>122</sup>

### ***Communication after the re-evaluation team meeting***

67. The District offered Procedural Safeguards to the Parent via e-mail on March 27, 2020.<sup>123</sup>

68. On March 27, 2020, the District provided a draft Prior Written Notice to the Parent. The Prior Written Notice informed her that the District was proposing to continue his eligibility category and to continue to offer him specially designed instruction in the areas identified at the March 20, 2020 meeting.<sup>124</sup>

69. The draft March 27, 2020 Prior Written Notice also explained why the re-evaluation team considered, but ultimately rejected, specially designed instruction in speech and language:

[Student] no longer presents with significant delays in his articulation skills at this time and therefore his articulation skills do not adversely impact his ability to access and benefit from his educational environment to his fullest potential. It is recommended that specially designed instruction in speech and language therapy be discontinued at this time. [Student] scored within normal limits on both the word level and sentence level portions of this test. [Student] does not meet the criterion of a standard score of 77 or below to qualify a student for articulation therapy in Lake Washington School District.<sup>125</sup>

70. On April 2, 2020, Ms. Tom e-mailed the Parent to request the Parent's input regarding the draft Prior Written Notice. On April 8, 2020, the Parent responded, requesting one more week to review the draft. On April 15, 2020, Ms. Tom again e-mailed the Parent to request input. On April 17, 2020, Ms. Tom called the Parent. The Parent told her that she was in the process of obtaining an outside opinion regarding speech. On April 22, 2020, Ms. Tom e-mailed the Parent to follow up. On April 23, 2020, the Parent stated in an e-mail that she had not been able to get a quick outside opinion and would like to request an independent evaluation for speech.<sup>126</sup>

71. In her April 23, 2020 e-mail to Ms. Tom, the Parent also asked questions about options for orientation and mobility services for the Student. Ms. Tom confirmed with Ms. Pinski, the physical therapist, and Ms. Hemenway, the vision specialist, that those options were discussed

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<sup>122</sup> Exhibit D-3 at 32; Tr. at 67-70.

<sup>123</sup> Exhibit D-2 at 6.

<sup>124</sup> *Id.* at 5-6; exhibit D-3 at 34; Tr. at 71-72.

<sup>125</sup> Exhibit D-2 at 5.

<sup>126</sup> Exhibit D-3 at 34; Tr. at 72-73.

with the Parent during the Student's individualized education program meeting that took place after the re-evaluation meeting.<sup>127</sup>

72. On April 24, 2020, the District finalized and sent the Prior Written Notice. The paragraph regarding the Student's lack of need for specially designed instruction in the area of speech and language is the same as in the March 27, 2020 draft Prior Written Notice.<sup>128</sup> Procedural safeguards were again provided to the Parent.<sup>129</sup>

***Speech language pathologist Kari Anne Tibeau conducted speech language assessment in July 2020***

73. Subsequent to the re-evaluation of the Student by the District, his primary care provider, Dr. Kristen Nyweide White, referred him to the Speech and Language Department of Seattle Children's Hospital. The Student and the Parent sought the assessment by Seattle Children's to determine his relative strengths and weaknesses in the areas of speech and language. The assessment was published July 16, 2020 and is found at exhibit P-1.<sup>130</sup>

74. Kari Anne Tibeau, MS, CCC-SLP, is the author of the speech language pathology note containing the results of the July 2020 assessment.<sup>131</sup> Ms. Tibeau did not testify. There is no evidence in the record about Ms. Tibeau's experience with the instruments chosen. Although the July 2020 assessment contains a brief explanation of what each instrument measures, there was no testimony presented about why these measures (and not others) were selected.<sup>132</sup>

75. Ms. Tibeau, the author of the July 2020 speech language note, did not speak with Mr. Hayden, the speech language pathologist who performed the assessment in March 2020.<sup>133</sup> There is no evidence in her report or elsewhere in the record that she contacted anybody from the District to gather information about the Student.<sup>134</sup>

76. The assessment measures that Seattle Children's used included a part of the Comprehensive Assessment of Spoken Language, 2<sup>nd</sup> Edition (CASL-2), the Double Interview Task from the Social Thinking Dynamic Assessment Protocol, the Goldman-Fristoe, the Intelligibility in Context Scale (ICS), and clinical observation. It did not include any information from the District.<sup>135</sup>

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<sup>127</sup> Tr. at 73.

<sup>128</sup> Exhibit D-3 at 33-35.

<sup>129</sup> Tr. at 74.

<sup>130</sup> Exhibit P-1 at 1.

<sup>131</sup> *Id.*

<sup>132</sup> See Exhibit P-1.

<sup>133</sup> Tr. at 190.

<sup>134</sup> See Exhibit P-1

<sup>135</sup> Exhibit P-1 at 2; Tr. at 191.

77. The CASL-2 measures the subject's overall ability to understand the deeper meaning of vocabulary and language – both in understanding the language used by others and in the subject's ability to use language expressively.<sup>136</sup> The CASL-2 has subtests that measure the subject's ability to express and understand nonliteral language, meaning from context, inference, double meaning, and pragmatic language.<sup>137</sup> The Student scored "below average" in each of these subtests of the CASL-2.<sup>138</sup> There are other subtests that are part of the CASL-2, but the Student did not take these subtests. The full CASL-2 was not administered to him.<sup>139</sup>

78. The subtests of the CASL-2 that the Student took in July 2020 measure higher level language skills, like the ability to understand sarcasm and figurative language, or the ability to understand the meaning of a word based on the context of a sentence, or the ability to infer meaning that is not explicitly in the text. These are areas that are part of the curriculum for all middle school students. The Student also qualifies for services in the areas of reading and writing, in which these higher language skills would be developed.<sup>140</sup>

79. The Goldman-Fristoe was administered to the Student. It is a standardized measure of articulation abilities at a single-word level. The results reveal if a child's ability to produce sounds in words is typical for their age. The Student scored below the 0.1 percentile on the Goldman-Fristoe. He had 19 total errors.<sup>141</sup>

80. The Intelligibility in Context Scale consists of 7 items on which the person completing the scale rates the intelligibility of the child being assessed. The Parent completed this assessment, and the result was an average total score of 3.57, indicating that the Student is sometimes to usually understood by others.<sup>142</sup>

81. Ms. Tibeau found that "[Student's] speech intelligibility was approximately 95% to this trained listener during this evaluation suggesting mildly reduced intelligibility."<sup>143</sup> Because Ms. Tibeau did not testify, there is no explanation of how the Student's speech intelligibility could be 95% while at the same time scoring at the 0.1 percentile on the Goldman-Fristoe. The results suggest that either (a) an inability to articulate at the single-word level has little to no impact on a child's intelligibility, or; (b) as Mr. Hayden testified, the Goldman-Fristoe is unreliable (at least as given to this Student).<sup>144</sup>

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<sup>136</sup> Exhibit P-1 at 2.

<sup>137</sup> *Id.* at 2-3.

<sup>138</sup> *Id.*

<sup>139</sup> Tr. at 191.

<sup>140</sup> Tr. at 192-94, 214-17, 243-44

<sup>141</sup> Exhibit P-1 at 4-5.

<sup>142</sup> Exhibit P-1 at 5.

<sup>143</sup> Exhibit P-1 at 5.

<sup>144</sup> See Exhibit P-1 at 4-5; Tr. at 202-05.

82. Ms. Tibeau concluded that the Student was “below age-level expectation” in (a) higher level language skills; (b) social communication skills; and (c) speech sound production skills. Ms. Tibeau concluded that the Student’s intelligibility was mildly reduced. She recommended speech therapy, social skills therapy and resources for the home.

***District addressed all subareas of suspected disability in communication***

83. By addressing articulation in the assessment, the District addressed all subareas of the Student’s suspected disability in communication.<sup>145</sup>

84. The Parent argues that the District did not address all subareas of the Student’s suspected disability in communication, pointing to Exhibit P-1, the speech language pathology note from July 2020. As discussed above, the Student was evaluated by a Seattle Children’s Hospital SLP in communication. One of the instruments the Seattle Children’s SLP used was the Comprehensive Assessment of Spoken Language – Second Edition (CASL-2). Although the SLP who administered the CASL-2 to the Student did not testify, it appears that the Student’s CASL-2 results suggest that he lacks higher level language skills, such as deriving meaning from context and using nonliteral language, inference and double meaning.<sup>146</sup> The Parent argues that the District’s failure to assess for these higher level language skills means that not all areas of suspected disability were addressed.

85. However, the results of the CASL-2 administered in July 2020 do not mean that the District failed to address all subareas of the Student’s suspected disability in communication. First and most obviously, the District did not have the benefit of the July 2020 CASL-2 in March 2020. Second, the results of the CASL-2 in isolation are questionable. Ms. Tibeau did not testify about her administration of the CASL-2. Ms. Tibeau did not contact Mr. Hayden, and there is no evidence that Ms. Tibeau contacted the Student’s teacher or any other school personnel. Third, these higher level language skills are already addressed in the Student’s curriculum for middle school students, and there were no “red flags” or concerns about the Student’s ability to access this part of the curriculum before the re-evaluation. Fourth, there is no evidence that the Parent ever requested that the District evaluate the Student in these higher language skills or ever expressed concerns about them – until after she received the July 2020 evaluation.

86. The Parent also argues that the District did not evaluate in all areas of suspected disability because it did not assess the Student in the area of speech and language pragmatics. Her concerns include the Student’s asking inappropriate and unsafe questions of people when talking to them, giving the example of the Student asking strangers for bank account numbers.<sup>147</sup> However, these inappropriate topics of conversation are not a matter of communication, but a matter of social/emotional or adaptive behavior. His pragmatic

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<sup>145</sup> See discussion of Mr. Hayden’s part of the assessment, findings 25-39, above.

<sup>146</sup> Exhibit P-1.

<sup>147</sup> Tr. at 352.

communication skills when asking for bank accounts is not interfering with the message he wishes to communicate – it is that the message itself is inappropriate. And this kind of inappropriate social behavior was assessed, just not by Mr. Hayden. One of the subparts of the ABAS-3 is “Conceptual,” and under “Conceptual,” there is a section for “Communication,” which is defined as “Speech, language, and listening skills needed for communication with other people including vocabulary, responding to questions, conversation skills, nonverbal skills, etc.” Another section of the ABAS-3, within the subpart of “Social,” measures “Skills needed to interact socially and get along with other people, including expressing affection, having friends, showing and recognizing emotions, assisting others, using manners, etc.”<sup>148</sup> These subareas within the ABAS-3 measured the type of behavior about which the Parent expressed concern.<sup>149</sup>

## CONCLUSIONS OF LAW

### ***Jurisdiction and Burden of Proof***

1. 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

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<sup>148</sup> Exhibit D-3 at 14.

<sup>149</sup> See *id.* Aileen Hammar testified for the Parent and commented about the Seattle Children’s evaluation and the District’s evaluation. She testified after I overruled the District’s objection to her testimony based on relevance. Ms. Hammar earned a master’s degree in special education from the University of Washington and has 30 years of experience as an educator in various settings. The last time she worked for a school district was 1992-93. A large portion of her experience was working at Seattle Children’s Hospital on a multidisciplinary team, the rehabilitation team. She spent a total of 23 years as an employee of Seattle Children’s. Ms. Hammar is also a deaf educator and an early childhood specialist. She is not a school psychologist, nor is she a speech language pathologist. She has not been the lead evaluator on a special education evaluation, but she has participated in evaluations as an educator. (Tr. at 146-48, 281, 301, 313-15) Ms. Hammar worked with the Student when he came to Seattle Children’s Hospital between the ages of three and about seven, but she has not worked with him recently. She has not observed the Student at school. She has not spoken with his teachers or the speech language pathologist. (Tr. at 149, 282-84.)

The parent called Ms. Hammar as a witness to highlight what Ms. Hammar saw as deficiencies with the re-evaluation at issue. I carefully considered her testimony and some of her concerns with the District’s re-evaluation are addressed in the findings and conclusions of law.

However, this order does not cite Ms. Hammar’s testimony for support of any factual proposition. Although her educational and professional experience are substantial, she does not know the Student – she has not worked with him since he was seven. (Tr. at 315.) Since Ms. Hammar is not a speech language pathologist, her testimony regarding the speech language pathology portion of the evaluation is given less weight than that of Mr. Hayden. Since she is not a school psychologist and has not supervised and coordinated any evaluation, much less an evaluation for this Student, her testimony on other aspects of the March 2020 re-evaluation are given less weight than that of Ms. Tom and Ms. Frank. Since she has not interacted with the Student for years, her testimony on his ability to access his education as of March 2020 is given less weight than that of the other witnesses.

promulgated pursuant to these federal and state 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, in this case the District.<sup>150</sup> The issue in this case was identified in the Third Prehearing Conference Order. It is “[w]hether the District’s evaluation of the Student conducted on March 20, 2020 was appropriate and, if not whether the Parents are entitled to an independent educational evaluation at public expense.” It is the District’s burden to show that the March 20, 2020 re-evaluation was appropriate.<sup>151</sup>

**Applicable Law: IEEs and Evaluations**

3. Washington Administrative Code sections 392-172A-3015 through -3040 apply to evaluations and re-evaluations.

4. Washington Administrative Code 392-172A-03015(2) provides that a re-evaluation of a student eligible for special education must be conducted within three years of the previous evaluation – but that a re-evaluation must not take place within a year of the previous evaluation. In this case, the Edmonds School District evaluated the Student in April 2017, so the District’s re-evaluation in March 2020 met the requirements of WAC 392-172-03015(2).

5. Under WAC 392-172A-03015(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;
- (c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

6. In this case, the Parent signed the consent for the re-evaluation on February 20, 2020, and the re-evaluation was complete on March 20, 2020, so the District met the timeliness requirement of WAC 392-172A-03015(3).

7. To meet its burden, the District must show that its March 2020 evaluation was appropriate.<sup>152</sup> To be appropriate, a school district’s evaluation must be sufficiently comprehensive to identify all of the student’s special education and related service needs.<sup>153</sup>

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<sup>150</sup> *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

<sup>151</sup> *Id.*, WAC 392-172A-05005(2)(c) (burden is on District to “show that its evaluation is appropriate”).

<sup>152</sup> WAC 392-172A-05005(2)(c).

<sup>153</sup> WAC 392-172A-03020; see also 34 CFR §300.304.

When a school district conducts a special education evaluation, a “group of qualified professionals selected by the school district” must use a “variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent[.]”<sup>154</sup> The group cannot use “any single measure or assessment as the sole criterion” for determining eligibility or educational programming. The group must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical and developmental factors.”<sup>155</sup> “Trained and knowledgeable personnel” must administer the assessments and do so “in accordance with any instructions provided by the producer of the assessments.”<sup>156</sup> 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.”<sup>157</sup>

8. In this case, the primary argument of the Parent is that the re-evaluation was not appropriate because the District did not evaluate the Student in all suspected areas of disability, specifically in all subareas of communication such as speech language pragmatics and higher language skills. The result, according to the Parent, was an inaccurate conclusion that the Student no longer needed specially designed instruction in speech and language therapy.

9. But, as I found above, the District *did* evaluate the Student in all suspected areas of disability. The District’s speech language pathologist, Mr. Hayden, did a careful review of the Student’s past assessment in communication. He knew the Student personally and had taught him in a cooking class. Mr. Hayden and Ms. Frank had no difficulty understanding the Student, and the Student’s pragmatic speech skills were typical. The Student did not have difficulty communicating with teachers or peers. The Student’s communication was not impacting his ability to access his education. Articulation was the only area in which he scored significantly below normal limits in the 2017 Edmonds School District evaluation. As discussed above, the District thoroughly evaluated the Student in March 2020 in articulation, using norm-referenced instruments as well as practical observation.

10. Under WAC 392-172-03020(2)(a), the District must “[u]se 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 and (ii) the content of the student’s individualized education program.” The Parent argues that the District did not get “information provided by the parent” because Mr. Hayden did not seek or include her input for the communication part of the re-evaluation. However, the Parent had other opportunities to request evaluation in speech language pragmatics, expressive or receptive language, or higher level language skills. She did

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

not identify these concerns when she consented to the re-evaluation (although she did bring up other concerns, which the District addressed) or in her communication with Ms. Tom. Nor did she raise concerns about the District's failure to assess the Student in these areas at the re-evaluation team meeting. There is no evidence that the Parent highlighted a concern with these other subareas of communication at any time before she received the evaluation by the Seattle Children's SLP in July 2020.

11. Further, just because Mr. Hayden did not contact the Parent does not mean that his part of the evaluation was invalid. Mr. Hayden spoke with Ms. Frank and observed the Student directly. He reviewed the Student's history. He relied on his 11 years of experience as a speech language pathologist. He used multiple instruments to assess the Student, including the norm-based Arizona instrument, observation in the classroom environment, and analysis of a representative speech sample. Even if Mr. Hayden had called the Parent before he started his part of the assessment, there is no information that the Parent has identified that would have affected what areas would have been assessed. Based on the Parent's expressed concerns during the hearing, in a hypothetical conversation between her and Mr. Hayden she may have identified the Student's problems with the *content* of his expression (such as asking for bank account numbers) rather than problems with accessing his education based on his ability to express and receive communication. There is no evidence that the Parent had any information regarding communication that would have affected the areas in which the District assessed the Student or the Student's eligibility or individualized education plan.

12. The Parent argues that the Seattle Children's speech language assessment of July 2020 shows that the District's evaluation in the area of communication was not appropriate. But the Seattle Children's assessment is significantly *less* reliable than the District's evaluation, because:

- Seattle Children's speech language pathologist Ms. Tibeau did not contact SLP Mr. Hayden, and there is no evidence that she contacted any other District personnel for information about the Student. She had no information about the Student's current abilities in communication in the classroom. Thus, she had no information about how the Student's ability to communicate impacted his ability to access his education.
- Ms. Tibeau also did not understand what areas were already part of the District's curriculum for the Student. Thus, Ms. Tibeau assessed for higher level language skills because she was unaware that higher language learning skills, like using and understanding nonliteral language and sarcasm, were already part of the curriculum and that he was not expected to already possess these skills at his grade level.
- Ms. Tibeau used a test, the Goldman-Fristoe, that the District did not use for good reason – because it provided unreliable information for some students like the Student. Ms. Tibeau did not testify or provide a declaration regarding why she thought the Goldman-Fristoe was appropriate for the Student.



13. The Parent argues that a “variety of assessment tools and strategies” were not used to assess the Student in communication, but the District has met its burden to show otherwise.<sup>158</sup> Mr. Hayden reviewed existing information, including the Student’s 2017 assessment. He administered the Arizona, a standardized and nationally normed test, which resulted in valid and reliable findings. In addition, Mr. Hayden analyzed a speech sample from the Student and was able to describe, in detail, the few sounds that the Student still has difficulty with. Mr. Hayden also looked at the Student’s progress in his communication goals and spoke with his teacher. Mr. Hayden also personally observed the Student. These constitute a “variety of assessment tools and strategies” in the area of communication.

14. In addition to her arguments regarding the communication portion of the re-evaluation, the Parent also argues that the Student should have been assessed in the area of cognitive, even though (a) she knew the District was not planning to evaluate him in that area, (b) she was given the opportunity to ask for that area to be evaluated, and (c) she did not do so. She argues that the Student’s cognitive ability could have some connection with his ability to communicate, and therefore the District should have assessed his cognitive ability. But there is no evidence that the District’s communication evaluation is affected by (much less invalidated because of) the lack of cognitive testing in 2020. There was cognitive testing from 2017, and the re-evaluation team reasonably decided that cognitive testing of the Student was not necessary, given the information the District already had, and the variety of other instruments being used and other areas that were being assessed.<sup>159</sup>

15. The District has met its burden to show that its re-evaluation in March 2020 was appropriate. It has shown that its re-evaluation of the Student in the area of communication was appropriate. It has shown that its choice to not re-evaluate the Student in the area of cognitive was appropriate. It has shown that its evaluation overall was appropriate in that it tested the Student in all areas of suspected disability, used a variety of assessment tools and strategies, was sufficiently comprehensive to identify all of the Student’s special education and related services needs, and otherwise complied with the relevant requirements.

16. If the parent of a student eligible for special education disagrees with a school district’s re-evaluation, the parent has the right to obtain an independent educational evaluation (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.<sup>160</sup>

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<sup>158</sup> See WAC 392-172A-03020.

<sup>159</sup> See *id.*; see also *Smith v. Tacoma School Dist.*, 120 LRP 23274 at 11 (W.D. Wash. Aug. 3, 2020) (concluding that the District had supported its decision not to evaluate in the area of cognitive).

<sup>160</sup> WAC 392-172A-05005; see also 34 CFR §300.502.

17. “The IDEA does not prescribe substantive goals for an evaluation, but provides only that it be ‘reasonably calculated to enable the child to receive educational benefits.’”<sup>161</sup> Minor procedural defects in a district’s reevaluation, where the validity of the evaluation overall is not impacted, do not warrant the award of an independent educational evaluation at public expense.<sup>162</sup> In this case, to the extent the Parent has shown any procedural defect in the Student’s re-evaluation, that defect is minor. The District has met its burden to show that its March 2020 evaluation was appropriate.<sup>163</sup>

### **Conclusion**

18. The District has shown by a preponderance of the evidence that it met the requirements of WAC 392-172A-03020 and 03025 and that the March 2020 re-evaluation was appropriate. Therefore, the Parents are not entitled to an IEE at District expense.

19. 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 Lake Washington School District’s March 2020 re-evaluation of the Student is appropriate. The Parent, therefore, is not entitled to an independent educational evaluation at public expense.

SERVED on the date of mailing.



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Jason Kinn  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>161</sup> *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175, 1185 (W.D. Wash. 2002).

<sup>162</sup> *See Ford v. Long Beach Unified Sch. Dist.*, 291 F.3d 1086, 1089 (9<sup>th</sup> Cir. 2002); *RZC v. Northshore Sch. Dist.*, 3 IDELR 139 (9<sup>th</sup> Cir. 2018); *W.G. v. Bd. Trustees of Target Range Sch. Dist.*, 960 F.2d 1479, 1484 (9<sup>th</sup> Cir. 1992); and *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1129 (2003).

<sup>163</sup> *See id.*

**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.

**DECLARATION OF SERVICE**

I declare under penalty of perjury under the laws of the State of Washington that today I served this document on each of the parties listed below. I emailed via secure email or mailed a copy to the parties at their addresses of record using Consolidated Mail Services or U.S. Mail.

Parent



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Redmond, WA 98073

Sarah C. Johnson, Attorney at Law  
Pacifica Law Group LLP  
1191 Second Avenue, Suite 2000  
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Dated November 18, 2020 at Seattle, Washington.

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Representative  
Office of Administrative Hearings  
600 University Street, Suite 1500  
Seattle, WA 98101

cc: Administrative Resource Services, OSPI