



**MAILED**  
Nov 15, 2019  
OAH – SEATTLE

STATE OF WASHINGTON  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
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November 15, 2019

Parents  
[REDACTED]

Lisa Pitsch, Director of Special Education  
Mukilteo School District  
9401 Sharon Drive  
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Seattle, WA 98101

**In re: Mukilteo School District**  
**OSPI Cause No. 2019-SE-0096**  
**OAH Docket No. 06-2019-OSPI-00806**

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 "Eric J. Roth".

Eric J. Roth  
Administrative Law Judge

cc: Administrative Resource Services, OSPI

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

IN THE MATTER OF:

MUKILTEO SCHOOL DISTRICT

OSPI CAUSE NO. 2019-SE-0096

OAH DOCKET NO. 06-2019-OSPI-00806

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Eric J. Roth in Everett, Washington, on October 10, 2019, at 9:00 a.m. The Parents of the Student whose education is at issue<sup>1</sup> appeared and represented themselves. The Mukilteo School District (District) was represented by Carlos Chavez, attorney at law. Lisa Pitsch, Director of Special Education for the District, also attended. The following is hereby entered:

**STATEMENT OF THE CASE**

The District filed a due process hearing request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on June 24, 2019. The Complaint was assigned Cause No. 2019-SE-0096 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered June 26, 2019, that assigned the matter to ALJ Eric Roth.

Prehearing conferences were held on July 8, August 1, August 8, and September 18, 2019. Prehearing orders were entered July 10, August 2, August 9, August 20, and September 24, 2019. The District and the Parents appeared at all prehearing conferences.

As set forth in the First Prehearing Order, the written decision due date was continued at the District's request to thirty (30) calendar after the hearing record closes. The hearing record closed on October 17, 2019, when the parties submitted closing briefs. The due date for the written decision is November 16, 2019.

**EVIDENCE RELIED UPON**

The following exhibits were admitted into evidence:

Parents' Exhibits: P-1 through P-14.

District Exhibits: D-1.

The following witnesses testified under oath. They are listed in order of their appearance: Student's Mother; Gerald Curtin, School Psychologist.

<sup>1</sup> In the interest of preserving family privacy, the names of all family members of the Student are omitted from this decision. Instead, they are identified as, e.g., "Parents", "Mother", "Father", and "Student".

## ISSUE

Whether the District's December 18, 2018 evaluation of the Student was appropriate and, if not, whether the Parents are entitled to an independent educational evaluation (IEE) at the District's expense. See First Prehearing Order dated July 10, 2019.

## FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness and plausibility of the evidence has been considered and weighed. To the extent that a Finding of Fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted has been determined more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue.

Some of the evidence presented was hearsay. In administrative hearings, hearsay evidence is admissible if, in the judgment of the presiding officer, it is the kind of evidence on which reasonably prudent people are accustomed to rely in the conduct of their affairs. Revised Code of Washington (RCW) 34.05.452(1). Findings of fact may not be based exclusively on hearsay unless the presiding officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. RCW 34.05.461. To the extent that any findings of fact below are based on hearsay, it is concluded that such findings did not unduly abridge the Parents' opportunity to confront witnesses and rebut evidence.

1. The Student is a fifteen-year-old student at Kamiak High School in the District. The Student previously received special education services in 2016 in the Lakewood School District ("Lakewood"). (D-1, pp.1-2.)
2. In late 2013, the Student underwent a neuropsychological assessment. As a result, the Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) with Persuasive Developmental Disorder (PDD) features. (D-1, p.1.)
3. The Student was initially qualified for special education services by Lakewood on January 9, 2014, under the Other Health Impaired (OHI) eligibility category based on his diagnosis of ADHD. Lakewood provided the Student with specially designed instruction (SDI) in the areas of written expression and social skills. (D-1, p.1.)
4. In June 2014, based on a referral by the Student's treating psychiatric nurse practitioner, the Student underwent a comprehensive psychological/neurodevelopmental assessment conducted by Crystal Gray, Ph.D., Licensed Clinical Psychologist. This assessment resulted in diagnoses of Autism Spectrum Disorder (ASD), Level 1 Social Communication and Restricted, Repetitive Behaviors with deficits in sustained attention, speed of processing for visuomotor integration and adaptive abilities, and ADHD, inattentive type, secondary to ASD. (D-1, p.1.; P-7.)
5. The Student was reevaluated in 2016 while attending school at Lakewood. During that reevaluation, the Student's eligibility category was changed from OHI to Autism based on the Student's updated diagnoses. The Student was also determined to need SDI in math in addition to the Student's existing SDI in writing and social skills. (D-1, p.2.)
6. During the time of the Student's 2016 reevaluation, the Student began to experience significant levels of anxiety and behaviors. The Parents requested that a functional behavioral

assessment (FBA) be conducted. This led to the development of a behavior intervention plan (BIP) on January 30, 2017. The Student subsequently began to experience greater anxiety relating to school, and the Parents reported that the Student suffered mistreatment there. In July 2017, the Student was admitted to a hospital because of stress related to school. (D-1, p.2.)

7. After completing 7<sup>th</sup> grade at Lakewood, the Student transferred to the District for 8<sup>th</sup> grade, completed 8<sup>th</sup> grade at Harbor Point Middle School, and began 9<sup>th</sup> grade at Kamiak High School in 2018. (D-1, p.2.)

8. The District reevaluated the Student for special education services in 2018. (D-1, p.2.) The District obtained the Parents' consent to do so on December 2, 2018. (D-1, pp.16-17.) Jerry Curtin, District School Psychologist, led this reevaluation. (D-1, p.1.) Mr. Curtin has been a school psychologist for over 14 years and has assessed multiple students. (Test. of Curtin.) Mr. Curtin was also a special education teacher for 12 years. (Test. of Curtin.) The other members of the reevaluation team were Lyn Geronimi, Special Education Teacher, and Lisa Pitsch, Director of Special Education. (D-1, p.5.)

9. The Student was assessed in several areas, including cognitive, academic, and social/emotional/behavioral. (D-1, pp.7-13.) The reevaluation included consideration of several other areas, including medical-physical, general education, and observation. (D-1, pp. 6-11.) The Parents did not request that the Student be evaluated in any areas besides those proposed by the District and did not object to Mr. Curtin's involvement in the reevaluation. (D-1, pp.16-17; Test. of Curtin; Test. of Mother.)

10. In conducting the assessment, Mr. Curtin spent approximately three hours directly assessing the Student and an additional 45 minutes observing the Student in class. (Test. of Curtin.) Mr. Curtin also reviewed available school records and input from the Parents. (D-1, pp.1-2; Test. of Curtin.) In total, Mr. Curtin spent between approximately nine and 12 hours assessing the Student. (Test. of Curtin.)

11. In making his findings in the area of medical-physical, Mr. Curtin considered the Student's previous neuropsychological evaluations, the Student's previous diagnoses, and input from the Parents. (D-1, p.6.) Mr. Curtin based his conclusion in the area of general education on observations of the Student. (D-1, p.6.)

12. Mr. Curtin used the Wechsler Intelligence Scale for Children – 5<sup>th</sup> Edition (WISC-V) to assess the Student in the area of cognitive. (D-1, p. 7.) Mr. Curtin has been trained in the proper use of the WISC-V and properly administered it. (Test. of Curtin.) The assessment showed that the Student has overall cognitive functioning in the High Average Range. (D-1, p.8.)

13. Mr. Curtin used the Woodcock-Johnson Tests of Achievement-IV for the Student's academic assessment. (D-1, p.10.) Mr. Curtin has been trained in the proper use of these tests and properly administered them. (Test. of Curtin.) The academic assessment reflected that the Student had math and writing skills ranging from high average to average. (D-1, p.13.)

14. Mr. Curtin used the Behavioral Assessment Scale for Children, Third Edition (BASC-3) to assess the Student in the area of social/emotional/behavioral. (D-1, p.11.) Mr. Curtin has been trained in the proper use of the BASC-3, has used it to assess other students in the District, and properly administered it to the Student. (Test. of Curtin.) The Student's index scores on this

assessment all fell within the acceptable range and showed no areas of significant concern. (D-1, p.13; Test. of Curtin.)

15. In addition to the assessments he performed, Mr. Curtin reviewed the Student's existing records. Mr. Curtin prepared a draft evaluation report and submitted it to the reevaluation team for consideration. (Test. of Curtin.)

16. The Student had a history of suicidal ideation before attending school in the District. Mr. Curtin was aware of this at the time of the December 18, 2018 reevaluation team meeting. (Test. of Curtin.)

17. Based on the assessment results, the reevaluation team determined that the Student would continue to benefit from SDI in math because it would allow the Student time to process information using the Student's methodical approach and in writing because it would help the Student to develop greater descriptive word choice and elaborate on his ideas. (D-1, p.9.) The reevaluation team recommended discontinuing the BIP, but also recommended that the Student should continue to receive SDI in the area of social/emotional/behavioral to help with the Student's continued social growth. The team acknowledged the Student's "significant" progress in this regard, but determined that continuing the individualized education plan (IEP) would provide needed support for the Student. (D-1, p.13.)

18. The reevaluation team, including the Parents, met on December 18, 2018, and reviewed the results of the reevaluation. (D-1, p.5; Test. of Curtin; Test. of Mother.) Based on the reevaluation, the team determined that the Student continued to qualify for special education services under the disability category of Autism and recommended that the Student continue to receive special education services in the areas of math, writing, and social/emotional/behavioral. (D-1, pp. 3-4.) The team further recommended that it discontinue the BIP because it was no longer necessary. (D-1, p.14.) The team also proposed reviewing the Student's progress in math in May 2019 to consider whether to continue SDI for the Student in math. (D-1, p.14.)

19. There was no disagreement amongst the reevaluation team about the results or recommendations of the reevaluation. (D-1, pp.3-4; Test. of Curtin.) The Parents did not disagree with the reevaluation's conclusions and recommendations at the December 18, 2018 meeting and signed the reevaluation. (Test. of Curtin; Test. of Mother.)

20. The team wished to continue the Student's SDI even though the Student had made significant progress in some areas of evaluation. The team wished to do so in part to provide the Student with a "safety net" and to be cautious about exiting the Student from special education too early. (Test. of Curtin.)

21. The District provided the Parents with a prior written notice of the eligibility determination dated December 18, 2018. This notice indicated that the District would initiate action on the reevaluation on December 18, 2018. (D-1, pp.14-15.)

22. The reevaluation report stated that the student qualified for special education services under the Autism eligibility category. (D-1, p.3.) It discussed the assessments and data that supported its conclusion about the Student's eligibility. (D-1, pp.1-15.) It discussed how the Student's disability affects the Student's involvement and progress in the general education curriculum. (D-1, pp.6-13.) It recommended the special education services that the Student needed. (D-1, pp.3-4.) It included information that was determined through the reevaluation

process as being needed to develop the Student's IEP. (D-1, pp.6-13.) It included the date and signature of each professional member of the reevaluation team and certified that the reevaluation report represented each person's conclusion. (D-1, p.5.) The report also documents the results of Mr. Curtin's assessments and observations. (D-1, pp.6-13.)

## 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. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). In this case, that is the District.

### 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 *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA, as follows:

First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

*Rowley*, 458 U.S. at 206-207 (footnotes omitted). For a school district to provide fair access to public education (FAPE), it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Rowley*, 458 U.S. at 200 - 201.

4. The Supreme Court recently clarified the substantive portion of the *Rowley* test quoted above:

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . [H]is educational program must be appropriately ambitious in light of his circumstances . . .

*Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. \_\_\_, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Endrew F.* standard as follows:

In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can "make progress in the general education curriculum," *id.* at \_\_\_\_, 137 S. Ct. 988 (citation omitted), taking into account the progress of his non-disabled peers, and the child's potential.

*M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1201 (9<sup>th</sup> Cir. 2017).

### **Applicable Law: IEEs and Evaluations under the IDEA Regulations**

5. If the parent of a student eligible for special education disagrees with a school district's evaluation, the parent has the right to obtain an IEE, which is an evaluation conducted by a qualified examiner not employed by the school district. If a parent requests an IEE at public expense, the district must provide the parent with certain information on obtaining IEEs, and must either initiate a due process hearing within 15 days to defend the appropriateness of its evaluation or ensure that a publicly-funded IEE is provided without unnecessary delay. If the district initiates a hearing, and the final decision is that the district's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. WAC 392-172A-05005; *see also* 34 CFR §300.502.

6. When a school district conducts a special education evaluation, a "group of qualified professionals selected by the school district" must use a "variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent . . ." The group must not use "any single measure or assessment as the sole criterion" for determining eligibility or educational programming. The group must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical and developmental factors. WAC 392-172A-03020; *see also* 34 CFR §300.304.

7. School districts must also ensure that assessments are selected and administered to avoid discrimination based on race or culture and are administered in the student's native language or mode of communication. Assessments must be administered by "trained and knowledgeable personnel" and "in accordance with any instructions provided by the producer of the assessments." Students must be assessed "in all areas related to the suspected disability" and the evaluation must be "sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified." *Id.*

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

9. WAC 392-172A-03035 concerns evaluation reports. It requires that they include: a statement of whether the student has a disability that meets eligibility criteria; a discussion of the assessments and review of data that supports the eligibility conclusion; a discussion of how the

disability affects the student's progress in the general education curriculum; and the recommended special education and related services the student needs. Such reports must also include information needed to develop the Student's IEP, the date and signature of each professional member of the reevaluation team, a certification that the report represented each team member's conclusion, and must document the results of the evaluation team members' individual assessments and observations. *Id.*; see also 34 CFR §300.304-.306.

10. After the "administration of assessments and other evaluation measures," the parent of the student and qualified professionals "determine whether the student is eligible for special education and the educational needs of the student." WAC 392-172A-03040(1)(a). When interpreting evaluation data,

... each school district must:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background and adaptive behavior; and

(b) ensure that information obtained from all of these sources is documented and carefully considered.

WAC 392-172A-03040(3).

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

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

## **Analysis**

13. This case presents the issue of whether the District's reevaluation of the Student is appropriate. The Parents have asserted generally that the District's reevaluation of the Student was not appropriate and have requested an IEE at public expense. The District has the burden to show that the reevaluation is appropriate.

14. The District has shown that it gathered a group of qualified professionals for the evaluation of the Student: a school psychologist, a special education teacher, and the Director of Special Education. The District used three assessment tools to reevaluate the Student. The evidence establishes that the evaluation team used a number of strategies, including direct assessments of the Student using several different tools, observation of the Student in class, review of available records, review of previous psychological evaluations, and input from the Parents. The District did so to gather relevant behavioral, psychological, and academic information about the Student.



The assessments administered by Mr. Curtin were technically sound and properly used to assess cognitive, social, emotional, and behavioral factors.

15. Mr. Curtin properly administered the assessments. The record shows that the assessments were sufficiently comprehensive to identify all of the Student's special education and related services needs and that the Student was assessed in all areas related to the Student's disabilities.

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

17. The reevaluation report satisfied all of the requirements of WAC 392-172A-03035. It stated that the student qualified for special education services under the Autism eligibility category and discussed the assessments and the data that supported that conclusion. It discussed how the Student's disability affects the Student's progress in the general education curriculum and recommended the special education services that the Student needed. It included information needed to develop the Student's IEP, the date and signature of each professional member of the reevaluation team, a certification that the evaluation report represented each team member's conclusion, and documented the results of Mr. Curtin's assessments and observations.

18. The Parents alleged that the District based its evaluation on unreliable information from the Student's previous school district and expressed a general distrust of the District. The evaluation summary, however, begins with a lengthy section detailing its review of existing data. This includes review of the Student's 2013 neuropsychological assessment and 2014 psychological/neurodevelopmental assessment, the Student's 2016 reevaluation report from Lakewood, and a detailed recitation of the Student's history at Lakewood, including a discussion of a traumatic event the Student experienced at Lakewood and his subsequent transfer to the District. The evidence establishes that the District took into account ample information about the Student's medical and educational history. Despite their allegations of unreliability, the Parents failed to present evidence to establish why this information was not reliable or what other data the District should have reviewed.

19. The Parents were concerned that the District did not take into account the trauma that the Student experienced while attending school at Lakewood or the Student's history of suicidal ideation. The preponderance of the evidence, however, establishes that the District was aware of these things and took them into account in the reevaluation. Indeed, the evaluation summary discusses some of these items in its review of existing data, and Mr. Curtin confirmed that he was aware of the Student's history of suicidal ideation. (D-1, pp.1-2; Test. of Curtin.)

20. Based on the record, it is concluded that the District conducted an appropriate evaluation of the Student. The Parents, then, are not entitled to an independent educational evaluation at public expense.

21. 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 Mukilteo School District's December 18, 2018 Reevaluation of the Student is appropriate. The Parents, therefore, are not entitled to an independent educational evaluation at public expense.

Signed on November 15, 2019.



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ERIC J. ROTH  
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. *lan*

Parents



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cc: Administrative Resource Services, OSPI