

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

IN THE MATTER OF

LONGVIEW SCHOOL DISTRICT

OSPI CAUSE NO. 2022 SE 0019

OAH DOCKET NO. 02 2022 OSPI 01520

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

A due process hearing was held before Administrative Law Judge (ALJ) Jacqueline Becker on March 29 and 30, 2022, via videoconference. The Mother of the Student whose education is at issue<sup>1</sup> (Parent) appeared and represented herself. Also present for the Parent was her lay advocate, [REDACTED]. The Longview School District (District) was represented by Parker Howell and Chase Bonwell, attorneys at law. Also present for the District was Dr. Karen Joy, Director of Special Services.

**PROCEDURAL HISTORY OF THE CASE**

The Due Process Hearing Request (Complaint) in this matter was filed by the District with the Office of Administrative Hearings (OAH) on February 18, 2022. The Complaint was given Cause No. 2022 SE 0019 and assigned to ALJ Becker. The Complaint alleged that the Parent had requested an Independent Educational Evaluation (IEE) of the Student at public expense and the District had denied that request. The District sought to demonstrate the appropriateness of its most recent evaluation of the Student via a due process hearing.

A prehearing conference was set for March 2, 2022, via notice mailed to the parties by OAH. The Parent filed a response to the Complaint on March 1, 2022. The Parent withdrew her request for an IEE prior to the March 2, 2022, prehearing conference because she did not want to participate in a due process hearing. However, the Parent filed a Citizen Complaint or Community Complaint with the Office of Superintendent of Public Instruction (OSPI) prior to the prehearing conference, and the relief she seeks pursuant to that complaint includes a publicly funded IEE for the Student. Attorney Howell represented that, based on his understanding, OSPI is holding in abeyance its action on the Parent's Community/Citizen complaint pending resolution of the present matter by OAH. The Parent concurred with this understanding. For this reason, the District requested to proceed with the due process hearing to determine whether the Parent is entitled to an IEE at public expense. The Parent did not object to

<sup>1</sup> To ensure confidentiality, names of parents and students are not used.

proceeding. Hearing dates were set via an order issued on March 7, 2022, and the due process hearing was held as scheduled.

### **EVIDENCE RELIED UPON**

#### Exhibits Admitted:

Parent's Exhibits: P8.<sup>2</sup>

District's Exhibits: D1 D23.

#### Witnesses Heard:

Thomas Ryan, District school psychologist  
Kristina Hastings, District general education teacher  
Constance Stuber, District school nurse  
Christy Eib, District school nurse  
Dr. Karen Joy, District Director of Special Services  
The Parent

#### Post Hearing Briefs

The due date for post hearing briefs was May 4, 2022. The parties' post hearing briefs were timely filed.

### **DUE DATE FOR WRITTEN DECISION**

The due date for a written decision in this case was continued to thirty (30) calendar days after the close of the record by order dated March 7, 2022. The record closed with the receipt of the post hearing briefs on May 4, 2022, and the due date for the written decision is June 3, 2022.

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<sup>2</sup> Several exhibits offered by the parties were duplicates. In such cases, only the District's version of the exhibit was admitted and used during the hearing.

## ISSUES/REMEDIES

The issue heard at the due process hearing was: Whether the District's evaluation of the Student, dated December 1, 2021, was appropriate and, if not, whether the Parent is entitled to an IEE at public expense?

## FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness, and plausibility of the evidence has been considered and weighed. To the extent a Finding of Fact adopts one version of a matter on which the evidence conflicts, the evidence adopted has been determined to be more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence is set forth below as necessary.

1. The Student is currently [REDACTED] years old. She was [REDACTED] years old when the Complaint was filed, and the due process hearing was held. Complaint.
2. The Student was [REDACTED]. Tr. 238.<sup>3</sup> The Parent does not know the Student's medical or developmental history prior to the age of 14 months. Tr. 239; D14.<sup>4</sup>
3. The Student attends Columbia Valley Gardens Elementary School (CVG) in the District. She was in second grade during the 2021 22 school year. D8; Tr. 53. Her primary language is English. Tr. 53.
4. On August 24, 2021, the Parent emailed several District staff members, including Dr. Joy and Dr. Elizabeth West (the District Executive Director of Special Education). D8; D20. The Parent's email stated as follows:

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<sup>3</sup> The hearing transcript is cited as "Tr." with references to the page of the cited testimony. For example, a citation to "Tr. 80" is to the testimony at page 80 of the transcript.

<sup>4</sup> Exhibits are cited by party ("P" for Parent, "D" for District), exhibit number, and page number. For example, a citation to "P1 p.5" is to the Parent's Exhibit 1 at page 5.

To whom it may concern,

I would like to request comprehensive educational testing for my child [REDACTED] who is going into 2nd grade at Columbia Valley Gardens.

I would like a full psycho-educational evaluation together with appropriate testing for learning disabilities. I request my child be tested in all suspected areas of disability (34 CFR 300.304), including the areas of math, dyslexia, dyscalculia, auditory processing, executive function, speech, and language, reading disability, functional vision, OT, PT.

My concerns are:

She doesn't retain what she has read, she doesn't retain math, she cannot remember math facts, she gets frustrated easily, anxiety over going to school, stresses out on tasks, gives up easily, avoids tasks, says she is tired, refuses to do math work, mixes up numbers when she tries, mixes up letters such as p,q,b,d,g,q, when reading she will read from right to left, runs into things frequently, oblivious to her surroundings, childhood trauma, sleeping issues stemming from trauma and anxiety.

I understand I need to sign a consent form so the school can conduct the evaluation (34 CFR 300.300). If I do not hear from you in 10 school days I will call to set up a time to sign the consent form.

After testing, and at least 5 days prior to attending the IEP team meeting to discuss the testing results [34 CFR 300.613(a)], I request I have a chance to review the result and ask any questions I have with the evaluator so that I may be an active part of the team (34 CFR 300.321).

I understand the school system has 60 days to complete testing and hold a meeting to discuss eligibility [34 CFR 300.301©(1)(i)]. Please note, at the IEP meeting I will be recording the meeting and any subsequent IEP meetings. I want to make sure I do not miss anything and an audio recording will help me immensely. I look forward to meeting with you on that date.

Sincerely,  
[REDACTED]

D8.<sup>5</sup>

5. The Parent used a template available on the internet when writing the August 24, 2021, email. Tr. 232. She used the template's standard language as the basis for the second paragraph of the email ("I would like a full..."). The Parent wrote the third paragraph herself and described her concerns about the Student in her own words. *Id.* The Parent conceded at the due process hearing that she did not write anything specific about the Student's vision in the

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<sup>5</sup> The names of the Parent and Student are redacted in this photograph of exhibit D8. The redactions do not exist in the original exhibit, and the names of the Parent and Student are visible in the original.

“concerns” paragraph of this email. She also testified that the only concern she articulated in the email regarding the Student’s hearing is that the Student seems to be oblivious to her surroundings. *Id.* at 232 33.

6. The District initially declined to evaluate the Student in order to allow time to observe her response to instruction and gather additional information. Tr. 233; D9. On October 19, 2021, the Student Support Team<sup>6</sup> met and decided to commence the formal special education evaluation process of the Student as requested by the Parent. Tr. 233; D10.

7. On October 20, 2021, the District sent the Parent a prior written notice (PWN) proposing to initiate an initial special education eligibility evaluation of the Student. D9. The PWN was written by Thomas Ryan.<sup>7</sup> Mr. Ryan is the District psychologist who works with students at CVG. Tr. 41 42.

8. The October 20, 2021, PWN states, “[Student’s] Mom requested testing in September and the team wanted time for [Student] to respond to instruction and get more information before testing for a disability since [Student] had not been in formal school for at least 6 months of her first grade year and has a background that may impact her learning. [Student] is performing below the expected level for her grade level.... COVID was a huge disruption in learning for many students, [Student] included. In winter of kindergarten, [Student] was on track for learning in reading and knew her letters and sounds which is typical progress for a kindergarten student of that age.” D9.

9. As part of the evaluation process, the Parent completed the “Health/Social Developmental History Questionnaire” (Questionnaire) provided to her by the District. This Questionnaire seeks a great deal of information concerning the Student’s health, development, and behavior. D14. The Parent was unable to provide information about the Student from birth to age 14 months because the Student was not in the Parent’s care at that time. *Id.*

10. One inquiry on the Questionnaire asks whether the Student has ever received psychological counseling. The Parent responded by checking the “yes” box. The next inquiry asks when and by whom such counseling was provided. The Parent responded by writing “medical information is private” and provided no further information. D14 p.3.

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<sup>6</sup> No evidence was presented as to the Student Support Team’s purpose or membership.

<sup>7</sup> Mr. Ryan has a bachelor’s degree in psychological sciences and a master’s degree in school psychology. Tr. 41. He has practiced as a school psychologist since 2015. *Id.*

11. The Questionnaire also asks whether the Student has experienced vision and/or hearing problems. The Parent checked the boxes indicating that the Student had experienced both vision and hearing problems. In the follow up area in which the Questionnaire asks the date of the Student's last vision and/or hearing exams, the Parent stated only, "medical info private." No information regarding vision or hearing exams was provided. D14 pp.3 4.

12. When asked at the due process hearing why she had not shared medical information when requested to do so by the Questionnaire, the Parent stated:

That was probably just my bad as being a first time parent and not really knowing what all I was, you know, supposed to put in there or everything to include, honestly. Just lack of knowledge. And I could share more. I'm just very closed off with her stuff because we don't know a lot because of her [REDACTED]

Tr. 237 38. Notably, the Student underwent a vision exam while she was in kindergarten and no vision problems were identified, but the Parent was advised to bring the Student back, at an unidentified time in the future, to see if she may need glasses. *Id.* The Parent never shared this information with the District until asked about it by the ALJ at the due process hearing.

13. The Questionnaire also asks the Parent to "describe your concerns for your child." D14 p.2. The Parent responded: "she doesn't retain what she reads, math avoids tasks [sic], mixes up letters & numbers, oblivious to her surroundings, too trusting." *Id.* When asked on the Questionnaire whether the Student "had ever participated in therapy services from a private entity, such as speech, occupational physical, vision therapy, etc.," the Parent checked the "no" box. *Id.* at 3. The Parent also indicated that the Student had never been identified as having a disability. *Id.*

14. Mr. Ryan sent the Parent a "Consent for Initial Evaluation" form in late October of 2021. Mr. Ryan recommended that the Student be evaluated in the following areas: medical physical, other (interviews), cognitive, observation, and academic. D16 p.1. Mr. Ryan informed the Parent via a voice mail message that she could check additional boxes on the consent form to indicate other areas in which she would like the Student to be "assessed." P8. The Parent checked the following additional boxes: adaptive, communication, vision, audiology, behavior, executive function, general education, fine motor, sensory processing, and social/emotional. D16 p.1.

15. The Consent for Initial Evaluation states, "I understand that I have the opportunity to participate in the consideration of the areas to be assessed. I would suggest the following areas of need be considered in assessing my child." D16 p.1. In the blank lines following this

statement, the Parent wrote, “Speech ‘Th’ sounds. Mixes up letters, reads backwards, misses words, mixes numbers, forgets, slow to understand, working memory slow. Not aware of ‘stranger danger,’ personal responsibility, does not pick up on social cues.” *Id.* The Parent signed the consent form on October 28, 2021. *Id.*

16. The Parent contends she was never asked for specific information as to why she checked particular boxes on the Consent for Initial Evaluation regarding areas to be evaluated. Tr. 229. The Parent has observed the Student to physically run into objects and trip frequently. According to the Parent, the Student has poor handwriting, does not remember what she reads, does not remember multi step directions, and often asks the Parent to repeat what she has said. *Id.* The Student sometimes does not answer when the Parent talks to her and does not appear to have heard what was said. According to the Parent, the Student repeats back information incorrectly and appears to get eye fatigue and headaches when working with math or reading. *Id.* at 230. The Student is easily distracted and does not like loud noises such as sirens and barking dogs. She has told the Parent that she “sees spots.” *Id.* The Parent did not share these concerns with the District prior to the Student’s evaluation because she felt she was never asked to do so. *Id.* at 231. The Parent conceded that she could have written additional information and concerns on the Consent for Initial Evaluation or on the Health and Development Survey. *Id.* at 233-35.

17. The Student was evaluated by the District for special education eligibility in November of 2021. D16. Mr. Ryan was the evaluation manager. Tr. 51. As part of the evaluation, Mr. Ryan reviewed interventions the Student had received from the District pertaining to her reading skills. *Id.* at 57. Mr. Ryan considered the Student’s performance in her general education classroom. He also considered the Parent concerns that had been communicated to him. *Id.*

18. The medical physical portion of the Student’s evaluation was conducted by Mr. Ryan. When conducting this portion of the evaluation, Mr. Ryan reviewed the Questionnaire completed by the Parent. D16 p.9. The medical physical findings listed in the evaluation report include “Parent reported concerns with vision and hearing.” *Id.* The portion of the evaluation form that addresses “vision and hearing screening” and allows for the input of hearing and vision screening scores was left blank. *Id.*

19. In the “audiology” section of the medical physical evaluation, Mr. Ryan indicated that the Student had passed her District hearing screenings on May 14, 2021, and on November 19, 2021. D16 pp.9-10. Mr. Ryan did not observe the Student to have any difficulty hearing him when he spoke to her, and she did not favor one ear over the other. Tr. 117. The Student’s

classroom teacher, Kristina Hastings,<sup>8</sup> similarly did not observe the Student to have difficulty hearing. The Student was in Ms. Hastings' class from April through June of her first grade year, and also during her entire second grade year. *Id.* at 143. Ms. Hastings regularly observes her students' voice levels, whether they turn to look at her when she speaks, and whether the volume of their Chromebook headphones is excessively loud. *Id.* at 146. The Student did not exhibit any concerning behaviors, and Ms. Hastings observed the Student to be engaged and participatory in the classroom. *Id.* at 148. The Parent never raised any concerns about the Student's hearing or vision with Ms. Hastings. *Id.* at 147.

20. Constance Stuber is a licensed practical nurse and a health room nurse at CVG. Tr. 159, 167. She assists in screening students' hearing each year using a device designed for this purpose. *Id.* at 160. There are three sound frequencies that students are expected to hear during the screening (1000, 2000 and 4000 hertz at 20 decibels). *Id.* at 179. If a student hears the three different sounds in each ear, they pass the screening. The Student passed her hearing screenings on October 4, 2019, and on May 14, 2021. *Id.* at 163; D1; D2. She also passed her hearing screening on November 19, 2021. Tr. 164; D3. The Parent never reported to the school nurses that the Student needed hearing aids or that she had concerns regarding the Student's hearing. Tr. 164. Mr. Ryan considered the Student's hearing screening results as part of the November 2021 evaluation. *Id.* at 165.

21. The vision portion of the evaluation was also conducted by Mr. Ryan. He reviewed the Student's vision screening results from May 14, 2021, and November 19, 2021, and noted that the Student had passed those screenings. D16 p. 29; Tr. 94-95. Throughout his time working with the Student, Mr. Ryan observed her for signs of visual difficulties, such as trouble reading fine print, or the need to put her face close to the page. Tr. 65. He did not observe signs of visual difficulty. Mr. Ryan also asked Ms. Hastings if she observed visual struggles, such as the Student rubbing her eyes or temples, squinting, having difficulty seeing the board, or having difficulty writing letters within the appropriate lines of the paper. *Id.* at 145. Ms. Hastings had no concerns about the Student's vision. *Id.* at 66, 96.

22. Christy Eib is a registered nurse and has been a school nurse in the District since 2018. Tr. 170. She has a bachelor's degree in nursing and approximately 17 years of nursing experience. *Id.* at 170-71. She is the registered nurse for CVG, and she performs the vision screenings. Ms. Eib uses a GoCheck Kids vision screener, on which she has been trained, to perform the screenings. *Id.* at 171, 174-75. The GoCheck Kids device and its software screen children for amblyopia ("lazy eye"), strabismus (eye misalignment), myopia (nearsightedness),

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<sup>8</sup> Ms. Hastings has a bachelor's degree in elementary education. Tr. 142.



hyperopia (farsightedness) and astigmatism (irregularity in the shape of the cornea). *Id.* at 176; D22 p.3. GoCheck Kids is recommended by the American Academy of Pediatrics and the Ophthalmology Association. Tr. 176. The device does not need calibration because it automatically updates when connected to Wi Fi. *Id.* at 178

23. When performing a vision screening, Ms. Eib aligns a student's eyes with the device and takes a picture. The device then gives a reading of "pass" or "refer." Tr. 176 77. "Pass" means no abnormal readings were found. "Refer" gives a readout as to what abnormal condition has been found. *Id.* Ms. Eib screened the Student's vision on May 14, 2021.<sup>9</sup> The Student passed the screening. *Id.* at 183, 190; D6. Ms. Eib also screened the Student's vision on November 19, 2021, and the Student passed that screening as well. Tr. 184, 190; D7.

24. Ms. Eib has never known the Student to need glasses or contact lenses, and the Parent never reported concerns about the Student's vision to the school. Tr. 184 85.

25. The District did not perform a comprehensive evaluation of the Student's vision or hearing because District staff members did not suspect the Student had a vision or hearing disability after reviewing the results of her screening tests, receiving input from her teacher, and observing the Student during the evaluation. Tr. 200, 211. The District's vision specialist would have further evaluated the Student if a vision disability had been suspected. *Id.* at 212. The audiology specialist who serves the District would have further evaluated the Student if a hearing disability had been suspect. *Id.* at 212 13.

26. A child can pass a visual or auditory screening but have a visual or auditory processing disorder. Tr. 206.

27. The social/emotional portion of the Student's December 1, 2021, evaluation was conducted by Mr. Ryan. The Parent and Lori Parcell, the Student's physical education teacher,<sup>10</sup> completed the Behavior Assessment System for Children (BASC 3) rating scales as part of this portion of the evaluation. The results indicated that the Student is emotionally stable at school in that she does not exhibit anxiety, depression, or difficulty socializing. D16 pp. 10 12. Because her social/emotional functioning does not significantly affect her achievement, the Student was determined not to qualify for specially designed instruction (SDI) in social/emotional. *Id.*

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<sup>9</sup> The Student's vision had also been screened at school by the Lions Club on October 4, 2019, using a visual screener similar to GoCheck Kids, prior to the District obtaining its own vision screening equipment. The Student passed that screening. Tr. 181-83; D5.

<sup>10</sup> The Student attends physical education class for 40 minutes, twice per week. Tr. 151.

28. The adaptive portion of the evaluation was conducted by Mr. Ryan. The BASC 3 and the Adaptive Behavior Assessment System Third Edition (ABAS 3) were completed by the Student's classroom teacher as well as by the Parent for this portion of the evaluation. The Student received below average and low scores on several parts of the adaptive assessments. Mr. Ryan determined that functional academics is an area of concern for the Student, but also that she is able to transition well, socializes well, and is prepared to learn. D16 pp.13 18. The evaluation team determined that the Student did not need SDI in adaptive because her strengths were significant, and her overall adaptive abilities were in the average range. Tr. 121.

29. The behavior portion of the evaluation was conducted by Mr. Ryan. The BASC 3 was completed by Ms. Parcell for this portion of the evaluation. The results indicated that the Student is able to regulate her behavior at school and that her behaviors do not affect her achievement. D16 pp. 19 20.

30. The cognitive portion of the evaluation was conducted by Mr. Ryan. The Wechsler Intelligence Scale for Children Fifth Edition (WISC V) was administered to the Student for this portion of the evaluation. D16 pp. 20 24. This testing revealed that the Student has an average Full Scale Intelligence Quotient (FSIQ) score, well developed verbal reasoning skills, average visual spatial reasoning skills, and average fluid reasoning skills. The testing also revealed average working memory skills, a high average visual memory, as well as a low average auditory memory. *Id.* at 23. Almost all of the Student's scores on the WISC V fell in the "average" range, with two falling in "low average" and one falling in "very high." *Id.* at 24. Because the Student's overall cognitive scores were average, it was determined that she did not qualify for special education in this area. Tr. 75.

31. The academic portion of the evaluation was conducted by Mr. Ryan. Mr. Ryan sought input from the Student's classroom teacher for this portion of the evaluation. Tr. 77. The Woodcock Johnson Tests of Achievement Fourth Edition (WJ IV A) were also administered to the Student. The testing showed the Student had very limited foundational mathematics skills, had difficulty spelling and writing simple sentences, and had lower than expected skills in basic reading, reading fluency, and reading comprehension. The Student had difficulty discerning the shapes of letters and their corresponding sounds, as well as the sounds that letters make in groups. The testing led Mr. Ryan to conclude that the Student would benefit from SDI in math calculation, written reasoning, and reading comprehension. D16 p.26.

32. The communication portion of the evaluation was conducted by Johnna Knapp. Ms. Knapp is a speech language pathologist (SLP). D16 p.28. The Arizona Articulation and Phonology Scale, 4<sup>th</sup> Revision (Arizona 4); the Oral and Written Language Scales Second Edition (OWLS II); and the Listening Comprehension and Oral Expression Scales were

administered to the Student for this portion of the evaluation. The testing showed the Student's fluency, voice, and overall receptive and expressive language skills were within the average range. She did not meet the eligibility requirements for special education services in the area of communication. *Id.* at 28 29.

33. The fine motor portion of the evaluation was conducted by Jonathan Montano. Mr. Montano is an occupational therapist. Tr. 81. The Miller Function & Participation Scales (M FUN) were administered to the Student for this portion of the evaluation. The M FUN is used to determine if a child has a delay in the visual motor, fine motor, and/or gross motor abilities needed to participate in the early school years. D16 p.30. Parent and teacher reports and clinical observation were also used to assess the Student. *Id.* The Student scored less than 1.5 standard deviations below the norm for visual motor and fine motor performance on the M FUN. *Id.* She had difficulty with prolonged working memory and extensive task planning, as well as with in hand manipulation in her nondominant hand. The classroom observation showed that the Student's overall ability to manipulate materials is on pace with her peers. Mr. Montano determined that the Student's areas of low performance did not negatively impact her educational participation or performance, and that she did not qualify for services in the area of Occupational Therapy (OT). *Id.*

34. The executive function portion of the evaluation was conducted by Mr. Ryan. The Behavior Rating Inventory of Executive Function, Second Edition (BRIEF2) was completed by the Parent and Ms. Hastings for this portion of the evaluation. D16 p.31. Based on the BRIEF2 results, Mr. Ryan determined that the Student is very different at home than at school. At home, the Student struggles to organize her thoughts, ideas, and personal space. At school, the Student is organized and able to take initiative, manages her emotions, and understands her role as a student. Mr. Ryan determined that instruction in executive functioning was not necessary for the Student. *Id.* at 36.

35. The Student was observed by Mr. Ryan at recess and during classroom reading instruction as part of the "observation" portion of the evaluation. She was observed to behave appropriately did not exhibit problematic behaviors. D16 pp. 36 37.

36. The sensory processing portion of the evaluation was conducted by Mr. Montano. The Sensory Profile 2 School Companion was completed by Ms. Hastings for this portion of the evaluation. The profile is a questionnaire that examines a child's response to various sensory experiences. It is "a tool for linking performance strengths and barriers with the student's sensory processing patterns." D16 p.37. Essentially, it examined how the Student responds to sensory input. Tr. 88. Based on the analysis of this profile, the Student demonstrated "typical" performance in the areas of visual, touch, movement, and behavior sensory processing. She

had more difficulty than average ignoring visual stimulation, however, and tended to look away from tasks in order to watch people move around the room. Based on this assessment, the Student did not qualify for OT services. *Id.* at 37 38.

37. The specific learning disability (SLD) portion of the evaluation was conducted by Mr. Ryan. The Woodcock Johnson IV Tests of Achievement were administered to the Student for this portion of the evaluation. D16 p. 39. Mr. Ryan employed the “discrepancy model” to determine whether the Student had a significant difference between her intellectual ability and her academic achievement. Tr. 58 60. These assessments determined that the Student has SLDs in math calculation, written expression, reading comprehension, and reading fluency. *Id.*

38. The evaluation report notes that Mr. Ryan is trained to administer and score the assessments he used when evaluating the Student. D16 pp. 10, 13, 19, 21, 25. It further notes that cultural, economic, and other potential biases were determined not to be a significant factor in the Student’s special education eligibility determination. *Id.* at 7.

39. An evaluation meeting was held on December 1, 2021, via Zoom conference call. Tr. 52 53. The meeting was attended by: Mr. Ryan; Ms. Knapp; Mr. Montano; Jean Merritt, principal of CVG; Ms. Hastings; Teri Nickerson, special education teacher; the Parent; and the Parent’s friend/advocate, Adriane Boldt. *Id.*; D17. At the meeting, Ms. Boldt asked about the vision and hearing assessment portions of the evaluation. Tr. 123 24. She said the Student was often upset when she came home from school and had headaches. *Id.* The Parent noted that the Student did not seem to hear what she was being told, or did not process it properly, and that she has a poor memory. *Id.* at 125.

40. When asked at the due process hearing what she felt the District failed to do as part of the evaluation, the Parent stated:

I just feel as a parent, that the screening I feel like that a lot could get past a regular screening of vision and hearing because I feel like a lot of her things aren't necessarily, like, not being able to see or not being able to hear, but it's more of like what goes along with that, like visual tracking, and in the hearing, what you say and the directions and all of that kind of stuff. So that was just my feeling, I guess as a parent, truthfully, just by observing her.

Tr. 242.

41. Mr. Ryan recalls the evaluation team told the Parent that school staff members did not observe the Student to have vision or hearing deficiencies. They discussed that it might be

useful to take the Student to an optometrist if the Parent continued to observe vision issues at home. Tr. 125.

42. The evaluation report includes the date and signature of each professional member of the evaluation team, and a certification that the evaluation report represents each team member's conclusions. D16 p.6.

43. On December 6, 2021, the Parent emailed Mr. Ryan and other District staff members and asked for an explanation as to why vision and audiology testing was not performed as part of the evaluation. D18 p.3. Mr. Ryan responded that the District conducted vision and hearing screenings of the Student on November 19, 2021, and the Student passed these screenings. D18 p.4. Mr. Ryan also explained that the Student's teacher had not observed any problems with vision or hearing. *Id.*

44. A PWN proposing to initiate an Individualized Education Program (IEP) for the Student was issued on December 7, 2021. D16 p. 41; Tr. 101. This PWN is dated November 15, 2021, but this is the date consent was received for the evaluation meeting, not the date the PWN was issued.<sup>11</sup> Tr. 101. The PWN notes that:

The team discussed the district hearing and vision screening. The school psychologist explained that the school nurse (RN) is responsible for the vision and hearing screenings, and that [Student] passed her vision and hearing screenings on November 19, 2021 (she also passed vision and hearing screenings in May of 2021); therefore, absent any visual or hearing exigencies (which would come from a medical professional), there is no evidence that [Student] suffers from hearing or vision difficulties.

D16 p.41.

45. An IEP meeting for the Student was held on December 16, 2021, and an IEP was put in place on that date. The IEP indicates that the Student is eligible for special education services under the category of "specific learning disabilities." D19 p.3. The IEP provides for SDI in the areas of math, reading, and written language. *Id.* at 10.

46. On February 4, 2022, the Parent emailed Dr. West and requested an IEE at public expense for the Student. The email stated that the Parent was requesting evaluation in the

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<sup>11</sup> Mr. Ryan testified that December 7, 2021, would have been a more appropriate date for the PWN.

following areas: medical/physical, adaptive, communication, functional vision, audiology, behavior, executive function, general education, cognitive, fine motor, observation, sensory processing, social emotional, and academic. D20 pp.1 2.

47. Dr. Joy<sup>12</sup> was a school psychologist before becoming the District Director of Special Services. Tr. 194 96. Dr. Joy determined that the District would not grant the Parent's request for an IEE at public expense because the evaluation performed by the District was comprehensive and appropriate. *Id.* at 199.

## CONCLUSIONS OF LAW

### Jurisdiction and Burden of Proof

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

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

### The IDEA

3. The IDEA and its implementing regulations provide federal funds to assist state and local agencies in educating children with disabilities and condition such funding upon a state's

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<sup>12</sup> Dr. Joy has a Bachelor of Science degree, a Master of Business Administration degree, a school psychologist certificate, and a Doctor of Education degree with an emphasis on educational leadership. Tr. 195-96.

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).

4. A free appropriate public education (FAPE) 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. The Supreme Court clarified the substantive portion of the *Rowley* test quoted above in 2017:

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

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

6. A school 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. *Rowley*, 458 U.S. at 200 01.

#### Independent Educational Evaluations (IEEs)

7. Parents have a right to obtain an IEE if they disagree with a school district’s evaluation of their child, under certain circumstances. WAC 392 172A 05005; 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(1)(c)(i); 34 CFR 300.502(b). If a parent requests an IEE, a district must either ensure that an IEE is provided at no cost to the parent without unnecessary delay, or initiate a due process hearing within 15 calendar days to show that the district’s evaluation is appropriate. WAC 392 172A 05005(2)(c).

8. If the district initiates a due process hearing and the final decision is that the district’s evaluation is appropriate, the parent still has the right to obtain an IEE but not at public expense. WAC 392 172A 05005(3).

#### Evaluations

9. When conducting an evaluation, the District is required to follow the requirements 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 [sic] for special education services 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 service 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 34 CFR 300.304. Thus, in summary, 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.

10. 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 34 CFR 300.305.

11. 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.

12. Additionally, if an SLD is suspected, WAC 392 172A 03055 sets out the process by which the presence of an SLD should be determined:

WAC 392 172A 03055 Specific learning disability Determination.

The group described in WAC 392 172A 03050 may determine that a student has a specific learning disability if:

(1) The student does not achieve adequately for the student's age or meet the state's grade level standards when provided with learning experiences and instruction appropriate for the student's age in one or more of the following areas:

(a) Oral expression.

(b) Listening comprehension.

(c) Written expression.

(d) Basic reading skill.

- (e) Reading fluency skills.
- (f) Reading comprehension.
- (g) Mathematics calculation.
- (h) Mathematics problem solving.

(2)(a) The student does not make sufficient progress to meet age or state grade level standards in one or more of the areas identified in subsection (1) of this section when using a process based on the student's response to scientific, research based intervention or the group finds that the student has a severe discrepancy between achievement and intellectual ability in one or more of the areas identified in subsection (1) of this section; and

(b) When considering eligibility under (a) of this subsection, the group may also consider whether the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, and through review of existing data.

(3) The group determines that its findings under subsection (2) of this section are not primarily the result of:

- (a) A visual, hearing, or motor disability;
- (b) Intellectual disability;
- (c) Emotional disturbance;
- (d) Cultural factors;
- (e) Environmental or economic disadvantage; or
- (f) Limited English proficiency.

(4) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider:

- (a) Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel; and
  - (b) Data based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.
- (5) The district or other public agency must promptly request parental consent to evaluate the student to determine if the student needs special education and related services, and must adhere to the time frames for an initial evaluation under WAC 392 172A 03005:
- (a) If, prior to a referral, a student has not made adequate progress after an appropriate period of time when provided instruction, as described in subsection (4)(a) and (b) of this section; or
  - (b) Whenever a student is referred for an evaluation.

#### Appropriateness of the Student's December 1, 2021, Evaluation

13. In the present case, the District provided the Parent with prior written notice of the December 1, 2021, evaluation that described the evaluation procedure, as required by WAC 329 172A 03020(1). The Mother signed the evaluation consent form on October 28, 2021.
14. The Student's evaluation was conducted by a group of qualified professionals. The individuals who participated in the evaluation had the education, training, and experience necessary to conduct the evaluation. The District has offered more than sufficient evidence to establish those qualifications and the Parent has not raised any challenge to that evidence.
15. The District has also demonstrated that it used a variety of assessment tools and strategies to gather relevant information about the Student, including information provided by the Parent. A multitude of standardized assessments were administered to the Student by a variety of professionals. Information was gathered from the Parent, the general education classroom teacher, and the physical education teacher via various assessment tools. Moreover, the Student was observed by Mr. Ryan and Mr. Montano.

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

17. Finally, the December 1, 2021, evaluation report satisfies all of the requirements of WAC 392 172A 03035. It states that the Student qualifies for special education services under the Specific Learning Disabilities eligibility category and extensively discusses the assessments and data that support that conclusion. The report includes the additional information required for students with SLDs, and it recommends the special education services the Student needs. The report includes information needed to develop the Student's IEP, the date and signature of each professional member of the evaluation team, and a certification that the evaluation report represents each team member's conclusion.

#### The District Assessed the Student in All Areas Related to her Suspected Disabilities

18. The Parent argues that the December 1, 2021, evaluation is inappropriate because the District failed to assess the Student in all areas related to her suspected disabilities as required by WAC 392 172A 03020(3)(e). The Parent asserts that the District did not appropriately assess the Student in the areas of vision and hearing, and that she shared with the evaluation team her concerns regarding the Student's vision and hearing. Parent's Final Statement.

19. According to the U.S. Court of Appeals for the Ninth Circuit, a disability is "suspected" and must be assessed by a school district when the district has notice that the student at issue has displayed symptoms of that disability. *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 20 (9th Cir. 2016). See *J.K. v. Missoula Cnty. Pub. Sch.*, 713 F. App'x 666, 667 (9th Cir. 2018) ("The duty to evaluate a student arises when disability is 'suspected,' or 'when the district has notice that the child has displayed symptoms of that disability'"). A district cannot circumvent its obligation to assess a student for a disability by relying solely on informal observations. *Timothy O.*, 822 F.3d at 1119 20.

20. "The IDEA does not give a parent the right to dictate specific areas in which a school district must assess a student as part of a special education evaluation." *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77843, \*53 (W.D. Wash. 2019) *aff'd sub nom. Crofts v. Issaquah Sch. Dist. No 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022) (citing *Avila v. Spokane Sch. Dist. 81*, 686 F. App'x 384, 385 (9th Cir. 2017) (rejecting the parents' contention that the district was obligated to administer assessments for dyslexia and dysgraphia when evaluating the student)). See *A.C v. Owen J. Roberts Sch. Dist.*, 2021 U.S. Dist. LEXIS 59217 (E.D. Pa. 2021) (holding that the district assessed the student in all areas of suspected disability, despite the parents' contention that the student should have been assessed for a traumatic brain injury



(TBI), when the student was not exhibiting symptoms of a TBI); *Letter to Unnerstall*, 68 IDELR 22 (Office of Special Education Programs 2016).

21. In the present case, the Parent's argument that the District failed to assess the Student in all areas related to her suspected disabilities is not supported by the evidence. The Student passed her hearing and vision screenings repeatedly, including in November of 2021, the time period during which the evaluation was being conducted.<sup>13</sup> The screenings, particularly the vision screening, were comprehensive and sophisticated. No one from the District observed the Student to exhibit difficulties with vision or hearing. Given this information, it was reasonable for the District to determine that no vision or hearing disability was or should have been suspected. See *D.R. v. Dept. of Education*, 827 F. Supp. 2d 1161, 1169 (D. Haw. 2011)(holding it was appropriate for the district to conduct an initial screening of the student for a central auditory processing disorder and, when none was indicated by the screening, to omit conducting a full evaluation).

22. Moreover, the majority of concerns that the Parent attributed to vision or hearing problems did not constitute cause for the District to suspect a disability in either area. The concerns noted by the Parent (reading backwards, skipping words, failing to remember directions, failing to remember what she has read, asking the Parent to repeat statements, being distracted easily) can stem from a variety of causes, including lack of attention. The Parent concedes several times in her briefing that the Student is easily distracted. Although the Parent observed the Student seeming to experience eye fatigue when doing schoolwork, and the Student reported seeing spots at times, these issues were not observed while the Student was at school. These concerns were not sufficient to give rise to a suspected disability in vision.

23. The Parent also appears to contend that the December 1, 2021, evaluation is inappropriate because the District failed to assess the Student's visual and auditory processing. Parent's Final Statement. However, there is little to no evidence that the District should have suspected the Student had a visual or auditory processing disorder at the time the evaluation was conducted. While the Parent's initial email to the District requesting an evaluation did list auditory processing as one of eleven areas of suspected disability, that email employed standard verbiage from an internet template in the paragraph that references auditory processing. The Parent testified to this at the due process hearing, and the language certainly appears to be from a standardized form. The portion of that email written by the Parent describes her concerns about the Student, none of which pertain to auditory processing or visual processing. Similarly, the suggested areas for assessment written on the Consent for Initial Evaluation by the Parent did not include auditory or visual processing, and nothing on the

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<sup>13</sup> Moreover, a private vision examination conducted during the Student's kindergarten year had not identified any vision problems, but this information was not provided to the District by the Parent at the time of the evaluation.

Health/Social Developmental History Questionnaire explicitly indicated a problem with visual or auditory processing. Although the Questionnaire's boxes indicating hearing and vision "problems" were checked by the Parent, no further information was provided and it was reasonable for the District to believe that the checked boxes referred to acuity in vision and hearing, not a processing disorder.

24. Furthermore, the WISC V assessment administered by the District evaluated visual and auditory processing to a limited extent. The Student's overall cognitive scores on the WISC V were average, and the results did not cause the evaluation team to suspect that the Student had a visual or auditory processing disorder.

25. For these reasons, it is concluded that the District has shown by a preponderance of the evidence that the Student was assessed in all areas related to her suspected disabilities.

### Conclusion

26. Based on the record, it is concluded that the District has established by a preponderance of the evidence that the December 1, 2021, evaluation of the Student is appropriate. Consequently, the Parent is not entitled to an IEE at public expense.

27. 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 Longview School District's December 1, 2021, evaluation of the Student is appropriate. The Parent is therefore not entitled to an independent educational evaluation at public expense.

Served on the date of mailing.



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Jacqueline H. Becker  
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 this final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.

### DECLARATION OF SERVICE

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

Parents

██████████  
████████████████████

Dr. Dan Zorn  
Dr. Karen Joy  
Longview School District  
2715 Lilac St  
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Dated May 31, 2022, at Seattle, Washington.

  
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Representative  
Office of Administrative Hearings  
600 University Street, Suite 1500  
Seattle, WA 98101 3126

cc: Administrative Resource Services, OSPI