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STATE OF WASHINGTON

OFFICE OF ADMINISTRATIVE HEARINGS

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July 20, 2016

Parents



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In re: Seattle School District
OSPI Cause No. 2016-SE-0024
OAH Docket No. 03-2016-OSPI-00028

Dear Parties:

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

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

Sincerely,

A handwritten signature in cursive script that reads "Anne E. Senter".

Anne Senter
Administrative Law Judge

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

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Superintendent of Public Instruction
Administrative Resource Services

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

SEATTLE-OAH

IN THE MATTER OF:

SEATTLE SCHOOL DISTRICT

OSPI CAUSE NO. 2016-SE-0024

OAH DOCKET NO. 03-2016-OSPI-00028

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Anne Senter in Seattle, Washington, on May 4 - 6, 2016. The Mother of the Student whose education is at issue¹ appeared and the Parents were represented by Jeannette Cohen, attorney at law. The Seattle School District (the District) was represented by Tracy Miller, attorney at law. Teresa Swanson, District special education supervisor, and Andrea Schiers, District assistant general counsel, also appeared for portions of the hearing.

STATEMENT OF THE CASE

The District filed a Due Process Hearing Request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on March 4, 2016. The Complaint was assigned Cause No. 2016-SE-0024 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered March 7, 2016, which assigned the matter to ALJ Anne Senter. The Parents filed their Response to the Complaint on March 17, 2016.

The Parents filed a Notice of Insufficiency, which was denied in an Order on Challenge to Sufficiency entered March 22, 2016. The Parents also filed a Motion for Stay Put, which was also denied in an Order on Stay-Put Motion entered April 15, 2016.

Prehearing conferences were held on March 14 and 21, 2016. Prehearing orders were entered March 14, 22, and 25, 2016.

Evidence Relied Upon

Exhibits Admitted:

District's Exhibits: D1 - D15; and

Parents' Exhibits: P1 - 31.

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

Witnesses Heard (in order of appearance):

Heather Valentine, District school psychologist;
Katlin Hayes, District general education teacher;
Amy Begley, District speech and language pathologist;
Ann Gateley, District special education teacher;
Lionel Enns, clinical child psychologist and BCBA, Mosaic Children's Therapy;
Maki Ichikawa, District special education program specialist;
Nancy Gruber, District special education instructional assistant; and
The Student's Mother.

Post-Hearing Briefs

The parties agreed that post-hearing briefs would be filed and exchanged by postmarking them by June 17, 2016. The Parents' post-hearing brief was timely received on June 17, 2016. The District's brief was received by mail on June 20, 2016. Although OAH staff opening the mail did not retain the envelope with the postmark, because the brief was received on the first day that something postmarked on June 17, 2016, could be received by mail at OAH, the District's brief is considered timely received.

Due Date for Written Decision

As set forth in the Second Prehearing Order, the due date for a written decision in this case was continued to thirty (30) days after the close of record on the District's motion. The record closed with the receipt of the District's post-hearing brief on June 20, 2016, so the due date for the written decision is **July 20, 2016**.

ISSUES

As set forth in the Second Prehearing Order, the issues for the due process hearing are whether the District's February 2016 evaluation of the Student is appropriate and, if not, whether the District should pay for an independent educational evaluation of the Student.

FINDINGS OF FACT

Background

1. The Student at issue was 12 years old and in the sixth grade at the time of the hearing. Exhibit D3, p. 1.
2. The District determined that the Student was eligible for special education in March 2007, when he was in preschool, under the category of autism. Exhibit D3, p. 1. The Student also has hearing loss in both ears and wears hearing aids. Valentine, Tr. 49.
3. Throughout the Student's elementary school years, the Parents were concerned, that he was not receiving appropriate social skills supports or engaging appropriately with his peers. See, e.g., Exhibits P2, P4-P8, P10. When the Student was reevaluated in 2010 and 2013, the Parents stated that they did not believe the reevaluations would be "complete" unless he was assessed by an autism specialist. Exhibits P1; P9, p.4; D4. Both years, they requested a

"trained and recognized evaluation specialist in the field of autism," and in 2013, they clarified that it should not be "simply" a special educator, speech and language pathologist, or school psychologist. *Id.* The District did not include such a person on the Student's reevaluation team either year. The Parents also did not agree with the Student's elementary school individualized education programs (IEPs).

4. An IEP was developed in the spring of 2015, at the end of the Student's fifth-grade year for his transition to middle school. Exhibits D6, P18. The IEP moved the Student to a new placement, the District's "Access" program, which included social and study skills in a special education class as well as para-educator support in general education classes. The Parent agreed to the change in placement to the Access program, but not with the remainder of the IEP. Exhibit D6, p. 1.

5. The Student entered sixth grade at Salmon Bay K-8 School (Salmon Bay) in the fall of 2015.

6. The Student's IEP was amended in October 2015, at least in part because of an OSPI compliance audit. Exhibits D5, P20; Gateley, Tr. 332. Following the amendment, the Student's IEP included goals in social communication, social/behavior, adaptive/life skills, study/organization, and written language. Exhibit D5, pp. 8-10. The IEP provided that the Student would spend 87% of his time in the general education setting and attend one special education class daily to receive specially designed instruction (SDI) in written language, social/behavior, and study/organization skills. *Id.* at 14. He was pulled out of the special education class three times per month to receive speech and language (SLP) services as well. *Id.*

7. In January 2016, Ann Gateley, the Student's special education teacher, recommended that the Student take an elective class the following semester, rather than the study skills class, because she felt like he was doing so well that he should have more social opportunities in his day. Exhibit P24, p. 4. The Student's Mother disagreed because she wanted him to continue receiving SDI in social skills and she thought it would be disruptive and stigmatizing to have him pulled out of a general education class to receive them. *Id.* at 1.

The February 2016 Reevaluation

8. The Student was due for a triennial reevaluation by February 21, 2016. Exhibit P23, p.3. The District notified the Parents of the reevaluation and stated that it would include assessment in general background, medical-physical, social/behavior, adaptive/life skills, communication, study/organization skills, and written language. *Id.*

9. When the Parents gave consent for the District to reevaluate the Student, they attached a letter. Exhibit P23, pp. 5-6. The letter stated that they had been requesting for several years that the Student's social and communication delays "be assessed by a trained and recognized evaluation specialist in the field of autism (and not simply by a special educator, speech and language pathologist, or school psychologist.)" *Id.* at 6. They stated that they were renewing that request as they did not believe the Student would receive appropriate services and supports until his needs were assessed by an autism specialist who has completely examined him within his natural classroom surrounding and amongst his regular classmates and routines, and that they would not consider his reevaluation complete until that occurred. *Id.*

10. Heather Valentine is the District school psychologist responsible for the Student's reevaluation. Exhibit D3. She holds a master's degree in special education and an educational specialist degree in school psychology. Exhibit D14. All of her degree courses regarding evaluating children included information on students with autism, although none of them focused only on autism. Valentine, Tr. 38-39. She is certificated through the state in both special education and as a school psychologist, and is also a nationally-certified school psychologist. Exhibit D14. She taught special education for ten years before becoming a school psychologist. *Id.*; Valentine, Tr. 39. She taught approximately two students with autism each of those years. *Id.* at 40. The 2015-2016 school year was Ms. Valentine's first year as a school psychologist. *Id.* at 40. She has conducted evaluations of more than 50 students, approximately six of whom were on the autism spectrum. *Id.*

11. The reevaluation team concluded that there was no need to bring in an autism specialist as requested by the Parents because the team did not have concerns about the Student that it believed could not be reevaluated by the team itself. Valentine testimony.

12. Ms. Valentine reviewed the Student's 2013 reevaluation, his most recent, and the IEPs that followed it. Valentine testimony. She reviewed input from the Parents. Exhibit D3, p. 6. She reviewed the Student's grades for the first semester of sixth grade. Exhibit D3, p. 6. He received "A"s in general/study skills, musical production, science, and world culture, an "A-" in language arts, and a B+ in math. *Id.* And she considered his scores on state and District assessments. *Id.* In the Spring of 2015, he reached Level 4, meaning he exceeded standards, on both the math and reading portions of the state Smarter Balanced assessment and in the science portion of the state Measurements of Student Progress (MSP) assessment. *Id.* He also exceeded standards on the reading, writing, and math portions of the MSP in Spring 2014 and on the reading and math portions in Spring 2013. *Id.* at 7. On the most recent District test, the Measurement of Academic Progress (MAP), the Student scored in the 98th percentile for both reading and math. *Id.*

13. To assess the Student's adaptive and life skills, Ms. Valentine used the Adaptive Behavior Assessment System, Second Edition (ABAS-II), which provides normative data comparing the Student to typically developing students his age. Exhibit D, p. 9. It assesses daily, functional skills across a variety of settings. *Id.* The Student's Mother and Ms. Gateley completed rating scales. *Id.* Based on Ms. Gateley's rating scales, the Student's general adaptive composite, which gives a global view of a student's overall adaptive skills, was in the 82nd percentile, which is in the average range. *Id.* Ms. Gateley's ratings placed the Student in the above average range in the conceptual composite and practical composite, and in the average range for communication, functional academics, self-direction, social composite, leisure, social, community use, home living and school living, and self-care. Exhibit D3, pp. 9-11. The Mother's ratings placed the Student in the extremely low range for the general adaptive composite and in the extremely low range for every category except for functional academics, in which her ratings placed him in the average range, and communication, in which her ratings placed him in the borderline range. *Id.* Ms. Valentine concluded that, since Ms. Gateley had taught the Student for four months, she was a reliable reporter of the Student's adaptive functioning at school and that the Mother was a reliable reporter of his functioning at home. *Id.* at 11. Ms. Valentine noted that it was unclear why Ms. Gateley's scores and the Mother's would be so divergent. *Id.* A review of his 2013 evaluation showed a similar discrepancy between home and school ratings. *Id.* She concluded that the results of the

ABAS-II, in conjunction with school staff reports of the Student's functioning at school, did not correlate with the very low level of adaptive functioning reported by the Mother at home. *Id.* Ms. Valentine concluded that the difference in the scores could be based on the Student behaving differently at home or on the Parents having different expectations and experience with children the Student's age than the teachers. Valentine testimony.

14. In order to assess the Student's written language, Ms. Valentine administered the written expression subtest of the Kaufman Test of Educational Achievement – Second Edition (KTEA-II). Exhibit D3, p. 24. The Student's written expression skills were found to be within the average range, scoring in the 75th percentile. *Id.* The Student's language arts teacher, Jennifer Fanning, reported that he sometimes had difficulty generating ideas for writing but was otherwise a "strong writer." *Id.* Ms. Gateley provided a writing sample, which the Student had written with a simple graphic organizer and a revision checklist. *Id.* Ms. Valentine concluded that the Student's performance on the KTEA-II was consistent with his reported functioning in the classroom and his performance on the Smarter Balanced and MSP testing in writing. *Id.* She concluded that his autism was not adversely affecting his ability to access the general education writing curriculum and that SDI in written expression was not recommended. *Id.*

15. Ms. Valentine assessed the Student's executive functioning skills by having one of the Student's general education teachers, Katie Hayes, Ms. Gateley, and the Student's Mother complete forms for the Behavior Rating Inventory of Executive Function (BRIEF). Exhibit D3, p. 21. The BRIEF is a questionnaire designed to assess a child's self-control and problem-solving skills by measuring eight aspects of executive functioning. *Id.* The global executive composite (GEC) is made up of all the BRIEF's subscales. Based on the ratings of both Ms. Hayes and Ms. Gateley, the Student's GEC fell within the average range. Based on the Mother's ratings, the Student's GEC fell within the significantly elevated range. Based on the ratings of both teachers, the Student fell within the average range for each of the subtests – inhibit, shift, emotional control, initiate, working memory, plan/organize, organization of materials, and monitor – as well as on the behavior rating index and the metacognition index. *Id.* at 21-23. Based on the Mother's rating scales, the Student scored in the moderately or significantly elevated range in every index and subtest except for inhibit and plan/organize, in which her ratings placed him in the average range. *Id.* Because Ms. Gateley and Ms. Hayes had each taught the Student for four months when they completed the questionnaires, Ms. Valentine concluded they were reliable reporters of his executive functioning in the classroom. *Id.* at 23. Also, their responses were in the acceptable range for both inconsistency and negativity indices. *Id.*

16. Ms. Valentine concluded that the results of the BRIEF indicated that the Student did not have difficulty with any aspect of executive functioning at school. Exhibit D3, p. 23. She noted that the ratings of both teachers, in conjunction with school staff reports of the Student's executive functioning at school, did not correlate with the very low level of executive functioning at home reported by his Mother. *Id.* Ms. Valentine concluded the results of the BRIEF indicated that the Student's autism was not adversely affecting his executive functioning at school or interfering with his ability to access the general education curriculum, so SDI in study/organization skills was not recommended. *Id.*

17. As part of the social/behavior portion of the reevaluation, Ms. Valentine had Ms. Gateley and the Student's Mother complete rating scales for the Social Responsiveness Scale, Second Edition (SRS-2). Exhibit D3, p. 17. The SRS-2 is a questionnaire covering multiple dimensions

of interpersonal behavior, communication, and repetitive/stereotypical behavior characteristic of autism spectrum disorders. Exhibit D3, p. 17. The scores from the entire questionnaire are summed to produce an SRS total score, or T-score, that serves as an index of severity of social deficits. The Student's T-score based on Ms. Gateley's ratings was within normal limits, and his T-score based on his Mother's ratings was in the severe range. Ms. Valentine concluded that the Student's T-score demonstrated that he was not demonstrating significant social deficits in the school setting, and was congruent with classroom observations and reports of his functioning in the school setting.

18. The SRS-2 also contains subscales in social awareness, social cognition, social communication, social motivation, and restricted/repetitive behaviors. Exhibit D3, pp. 17-18. Ms. Gateley's ratings placed the Student within normal limits for each of the subscales except for social motivation in which he scored in the mild range. *Id.* The Mother's ratings placed him in the severe range for each subscale. *Id.*

19. Ms. Valentine obtained the Student's input on his social skills. Exhibit D3, p. 18. He had good eye contact and smiled during their conversation and was wringing his hands a little when he talked. *Id.* When Ms. Valentine asked him what he thought he needed help with at school, he said his Mother wanted him to be in special education to work on his social skills. *Id.* When asked if he thought he needed help with that, he replied, "Well, maybe." He reported that he knew some kids from his elementary school who came to Salmon Bay and that he had also made new friends at the school. When asked about working with groups in class, he reported that he "does ok with it" at Salmon Bay, but it had been the "bane of his existence" in elementary school because everyone already had a partner picked out and he was sometimes the last one picked. When he was asked if he preferred working alone or in groups, he said it had not come up much this year, so he did not know. *Id.*

20. Ms. Valentine observed the Student in a general education classroom and in a special education classroom as part of the reevaluation. Exhibit D3, pp. 7-8. In the general education classroom, she observed him participating appropriately in classroom activities, including raising his hand to be called on when the teacher asked a question and responding to a question asked of him by a peer. *Id.* at 7. In the special education study skills class, Ms. Valentine observed the Student asking questions of the teacher and having a conversation with a peer about the classwork that was initiated by the other student. *Id.* She observed in both settings that the student was focused on his work, followed directions, raised his hand to participate, and interacted with peers. *Id.* at 8. She noted that he demonstrated good social judgment when he raised his hand but put it down when the teacher was busy and then raised it again when he could get her attention. *Id.* She observed that he showed consideration for the feelings and reactions of others when he decided he could get his book from another classroom without disturbing other students. *Id.*

21. Ms. Valentine also asked all the Student's teachers how he was functioning socially in their classes. Valentine, Tr. 50. Ms. Gateley was the Student's special education teacher during his sixth-grade year. Gateley, Tr. 324. She holds a master's degree in special education, is a certificated special education teacher, and has more than ten years of classroom experience working almost exclusively with students who have autism spectrum disorders. Exhibit D13; Gateley, Tr. 323.

22. Ms. Gateley reported to Ms. Valentine that the Student is a willing participant in group discussions. Exhibit D3, p. 18. She had observed him in the general education setting in a small group assignment in which he initiated an idea to the group's discussion six times and added an idea to the conversation eight times during a ten-minute assignment. *Id.* She observed that he has the skills to converse on a topic and is not afraid to engage that way. *Id.* She opined that she did not see his social skills negatively impacting his ability to access the curriculum. *Id.*

23. Ms. Gateley has observed that the Student can interact with his peers in a small group when he chooses to, and can ask them to participate in a game or to sit with him. Gateley, Tr. 344. She has also observed that he prefers at times just to read or do his work rather than to interact with peers. *Id.* She observed that he has the skills to make social suggestions but did not always choose to do so. *Id.* She described his participation in the social skills group as "stellar." *Id.* at 349. He was the model of appropriate social skills and always interacted with his peers in a socially appropriate manner, especially with some challenging partners. *Id.* She observed him in the general education setting and saw that he was a strong leader who helped facilitate his group's conversation, initiating comments like "Let's get back to what we're supposed to be doing." *Id.* at 350. She also observed him at a practice for the school play he was in and saw him talking with other kids. *Id.* at 351-52. Ms. Gateley observed that many of her students "flap" or wave their hands. *Id.* at 356-57. Instead of flapping, Ms. Gateley has observed that the Student on rare occasions would "wring" his hands, which she viewed as an adaptive strategy that is less noticeable than flapping. *Id.* at 357-58, 391.

24. Nancy Gruber is an instructional assistant in the Student's social studies, language arts, and study skills classes. Exhibit D3, p. 19. She reported that he has no behavior problems in class and rarely needs clarification or assistance so has little need for self-advocacy. *Id.* She noted that he benefits from having someone near him in case he needs assistance as he can become anxious if he is unsure about how to proceed or to do something correctly. *Id.* She had only seen him exhibit a level of anxiety where he "flaps a bit" one or two times in the prior two months. *Id.* Ms. Gruber noted that the Student rarely interacts with his peers or tablemates in class and usually focuses on the teacher or his work. *Id.* When instructed by a teacher to "turn and talk" with a table mate, he follows the instructions but exchanges minimal ideas with the peer. *Id.* She noted that a kind or more-verbal partner at his table helps this exchange be more successful, and that adult facilitation helped as well. *Id.* Ms. Gruber reported that the Student usually sits with a peer at lunch whose English is still developing. *Id.* She noted that they happily eat their lunches together, conversing occasionally. *Id.* She remarked that her only concern for the Student is that he continue to develop his social skills. She commented that he "seems pretty content" on his own, but becoming more able to find friends he enjoys would make life more fun and interesting for him. She suggested that activities outside the classroom, including Associated Student Body or drama would be useful in building friendships and helping him express himself. *Id.*

25. Teacher Glyde King reported that the Student "absolutely blossomed" during the school play, *My Fair Lady*. Exhibit D3, p. 13. She noted that his "social skills, his ability and willingness to memorize, to improvise, his relations with the other students, his reading from the script, and his essay" were all unassisted, at least in her class, and very mature. *Id.*

26. Teacher Jennifer Fanning reported that, in language arts, the Student is quiet and listens well. *Id.* She reported that he had started raising his hand to participate and ask questions and

that he was self-advocating like that more and more. *Id.* She observed that this self-advocacy was sometimes a source of anxiety for him, and she noticed him flapping his hands very subtly. *Id.* She noted that he was good about asking for papers he had missed and occasionally asked clarifying questions in class. She said he mostly kept to himself unless they were doing a "turn and talk." She stated that he was polite and helpful when spoken to. *Id.* Ms. Fanning stated that the Student was also in her "WEP group," where he was helpful and friendly. She stated that he would rarely join a group unless the groups were assigned, but did not seem concerned about this "self-imposed isolation." *Id.*

27. Teacher Katie Hayes reported that the Student worked well when assigned to a group and that he had taken on a leadership role. *Id.* She also reported that he explained to a peer who had been absent what the class had worked on and what needed to be done. *Id.* Ms. Hayes noted that the Student was a model student for appropriate class behavior, raising his hand frequently to share, coming prepared, asking questions when he needed clarification, and working well with others. *Id.* She noted that he preferred to work alone, given a choice, but she believed this was a personality type associated with being efficient and working independently rather than avoiding working with others. *Id.*

28. Teacher Joel Maier reported that, in homeroom, the Student had taken on the role of Associated Student Body representative and was doing a "stellar job" of going to the meetings and reporting back to the class, and noted that he had "really good leadership skills." *Id.*

29. Math teacher Constance Wood reported that the Student was participating in class more and asked for help when he needs it. Exhibit D3, p. 20. She noted that he had sometimes shared on subjects other than math-related topics. *Id.* When she asks students to work in groups the student and the only other three sixth graders in the class join together. *Id.* The Student did not interact with the seventh-grade students. *Id.*

30. Ms. Valentine concluded that the teachers had all taught the Student for four months so they were reliable reporters of his social/behavioral functioning in school. Exhibit D, p. 20. She concluded that the teacher's responses on the SRS-2 resulted in a total score within normal limits with the only area of specific concern being social motivation, in the mild range, which was consistent with the classroom observations and teacher reports of the Student's functioning at school. Exhibit D3, p. 20. Ms. Valentine determined that the Student's autism was not adversely impacting his ability to work with others in the classroom or to access the general education curriculum. *Id.* Accordingly, she did not recommend SdI in social/behavior skills for him. *Id.*

31. Amy Begley, District speech-language pathologist (SLP), participated in the Student's reevaluation. Exhibit D3, p. 13. She holds a master's in science degree in speech-language pathology. Exhibit D15. She has worked in speech pathology in both private practice and in educational settings since 2002. *Id.* She has worked as an SLP in the District for over six years. *Id.* Ms. Begley has worked with "countless" children with autism. Begley, Tr. 224.

32. Ms. Begley administered the pragmatic judgment subtest of the Comprehensive Assessment of Spoken Language (CASL), which requires a student to judge the appropriateness of language used in specific environmental conditions or to use language appropriate to certain situations. Exhibit D3, p. 13. The Student's score fell in the 90th

percentile, which is in the above average range for his age, and he demonstrated mastery in navigating the nuances of the various social situations that were presented. *Id.*

33. Ms. Begley, who provided the Student's SLP services during sixth grade, noted that he demonstrated age-appropriate social skills in the speech-therapy setting, including making "small talk" with his peers, asking appropriate follow-up questions, clarifying when needed, and commenting on other students' observations. Exhibit D3, p. 13; Begley, Tr. 225. She worked with the Student along with two students who did not have social communication delays so he got practice working with peers who did not have goals in that area. Begley, Tr. 225. Ms. Begley observed the Student, in this context, initiating small talk with a partner and commenting on what the partner said to extend the conversation, taking turns when appropriate, reading nonverbal cues, commenting on what his peers were doing, and laughing with his peers. *Id.* at 226, 239. The Student met his two communication goals, including the one about small talk, by the time of the reevaluation. *Id.* at 231, 242. Ms. Begley also observed the Student interact with peers spontaneously outside her speech therapy group and watched him act in a school play. *Id.* at 238, 284. Based on her observations of the Student, Ms. Begley believes that the Student is quiet or reserved because she knows he has the skills to interact with other students. *Id.* at 245.

34. Ms. Begley asked his teachers to report on the Student's social communications to determine whether he was generalizing the skills she saw in the therapy setting to the classroom. Ms. Hayes, Ms. King, Ms. Fanning, and Mr. Maier made the same reports as provided to Ms. Gateley about the Student's social skills in the classroom. *Id.*

35. Ms. Begley recommended that the Student no longer required specially designed instruction (SDI) in social communication because of the results of the standardized testing and his demonstration of age-appropriate social communication skills in the general education environment. Exhibit D3, pp. 13-14. Her opinion is that his current social functioning is typical for a sixth-grader. Begley, Tr. 248.

36. Jean Rogers, an educational audiologist, tested the Student's hearing, determined that his hearing aids were working, and observed him in a classroom setting during a time when he gave a presentation as part of a small group and listened when other groups gave their presentations. Exhibit D3, p. 12.

37. For the medical/physical portion of the reevaluation, Darci Wiebke, District school nurse conducted vision, hearing, neurological, and dental screenings. Exhibit D3, p. 15. Other than noting a concern with the Student's eye range of motion, which she recommended the Parents bring up with the Student's ophthalmologist at his next visit, the results were normal. *Id.*

38. The reevaluation team determined that the Student no longer met eligibility criteria for special education because he did not present with substantial deficits in his academic, social, adaptive, communication, or study/organizational skills at school, his teachers consistently reported that he worked independently on grade-level curriculum, participated in class, asked for help when needed, and worked well with groups in school, and assessments given during the evaluation as well as state and District assessments showed average to above average achievement in all areas. Exhibit D3, pp. 1-2.

39. The team determined that the Student should be referred to the "504 team" to determine if there is a need to formalize any accommodations necessary due to his hearing impairment or autism diagnosis. Exhibit D3, p. 3.

40. Ms. Valentine sent the Parents a draft copy of the reevaluation report as well as an invitation to a meeting scheduled for February 18, 2016. Exhibit P26.

41. The Parents did not attend the reevaluation team meeting because they did not believe the District would consider their views. Mother testimony; Valentine, Tr. 47.

42. The draft report sent to the Parents before the meeting did not change as a result of the meeting and became the final report. Valentine testimony.

43. The reevaluation report included a statement that the Student did not have a disability that meets the eligibility criteria for special education, a discussion of the assessments and review of data to support the conclusion regarding eligibility, and dated signatures of each of the professional members of the reevaluation group, certifying the report represented their conclusions. Exhibit D3. It also contained documentation of the results of individual assessments or observations of individuals contributing to the report. *Id.*

44. The Parents requested an independent educational evaluation (IEE) by letter from their attorney dated February 19, 2016. Exhibits P29, D1. They requested that the IEE be conducted by "a specialist in the field of Autism who has expertise working with children of [the Student's] age and disability in school programs" who is a board certified behavior analyst (BCBA) or "have, at the minimum, a master's level degree in behavior analysis." *Id.*

45. The District sent the Parents a prior written notice dated February 20, 2016, proposing that the Student was no longer eligible for special education services because the reevaluation indicated that, at school, he presented with age- and grade-appropriate academic, social, adaptive, communication, and study/organization skills, and did not meet the criteria for a student with a disability who needed specially designed instruction to access the general education curriculum. Exhibit D3, p. 5.

46. The District filed the due process hearing request in this case on March 4, 2016, requesting a hearing to demonstrate that its evaluation was appropriate.

47. While the case was pending, the Parents hired Lionel Enns to observe the Student at school. Dr. Enns has a Ph.D. in school psychology and is a licensed child psychologist, a BCBA, and a nationally certified school psychologist. Exhibit P30. He did his school psychology internship at the District during the 2009-2010 school year and has since worked in private practice as a clinical psychologist. *Id.*; Enns, Tr. 400.

48. Dr. Enns observed the Student at his District school for two hours. Exhibit P31. He observed the Student sitting alone at lunch because the student he usually ate with was not there. *Id.* at 2. Dr. Enns learned from an instructional aide that he typically sat with the other student and did not mind sitting by himself. *Id.* After lunch, the Student walked by himself to a playfield where other children were playing with a soccer ball. The Student observed the game for about five minutes and then engaged with the other children, repeatedly entering the unorganized game and dribbling the ball. Dr. Enns observed that this interaction appeared

generally positive and socially healthy, although there did not appear to be any sustained social interactions that would suggest camaraderie or friendship, and there was very little chatting and no apparent conversation. *Id.* at 3.

49. Dr. Enns next observed the Student in a keyboarding class, where he entered the class and sat at his seat. *Id.* at 3. Other children frequently and persistently engaged in conversation and the teacher did not interrupt them even as instruction began. The boy seated next to the Student joked with students in another row. The Student quietly performed his work, often focused on his computer monitor. He raised his hand to get the teacher's attention. Dr. Enns perceived that the Student stood out due to his diminished social interactions with his peers. *Id.*

50. Dr. Enns next observed the Student in a PE class. *Id.* at 4. Most students had paired off and were hitting a whiffle ball back and forth. The Student was hitting the ball up in the air on his own. He swung his racket and accidentally struck a nearby boy. The boy exclaimed "Oh my God!" and appeared upset with the Student. The Student appeared mortified and apologized profusely. The other student walked away. The Student cried. He continued to play on his own, while stopping to wipe away tears. One of the boys involved came back to see if the Student was okay. The teacher announced that everyone should find a partner and asked if anyone needed one. The Student began flapping his arms. He wandered among the other children, but Dr. Enns perceived that he appeared socially lost. He rubbed his hands and then flapped his arms again. He joined another boy to play as a team. Once the Student was defeated, he took the role of scorekeeper, and then moved to the sidelines and continued to flap his arms. Dr. Enns perceived that he was rather isolated from his peers.

51. Dr. Enns summarized his two-hour observation by stating that the Student showed strengths in appearing calm, following school rules, engaging with other children on the playground during a semi-organized game of soccer, although his engagement was limited to physical play without apparent conversation. Exhibit P31, p. 4. He noted that he clearly appeared motivated to engage with other children. *Id.* Dr. Enns opined that the Student's failure to engage with his classmates in a "typical fashion" during the keyboarding class demonstrated that he did not understand how to interact socially during unstructured times. *Id.* Dr. Enns concluded that the Student "struggled" to interact with his peers in PE where his peers chatted and joked and formed typical adolescent social bonds and where the Student experienced rather significant distress after accidentally striking the other student and appeared lost and vulnerable when asked to pair up with a peer. He stated that the Student's "increased perseverative flapping" could be interpreted as an expression of anxiety and social distress. *Id.*

52. Dr. Enns formed clinical impressions based on his observations including that the Student is challenged by multifaceted social anxiety and struggles to understand social relationships intuitively, which together create stressful, awkward social interactions. Exhibit P31, p. 5. He stated that the Student is struggling to make sense of the often unordered and complex social world. *Id.* He opined that it was understandable at an intellectual level that the District might take the position that the absence of problem behaviors showed adequate functioning, but that it was not morally, ethically or practically defensible. *Id.*

53. Dr. Enns noted that the lunchtime routine was broken by the absence of his friend, which drew attention to the limitations of the Student's social abilities as other children would likely gravitate toward a different peer or social group. Exhibit P31, p. 5. Dr. Enns concluded that the

Student's failure to do this suggested a rather crucial deficit in social initiation or friendship maintenance. *Id.*

54. As a result of his observation, Dr. Enns recommended an IEE of the Student because "there are aspects of psychological, neuropsychological and social functioning that remain unknown or unclear" despite what he learned through the school observation. Exhibit P31, p. 6. He also recommended that the Student receive instruction and support in age-appropriate social skills. *Id.*

55. Dr. Enns also reviewed the District's evaluation report. Dr. Enns opined that the ABAS "gives the impression of being more sensitive than it really is." Enns, Tr. 445. He stated that it is a "useful tool" but one that typically is "used as a supplement to the work." *Id.* He stated that, for purposes of determining whether a student was qualified for special education services, it would "just be a component of a broader evaluation." *Id.* at 447. He did not explain what the ABAS would appropriately supplement. Similarly, Dr. Enns opined that the SRS would be used as a "screener" to find children who might require further evaluation for autism. Like the ABAS, he opined that the SRS would provide "supplemental information" but he would not use it as a stand-alone assessment or in conjunction with the ABAS because it is entirely subjective. Enns, Tr. 455. He stated that, from an applied behavior analysis perspective, the rating scales would give a broader picture, but the core concern is the behavior a student shows. *Id.* at 457. One would look at behaviors and see whether they are occurring. *Id.*

56. With respect to the evaluation's conclusion that the Student's autism did not prevent him from fully accessing, participating in, and learning in the general education curriculum, Dr. Enns challenged the measures used to assess the Student's social skills for the reasons set forth above. *Id.* at 456. He opined that the measures did not show that the Student was "socially typical" or did not "require any social interventions." *Id.* at 457. He opined that the Student needs to engage with other students in a more meaningful way in order to be a "fully developed student." *Id.* at 466.

57. Dr. Enns believes that an IEE should focus on behavioral goals. *Id.* at 463. A BCBA would make narrative observations, look for patterns in the behaviors, and then find methods to improve social functioning. *Id.* Dr. Enns referred to this as a positive functional behavior analysis. A positive functional behavior analysis is not standardized or norm-referenced and is subjective based on the observations of the individuals conducting the analysis. *Id.* at 493.

58. District staff who worked with and observed the Student on a regular basis disagreed with Dr. Enns's conclusions that the Student struggled to understand social relationships and suffered from social anxiety because they had seen him use social tools. Begley, Tr. 250-256; Gateley testimony. Given the limited and unusual circumstances under which Dr. Enns observed the Student in comparison with the educators who had observed and worked with him for four months prior to the reevaluation, the District educators' observations are given greater weight.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

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

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. See *Schaffer v. Weast*, 546 U.S. 49 (2005). As the District is the party seeking relief in this case, it has the burden of proof.

The IDEA

3. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *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.

Id. at 206-207 (footnotes omitted).

4. A "free appropriate public education" consists of both the procedural and substantive requirements of the IDEA. The *Rowley* court articulated the following standard for determining the appropriateness of special education services:

[A] "free appropriate public education" consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" [FAPE] as defined by the Act.

Id. at 188-189.

5. A district is not required to provide a "potential-maximizing" education" in order to provide FAPE, but only a "basic floor of opportunity" that provides "some educational benefit" to the Student. *Id.* at 200-01. A district must provide a student with a "meaningful benefit" in order to satisfy the FAPE requirement. *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 852 (9th Cir. 2014).

Independent Educational Evaluations (IEEs)

6. Parents have a right to obtain an IEE if they disagree with the school district's evaluation 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 days to show that its evaluation is appropriate. WAC 392-172A-05005(c).

7. A reevaluation must be conducted at least every three years unless the parent and the district agree that a reevaluation is unnecessary. WAC 392-172A-03015(2)(b); 34 CFR §300.303(b)(2). Reevaluations must be completed within 35 school days after the date written consent for an evaluation has been provided to the district by the parent. WAC 392-172A-03015(3).

8. The 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 for evaluations 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.

Qualified evaluators

11. 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), (3)(iv).

12. The District here demonstrated that the reevaluation team was qualified to reevaluate the Student and no "autism expert" was required. Ms. Valentine was both an experienced, certificated special education teacher and a school psychologist whose master's degree

courses included instruction on the evaluation of students on the autism spectrum. Ms. Gateley had worked as a special education teacher almost exclusively with students on the spectrum for ten years. And Ms. Begley had significant SLP experience with students on the spectrum as well.

Appropriate assessment tools

13. The District has demonstrated it used appropriate assessment tools to evaluate the Student. Dr. Enns opined that he would not use the ABAS and SRS alone or together to determine a student's eligibility. He did not explain what assessments, other than observations, would be required to appropriately supplement those assessments. Here, District staff observed the Student in the general and special education environment and gathered information from all the Student's teachers so the assessments were indeed supplemented by observation.

Sufficiently comprehensive evaluations

14. As set forth above, when conducting evaluations, districts must ensure that a child is assessed in "all areas related to the suspected disability." WAC 392--172A-03020(3)(e); 34 § CFR 300.304(c)(4). But a district need not evaluate in areas in which it does not suspect a disability. See, e.g., *Razzaghi v. Dist. of Columbia*, 44 IDELR 271 (D.D.C. 2005); *Moses Lake Sch. Dist.*, 109 LRP 26490 (2008). An evaluation must also be "sufficiently comprehensive" to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified. WAC 392-172A-03020(g); 34 CFR § 300.304(c)(6).

15. The Parents argue that the District failed to fully evaluate the Student's social skills to see if he could apply them to situations in a variety of general education settings with typically developing peers. The District demonstrated that it reasonably evaluated the Student's social skills by using a variety of assessments and tools as well as observations and information from District staff across a variety of general education settings.

Parental participation

16. As explained above, the group of qualified professionals evaluating a student must consider information provided by the parent. WAC 392-172A-03020. And parents have the right to be included in the meeting with a group of qualified professionals to determine whether the student is eligible for special education. WAC 392-172A-03040.

17. Here, the Parents argue that they were not full participants in the process because they were not told who made the decision that an autism specialist would not be a part of the reevaluation team, and were not informed of potential services for the Student outside of special education. While this information may have been useful to the Parents, it is not required to be shared as part of an appropriate reevaluation. Moreover, the Parents elected not to attend the reevaluation team meeting where they could have asked these questions if they wished. The District has demonstrated that it offered appropriate parental participation in the reevaluation process.

Eligibility determination

18. When a school district requests a due process hearing to prove its reevaluation is appropriate, it must prove that its reevaluation is procedurally correct, i.e. that it complied with all applicable procedural requirements under the IDEA. The District has proven that its reevaluation of the Student was procedurally correct.

19. The law is unclear, however, regarding whether a school district must also prove that the resulting eligibility determination is *substantively* correct in order for the school district defeat a parental request for an IEE at public expense. See, e.g., *Lake Washington Sch. Dist.*, 114 LRP 8487 (SEA WA 2014); *Irvine Unif'd Sch. Dist.*, 112 LRP 41895 (SEA CA 2012); *Reading Sch. Dist.*, 112 LRP 9696 n.9 (SEA PA 2012). Because both parties present argument on the District's eligibility determination, and because the Parents will not prevail under either analysis, the District's eligibility determination is here considered.

20. A student who has been diagnosed with autism is eligible for special education if the student's autism has an adverse impact on the student's education, and that adverse impact can only be addressed through the use of special education and related services. WAC 392-172A-01035(1)(a). The IDEA construes a "student's education" broadly, and includes both academic and nonacademic components. Nonacademic components of a student's education can include social, behavioral, and emotional challenges.

21. It is clear from the Student's good grades and strong state and district test scores that his disability is not adversely affecting the academic component of his education. And the evidence presented by the District is equally compelling and proves that the social and behavioral components of the Student's education do not require special education and related services in order for the Student to obtain an educational benefit – and this is all that is required from a District. The District's assessments, observations, and teacher reports show that he is able to access the general education curriculum. Beyond that, he performed in a school play, plays pick-up soccer at lunch, and served as his homeroom's ASB representative. It is concluded that this is sufficient to establish the Student is receiving an educational benefit and does not need special education and related services with respect to the nonacademic component of his education. This is not the same as concluding the Student has absolutely no deficiency, or would not benefit from *more* friends at school. But that is not the legal standard for providing FAPE or determining eligibility for special education.

Other Issues

22. The Parents presented testimony and/or raised subject matters that are not at issue in this hearing, which only involves the appropriateness of the District's evaluation for purposes of determining whether the Parents are entitled to an IEE. Those subjects, including allegations that the Student did not receive the SLP services to which he was entitled in sixth grade, that the Parents did not receive a report of the Student's progress on his IEP goals in February 2016, that the Student did not make progress on his social skills goals in sixth grade, that the Student stopped receiving special education services sooner than stated on his PWN, and that

the District did not provide the Parents with information about available options for the Student that were unrelated to the evaluation procedure, are not here considered.

ORDER

The Seattle School District's February 2016 reevaluation of the Student was appropriate. The Parents are not entitled to an independent educational evaluation at public expense.

Signed at Seattle, Washington on July 20, 2016.



Anne Senter
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

CERTIFICATE OF SERVICE

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



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