

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Battle Ground School District

Docket No. 12 2022 OSPI 01751

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

Agency: Office of Superintendent of  
Public Instruction

Program: Special Education

Cause No. 2022 SE 0154

A hearing in the above entitled matter was held before Administrative Law Judge (“ALJ”) Courtney E. Beebe via video conference, on February 27 and 28, 2023. The Parent of the Student whose education is at issue<sup>1</sup> appeared pro se. The Battle Ground School District (“District”) was represented by Erin Sullivan Byorick, attorney at law. Kellie Case, Director of Special Services for the District, attended. The following is hereby entered:

**STATEMENT OF THE CASE AND COURSE OF PROCEEDINGS**

1. The Parent filed a Special Education Due Process Hearing Request with the Office of Administrative Hearings (“OAH”) on December 2, 2022. The parties appeared for a prehearing conference on December 19, 2022. The First Prehearing Order was issued on December 20, 2022. The parties appeared for a second prehearing conference on February 1, 2023. The ALJ issued a Second Prehearing Order on February 1, 2023. The parties appeared for a hearing readiness conference on February 21, 2023.
2. On February 22, 2023, the District filed a Motion in Limine seeking to exclude the three exhibits filed by the Parent. The due process hearing occurred on February 27, and 28, 2023, via video conference. The ALJ denied the District’s Motion in Limine on the record.
3. The record closed on April 7, 2023, when the parties filed written closing briefs. The decision in this matter is due thirty (30) days after the close of the record, which is May 7, 2023. (See First Prehearing Order and Post Hearing Order.)

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<sup>1</sup>In the interests of preserving the family’s privacy, this decision does not name the parents or student. Instead, they are each identified as "Parent" and/or "Student."

## EVIDENCE RELIED UPON

1. The following exhibits were admitted into evidence:

Parent's Exhibits: Parent's Exhibit 1 (Schedule and Grades) and Parent's Exhibit 2 (Missing Assignment Emails).

District's Exhibits: D1, D2, D3, D4, D5, D6, D7, D8, D9, D10, D11, D12, D13, D14, D15, D16, D17, D18, D19, D20, D21, D22, D23, D24, D25, D26, D27, D28, D29, D30, D31, D32, and D33.

2. The following exhibits were excluded: Parent's Exhibit 3 (Email).
3. The following witnesses testified under oath. They are listed in order of appearance: Courtney Adams, Sara Wilhelm, Kristia Halverson, the Student, Sara Bailey, James Heberling, Josh Hard, Mary Walter, Brian Kimber, Kelly Clay, and the Parent.

## ISSUES AND REMEDIES

The issue presented for due process hearings is:

*Whether the District's March 2022 and June 2022 evaluations of the Student are appropriate and if not then whether the Parent is entitled to an independent educational evaluation ("IEE") at public expense.*

(See Second Prehearing Order dated February 1, 2023.)

## 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 is in conflict, the evidence adopted has been determined more credible than conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue.*

### ██████████ Evaluation

1. The Student received a medical diagnosis of autism spectrum disorder on September 29, 2008, and prior to the Fall of 2019 he received special education services, accommodations, and modifications at the schools he attended. (D8, pp.4, 9, 27; D17, p.4.) Specifically, the Student received specially designed instruction

("SDI") in the areas of communication, learning strategies / organizational skills, and study skills. (D8, p.4; Tr., p.436 (Parent).)

2. During the 2019 2020 and 2020 2021 academic years, the Student attended [REDACTED] and completed [REDACTED] grades. (D8, p.9; Tr., pp.44 46 (Adams).) On April 1, 2020, the [REDACTED] School District conducted a reevaluation of the Student. (Ex. D2, pp.1 14; Tr., pp.44 47 (Adams).) The [REDACTED] School District's evaluation team determined that the Student "does not display a significant adverse educational impact given his medical diagnosis of Autism." (D2, p.14; Tr., pp.46 47 (Adams).) This evaluation reflected that the Student received average grades and no longer qualified for special education services. (D2, p.12; Tr., pp.46 47 (Adams).) As per an April 1, 2020, prior written notice ("PWN") the Student was "exited from special education services at this time." ("Id.") The [REDACTED] School District developed and implemented a Rehabilitation Act Section 504 Plan to assist with organization skills. (D2, p.7; Tr., pp.46 47 (Adams).)

**January 1, 2022, 504 Plan**

3. The Student enrolled at the District for the 2021 2022 and 2022 2023 academic years. (D8, p.8.) The Student is currently a [REDACTED] that attends Battle Ground High School. (D8, p.8.) The Student also attends [REDACTED] (D20, D21; Tr., pp.381 385 (Kimber).)

4. On January 1, 2022, when the Student was in [REDACTED], the District created a "Section 504 Accommodation Plan" ("504 Plan") because the Student's diagnosis of autism spectrum disorder required "specific accommodations that are necessary for the child to have an opportunity commensurate with non disabled students (at about the same age) . . ." (D4, pp.1 8; Tr., pp.47 48 (Adams).) The 504 Plan provided for the following accommodations:

Accommodations	Frequency	Location	Duration m/d/y to m/d/y
Allow for larger projects to be broken down into smaller, more manageable parts	Daily	Classroom	01/05/2022 to 01/04/2023
Extra time to complete assignments	Daily	Classroom	01/05/2022 to 01/04/2023
Provide a shared Google Document to help [the Student] know what assignments / tests are expected, any instructions that have not been explicitly given & due date.	Daily	Classroom	01/05/2022 to 01/04/2023
Provide frequent check-ins with [the Student] to assess understanding	Daily	Classroom	01/05/2022 to 01/04/2023

(D4, p.3; Tr., pp.49 51 (Adams).) The Parent consented to the 504 Plan as reflected in a PWN dated January 5, 2022. (*Id.*)

5. However, on March 16, 2022, in an email exchange with Rachel Simmons, Assistant Principal, the Parent requested that the District:

*not . . . provide [the Student] with extra support that [the District] would not typically provide for other students, including:*

*meeting with Kevin Doyle to assist [the Student] with completing his High School and Beyond Plan*

*meeting with Jacob Drummond, our graduation coach, unless [the Student] begins failing classes and rises to a tiered level of support in which a student would ordinarily receive this support.*

*[the Student] will continue to receive the accommodations on (sic) his 504 Plan . . .*

*Additional academic supports that [the Student] may choose to take advantage of include:*

*making arrangements to meet with a teacher before or after school*

*meeting with teachers during Tiger Time, 30 minutes on Tuesdays and Thursdays*

*meeting with our math instructional assistant or requesting online resource from her to support [the Student] with math*

*attending National Honor Society Tutoring 2:30 4 p.m. (sic) every Thursday, drop in okay*

*attending after school tutoring with Mr. Drummond in room C44, M, T, Th, or Fri.*

*[The Parent] expressed that [she] wanted specially designed instruction, and [she] would rather him fail in high school than in college.*

(D9, pp.1 2; Tr., pp.77 78 (Adams); 409 410 (Parent).) The Parent believed that the 504 Plan “provided [the Student] with more support than he will have in the long term in college and in jobs.” (Tr., pp.409 411, 447 (Parent).)

### **March 15, 2022, Evaluation**

6. The Parent was concerned about the Student’s ability to self advocate, organize his work, timely turn in complete assignments, and perform well in college. (D8, p.4; Tr., pp.43 45 (Adams); 409 411 (Parent).) On January 5, 2022, the Parent requested that the District evaluate the Student in the following areas: intellectual functioning, language, learning style, adaptive behaviors, social emotional understanding, and

executive functioning skills. (D5, p.1; Tr., pp.49 50 (Adams); 393 396 (Clay).) On January 31, 2022, the District held a referral meeting and issued a PWN “proposing to initiate an evaluation . . . to determine if [the Student] requires specially designed instruction” because the Parent “continues to have concerns regarding organizational skills and self advocacy (sic) skills.” (D6, p.1, D8, p.4; (Tr., pp.44 45, 48 (Adams); 118 119 (Wilhelm); 395 396 (Clay).)

7. On February 2, 2022, the Parent signed a “Consent for Initial Evaluation” form, providing consent to evaluate the Student in the following areas: communication, general education observation, medical physical, academic, study skills, and behavior / social (with an adaptive component). (D8, p.2; Tr., pp.44 45, 48 (Adams).) The Parent also checked the “other” box but did not list any additional areas of concern. (*Id.*) After additional discussion regarding the scope of the evaluation, the Parent and the District agreed that the evaluation:

*. . . will consist of assessments in the areas of communication, sensory processing, observation, medical / physical, study skills, and behavior / social skills which also includes an adaptive component. Additionally, records review in general education, academic, and prior evaluation data will be addressed. Because previous records do not indicate a concern in [the Student’s] cognitive abilities, the team, including parent, agreed that another cognitive assessment is not needed for the purpose of this evaluation.*

(D8, p.4; Tr., pp. 44 45, 48 (Adams).)

8. The March 15, 2022, evaluation team (“Evaluation Team”) consisted of the following members: Courtney Adams,<sup>2</sup> District’s School Psychologist; Mary Welter,<sup>3</sup> general education teacher (math); Krista Halverson,<sup>4</sup> Occupational Therapist (“OT”);

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<sup>2</sup> Courtney Adams earned an Educational Specialist Degree in School Psychology from George Fox University, and a B.S. Degree in Human Development and Family Studies from Warner Pacific College. (D23, p.1; Tr., pp.37-39 (Adams).) Ms. Adams is a certificated school psychologist in Washington and has worked for the District for ten years. (*Id.*)

<sup>3</sup> Mary Welter earned a Bachelor of Arts in Mathematics from Washington and Jefferson College, and an M.E. from University of Maryland College Park. (D32, p.1; Tr., pp.321-325 (Welter).) Ms. Welter is a certificated teacher in the State of Washington and has worked for the District for five years. (*Id.*)

<sup>4</sup> Krista Halverson received a B.A. in Art History and a minor in business from the University of Oregon, and a Master’s of Occupational Therapy from Pacific University. (Tr., pp.152-153 (Halverson).) Ms. Halverson is a licensed occupational therapist and has worked for the District for eight years. (*Id.*)

Sara Wilhelm,<sup>5</sup> District’s speech language pathologist (“SLP”); Sarah Bailey,<sup>6</sup> general education teacher (French); and the Parent. (D8, p.1; Tr., pp.45 47 (Adams).)<sup>7</sup>

9. At the time of the March 15, 2022, Evaluation, the Student participated fully in the general education setting and maintained a GPA of 3.163. (D8, p.9; Tr., pp.46 51 (Adams).) The Student’s general education teachers “reported no academic concerns,” and the Student’s records showed that he received average or above average grades in reading and writing, but he did fall in the “low average” grade range for math. (D8, p.10; P2, pp.1 3; Tr., pp.50 54 (Adams); 327 333 (Welter); 222 (Bailey).) However, the Student was passing Algebra 2. (*Id.*) The Parent also reported that, with the exception of Algebra 2, she did not have concerns regarding the Student’s academic ability, but she did have concerns about the Student’s ability to turn in assignments because the Parents reminding him to turn in assignments and imposing consequences at home. (D8, p.10; Tr., pp.415 417 (Parent).)

10. As part of the March 15, 2022, Evaluation, Ms. Adams reviewed the [REDACTED] Evaluation and Individualized Education Program (IEP) from April 1, 2020, and other educational records. (D2; Tr., pp.46 47, 49 (Adams).)

11. Sarah Wilhelm, SLP, assessed the Student in the area of communication by administering “The Social Language Development Test Adolescent,” (“SLDTA”) which is used to evaluate social communication like “reading body language, using body language gestures, being able to use and understand humor, and being able to converse with others.” (D8, p.10; Tr., pp.120 121 (Wilhelm).) The Student scored in the average range for his same age peers, and Ms. Wilhelm did not observe the Student avoid participating, or express confusion about the test and the questions. (D8, p.10; Tr., pp.121 129 (Wilhelm).)

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<sup>5</sup> Sara Wilhelm has a B.A. in Linguistics and Spanish from the University of Minnesota and performed Post-baccalaureate SLP Coursework at Portland State University prior to earning an M.S. in Speech-Language Pathology at the University of North Dakota. (D33, pp.1-2; Tr., pp.114-116 (Wilhelm).) Ms. Wilhelm is a certificated teacher in the State of Washington and has worked for the District for ten years. (*Id.*)

<sup>6</sup> Sarah Bailey earned a B.S. in International Relations from Scripps College, and an M.S. in International Affairs from George Washington University. (D24, p.1; Tr., pp.202-203 (Bailey).) Ms. Bailey is a certificated teacher in the State of Washington and has worked for the District for twelve years. (*Id.*)

<sup>7</sup> Christina Woods, general education teacher, also appears to have signed the “Evaluation Summary,” but the name is not completely legible. (D8, p.8.) Ms. Woods did not offer testimony at the due process hearing.

12. Ms. Wilhelm also observed the Student in food science class<sup>8</sup> on February 11, 2022. (D8, pp.10 11; Tr., pp.129 133 (Wilhelm); Ms. Wilhelm chose food science class because it was a more socially engaged class, and Ms. Wilhelm observed the Student appropriately engage in group work and socialize with other students by joking, asking and answering questions, following instructions, gathering materials, and working quietly on his own. (D8, pp.10 11; Tr., pp. 133 139 (Wilhelm).) Ms. Wilhelm did not observe the Student engage in sensory processing behaviors or react to noise. (*Id.*)

13. Ms. Wilhelm also observed the Student during French class with Ms. Bailey on March 3, 2022. (D8, p.10; Tr., pp. 129 133 (Wilhelm).) Ms. Wilhelm observed the Student respond to questions when asked, work with a partner, and work independently. (D8, p.10; Tr., pp.130 133 (Wilhelm).) Ms. Bailey reported that the Student participates in class, asks and answers questions, turns work in on time, and works well with partners. (Tr., pp. 205 218 (Bailey).) Ms. Bailey noted that she rarely needs to provide the Student with the accommodations listed in his 504 Plan because he completed tests and classwork timely and understood expectations. (Tr., pp.219 222 (Bailey).) Also, Ms. Bailey did not observe the Student engage in sensory processing behaviors or react to noise. (Tr., pp.223 225 (Bailey).)

14. The Student's English teacher Katheryn Lamoreaux and Ms. Bailey also completed a "pragmatic profile questionnaire" designed to rate the Student's social behavior, and neither reported any concerns about the Student's in class behavior. (D8, pp.10 11; Tr., pp.125 130 (Wilhelm); 223 226 (Bailey).) The Parent generally agreed with Ms. Lamoreaux and Ms. Bailey but believed that the Student struggled with concepts like "irony" and "reading faces." (Tr., pp.417 418 (Parent).)

15. As part of the SLDTA, Ms. Lamoreaux rated the following behaviors as "often observed":

*asking appropriate questions during conversation / discussion, asking for / responding to clarification during conversations, participating appropriately in structured and unstructured group activities, asking for / offering to help, and asking for clarification if confused or if the situation is unclear.*

(D8, pp.11 12; Tr., pp.133 139 (Wilhelm).) The same teacher reported that the Student "sometimes . . . adjusting body language (sit/stand) appropriate to the situation." (*Id.*)

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<sup>8</sup> The name of the food science teacher is not part of the record.

16. Ms. Bailey described the Student as showing behaviors appropriately within the class environment, with strengths in “participating appropriately in structure and unstructured group activities, asking for help from others, offering to help others, reading the social situation correctly and behaving / responding appropriate, and understanding posted and implied school rules.” (D8, p.12; Tr., pp.133-139 (Wilhelm); 219-225 (Bailey).) Ms. Bailey reported that the Student sometimes asked for clarification, demonstrated appropriate use of body language, and presented matching nonverbal and verbal messages. (*Id.*)

17. Ms. Wilhelm also reviewed the Student’s educational records. (Tr., pp.119-120, 142 (Wilhelm).) Based on her observations and general education teacher reports, Ms. Wilhelm concluded:

*Although [the Student] may exhibit some pragmatic differences, such as preferred topics of interest, limited social interactions with lesser known peers, and difficulty reading irony / sarcasm in specific contexts, he is able to demonstrate appropriate social communication / pragmatic skills for his age with the academic setting. [The Student’s] social communication style may also reflect his neuro diverse individuality and preferences. [The Student] does not meet the criteria for specially designed instruction from a speech language pathologist at this time.*

(D8, p.10; Tr., pp.139-140 (Wilhelm).)

18. Ms. Adams also observed the Student in Thomas Eilerts’ general education U.S. History class on March 2, 2022, and the Student’s food science class on March 4, 2022. (Tr., pp.56-57 (Adams).) Ms. Adams chose the U.S. History class because it reflected an academic environment, and the food science class because it offered a more social, group interactive environment. (Tr., pp.55-57 (Adams).) Ms. Adams observed the Student’s classroom behavior and performance as “comparable to his peers,” concluding that the Student:

*initiated tasks in an appropriate period of time, sustained his attention to the given task, and transitioned between tasks without prompting. He remained seated and used class material as intended and directed by teachers. He interacted with peers and school staff appropriately. There were no behaviors of concern that were noted in these observations.*



(D8, p.14; Tr., pp.56 60 (Adams).) The Student also met with Ms. Adams individually and he engaged in conversation and “willingly worked” with Ms. Adams. (Tr., pp.59 60 (Adams).)

19. Ms. Adams also administered the “Behavior Rating Inventory of Executive Function” (“BRIEF”) by providing the questionnaire to the Parent, the Student, and Mr. Eilerts. (D8, p.15; Tr., pp.60 64 (Adams).) The Parent’s rating scale reflected that the Student “exhibits difficulty with some aspects of executive function,” because he does not turn in assignments on time and review his work. (D8, p.15; Tr., pp.420 422 (Parent).) The Parent also reported that the Student “masks” his sensory seeking behaviors and they may not be observable. (Tr., pp.419 421 (Parent).) The Student’s and Mr. Eilerts’ rating scale only reflected a mildly elevated issue with working memory, and overall that the Student “exhibits appropriate self regulatory abilities and cognitive executive functions as within expectation relative to [] peers.” (D8, p.16; Tr., pp.63 64 (Adams).) Ms. Adams concluded that based on the BRIEF, the Student “is able to access and benefit from his education with the current supports in place through his 504 Plan.” (D8, p.16; Tr., pp.64 65 (Adams).)

20. Ms. Adams administered the “Behavior Assessment System for Children, Third Edition” (“BASC 3”) and the Parent and general education teachers Christina Wood and Ms. Lamoreaux completed the required checklists for the assessment. (D8, p.20; Tr., pp.65 67 (Adams).) The Student, while given a self assessment check list, did not complete the assessment.<sup>9</sup> (*Id.*) The Parent reported that the Student does not understand whether a person is a friend or not a friend, and that she believed that the Student did not understand relationships. (Tr., pp.423 422 423 (Parent).)

21. Ms. Adams also used the “Autism Spectrum Rating Scales,” (“ASRS”) to provide Ms. Wood, Ms. Lamoreaux, and the Parent with context for the Student’s behavior, and Ms. Adams used the ASRS to inform her evaluation of the Student’s BASC 3 results. (D8, pp.20 22; Tr., pp.65 69 (Adams).) Ms. Adams concluded that the BASC 3 indicated “no target behaviors for intervention in the areas of General Behavior Issues, Academic Behavior Issues, or Adaptive / Social Behavior Issues. (*Id.*) Further, the ASRS revealed that the Student:

*appropriately uses verbal and non verbal communication for social contact, does not engage in unusual behaviors, does not have problems with attention and / or motor and impulse control, relates well to children and adults, provides appropriate emotional responses to people in social situations, does not engage in stereotypical behaviors,*

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<sup>9</sup> It is unknown why the Student did not complete the BASC-3 self-assessment.

*tolerates changes in routine well, reacts appropriately to sensory stimulation, and is able to appropriately focus attention; however, he uses language in an atypical manner.*

(D8, p.22; Tr., pp.67 71 (Adams).) Ms. Adams concluded that the Student is able to access his education with the supports in place through his 504 Plan. (*Id.*)

22. In the area of Medical Physical, Ms. Adams reviewed the Student's medical history based on information from the Parent and his diagnosing physician Paul Fleenor, M.D. (D8, p.27; Tr., pp.71 72 (Adams); 423 424 (Parent).) The Parent completed the "social developmental questionnaire to gather past and current information," and reported that the areas of concern include "chewing / picking at fingers, unorganization (sic), missing work and [the Student] not understanding that he should seek out why grades are low or how he should approach improving his grades." (D8, p.27; Tr., pp.72 74 (Adams); 423 424 (Parent).) However, Ms. Adams, after reviewing the Student's medical records and the Parent's information, concluded that the Student "does not display significant adverse educational impact given his medical diagnosis of Autism." (D8, p.27; Tr., pp.75 77 (Adams).)

23. Ms. Halverson, OT, also administered an "Adolescent / Adult Sensory Profile" to determine whether the Student had difficulty with sensory processing. (D8, p.28; Tr., pp.154 157, 159 162 (Halverson).) As part of the assessment, Ms. Halverson interviewed the Student by asking standardized questions and the Student presented as "open, pleasant, focused," without displaying "any unusual movement or any stereotypical behavior." (Tr., pp.161 165 (Halverson).) Further, the Student did not seek clarification of questions, express confusion, or use contradictory facial expressions. (*Id.*) The Student expressed that he manages distractions by closing a door or using earplugs and calmed himself by humming. (*Id.*)

24. Ms. Halverson also obtained information from the Parent and the Student's general education teachers, Ms. Wood, Mr. Eilerts, Ms. Welter, Ms. Lamoreaux, and Ms. Bailey. (D8, p.28; Tr., pp.165 167 (Halverson).) According to the information provided, the Student "does not try to actively seek sensory input, avoid sensory input, become overly distracted by sensory input, or act passively to sensory input." (*Id.*) Ms. Halverson also reviewed the Student's records from ██████████ School District as well as other educational records. (Tr., pp.158 159 (Halverson).) Ms. Halverson concluded from the sensory profile that the Student scored in the average range and is able to engage in daily life activities and learn in the educational environment. (D8, p.28; Tr., pp.167 169 (Halverson).)

25. Regarding the Student's ability to timely turn in assignments, the Parent repeatedly identified this area as a challenge for the Student. (P2, pp.1 33; Tr., pp.409 425 (Parent).) The Parent referenced the District's Grading Notification program which provided the Parent with notifications when the Student missed assignments. (P1, pp.1 3; P2, pp.1 33; Tr., pp. 409 425 (Parent).) Ms. Adams noted that while there were notifications that the Student's assignments were late, as of March 7, 2022, the Student was passing all classes and had no missing assignments. (D8; Tr., pp.50 56 (Adams).)

26. The Evaluation Team met on March 15, 2022, to review the Evaluation. (Ex., D8, pp.1, 30 31; Tr., pp. 74 76 (Adams); 137 139 (Wilhelm); 167 169 (Halverson); 226 228 (Bailey).) The Evaluation Team concluded that the Student was not eligible for special education because he "is functioning within expectation relative to his peers within the educational setting." (*Id.*) The District issued a PWN on March 15, 2022, "refusing to initiate" an "eligibility category" for the Student because he "does not meet eligibility criteria for special education eligibility. [The Student] does not demonstrate a need for specially designed instruction or modification to his general education program." D8, p.30; Tr., pp.74 77 (Adams).) Ms. Adams provided the Parent with a copy of the March 15, 2022, Evaluation via email on March 18, 2022. (D10, p.1; Tr., pp.76 77 (Adams).)

### **May 13, 2022, 504 Plan**

27. On March 23, 2022, Mr. Doyle, the District's Career Guidance Specialist, emailed the Student and asked him to schedule a time to come to the College and Career Center to complete a "High School and Beyond Plan." (D11, p.1.)

28. On May 10, 2022, the 504 Plan eligibility committee ("Eligibility Committee") issued a "Notice of Meeting" for a meeting on May 13, 2022, to discuss "school related information" resulting from the March 15, 2022, Evaluation. (D12, p.1; Tr., pp.77 79 (Adams); 396 398 (Clay).) The Eligibility Committee included the following persons: the Parent, Kellie Clay,<sup>10</sup> District Representative, Rachelle Simmons, Administrator / Designee; Ms. Wood, Christi Shultz, general education teacher; Ms. Lamoreaux, Ms. Welter; Dan Getty, general education teacher; Ms. Bailey; Mr. Eilerts, Ms. Adams, and Cheyanne Knight, school counselor. (D12, p.1; Tr., pp.78 79 (Adams).)

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<sup>10</sup> Kellie Clay received a B.A. in journalism from the University of Oregon and earned a special education teaching license from Portland State University. (D25, pp.1-2; Tr., pp.389-390 (Clay).) Ms. Clay earned an M.A. in special education and an administrative license from Portland State University. (*Id.*) Ms. Clay has worked for the District for four years and currently serves as the District's Director of Special Services. (*Id.*)

29. The Eligibility Committee proposed changing the accommodations in the January 1, 2022, 504 Plan to account for the results of the March 15, 2022, Evaluation. (D12, pp.3 6; Tr., pp.390 393 (Clay).) The Eligibility Committee proposed the following accommodations:

Accommodations	Frequency	Location	Duration m/d/y to m/d/y
Allow [the Student] to utilize his own notes on tests	During Testing	Classroom	05/23/2022 to 05/22/2023
Allow for larger projects to be broken down into smaller, more manageable parts	Daily	Classroom	05/23/2022 to 05/22/2023
Allow for shortened tests to show skill mastery	During Testing	Classroom	05/23/2022 to 05/22/2023
Extra time to complete assignments	Daily	Classroom	05/23/2022 to 05/22/2023
Provide check-ins for understanding using open ended questions	2x per period	Classroom	05/23/2022 to 05/22/2023
Provide prompting for [the Student] to double check his work on test	During testing	Classroom	05/23/2022 to 05/22/2023
Weekly organizational and planner check-ins with the Grad Coach	1x weekly	Classroom	05/23/2022 to 05/22/2023

(D12, p.3; Tr., pp.390 393, 396 (Clay).) After a video conference meeting on May 13, 2022, all the members of the Eligibility Committee, including the Parent, signed the May 13, 2022, 504 Plan. (D12, pp.4 6; Tr., pp. (Clay); (Parent).)

### June 10, 2022, Evaluation

30. On May 10, 2022, the Parent requested that the District evaluate the Student in the areas of academic and cognition because “[the Student] gets good grades on assignments, but then does not do well on tests.” (D13, p.1; Tr., pp.78 79 (Adams); 425 427 (Parent).) More specifically, the Parent “is concerned that [the Student] does not have the self advocacy skills to access his 504 accommodations in college” and is not “able to actually put together a paragraph that reads well.” (D17, p.4; Tr., pp.79 80 (Adams); 425 (Parent).) The same day Ms. Adams emailed the Parent a consent form “for the additional academic and cognitive assessments,” and requested the opportunity to “do additional classroom observations and get some updated information on how [the Student] is currently performing in his classes.” (D15, pp.2 3; Tr., pp.79 80 (Adams).)

31. Ms. Adams emailed the Parent on May 16, 2022, asking about the status of consent to initiate the evaluation of the Student. (*Id.*) The Parent responded by asking to add assessments in “adaptive, age appropriate transition, study skills & vocational.” (D15, p.1; Tr., pp.79 81 (Adams); (Parent).)

32. Ms. Adams provided the Parent with an updated consent form that included the following areas of concern: cognitive, age appropriate transition assessment, general education, observation, academic, study skills, and behavior / social. (D15, p.1; D17, p.3; Tr., pp.80 81 (Adams).) Ms. Adams also stated that she would like Ms. Welter (the Student’s general education math teacher) to complete the BRIEF and BASC 3 checklists that were completed by other [general education] teachers in the previous evaluation [March 15, 2022]” because of the Parent’s concern that the Student demonstrated a weakness in math. (*Id.*) The Parent signed the evaluation form on May 17, 2022. (D17, p.3; Tr., pp.79 81 (Adams).)

33. The June 10, 2022, Evaluation Team consisted of the following individuals: Christi Shultz, general education teacher, the Parent, Ms. Adams, Josh Hard, special education teacher, Ms. Clay, Ms. Wood, Ms. Welter, Mr. Eilerts, Ms. Lamoreaux, and James Heberling, special education teacher. (D17, pp.1, 8; Tr., pp. (Adams); 279 280 (Heberling).)

34. Ms. Adams administered the Differential Ability Scales Second Edition (“DAS III”) to assess the Student’s cognition. (D17, p.9; Tr., pp.81 82 (Adams).) Ms. Adams observed the Student demonstrate understanding of the assessment and follow instructions while maintaining attention during the assessment. (Tr., pp.82 85 (Adams).) The results of the assessment showed that the Student “demonstrates average to above average abilities across cognitive domains . . . [and] we would expect him to perform within a similarly average to above average range on academic tasks.” (*Id.*)

35. In the area of general education, a review of the Student’s grades and assignments revealed that since implementation of the January 1, 2022, 504 Plan the Student’s cumulative grade point average increased from 2.83 to 3.333 and that his math grades improved from a D+ to a C . (D17, p.13; Tr., pp.86 87 (Adams); 337 (Welter).) The Student’s general education teachers reported that he has earned all required credits, maintains a cumulative GPA of 3.147, and that there were no reported “academic, social skill or learning behaviors of concern within the classroom.” (D17, p.13; Tr., pp.86 88 (Adams).) Further, the Student’s general education teachers:

*reported that [the Student] acts responsibly and advocates for himself by asking questions, redoing assignments for better grades without*

*being asked to do so, turning in assignments to various classes during passing time, and sending teachers emails asking for information or sharing information. Teachers reported that [the Student] works well both independently and in groups, and he is friendly and collaborative in class. Additionally, no sensory or communication concerns were noted within the general education setting.*

(D17, pp.13 14; Tr., pp.86 88 (Adams).

36. Josh Hard<sup>11</sup> and James Heberling,<sup>12</sup> special education teachers for the District, assessed the Student in the areas of reading, math, and writing, using the Woodcock Johnson IV Test of Achievement (“WJ IV”). (D17, pp.14 15; Tr., pp.262 278 (Heberling);303 307 (Hard).) Mr. Heberling administered the Broad Reading, Reading Comprehension, and Broad Written Language portion of the WJ IV Test, and the Student scored in the average to above average ranges. (D17, pp.14 17; Tr., pp.262 272 (Heberling).) Regarding Broad Written Language, the Student received an average score in Writing Samples (writing detailed sentences for a given purpose) and Sentence Writing Fluency subtest (formulate and write simple sentences). (D17, pp.14 17; Tr., pp.268 272 (Heberling).) The Student did not need additional time or other accommodations, and the Student followed the instructions without repetition and confusion. (*Id.*)

37. Mr. Heberling also reviewed the Student’s Smarter Balanced Assessment scores from the Student’s tenth grade year. (D1, p.1; Tr. pp., 275 277 (Heberling).) In the area of “ELA/Literacy GR 10,” Mr. Heberling noted that the Student scored “at standard” in the area that “encompasses reading and writing.” (*Id.*)

38. Mr. Hard administered the WJ IV in the areas of Math Calculation Skills and Math Problem Solving, and the Student scored in the average range. (D17, pp.14 17; Tr., pp.303 310 (Hard).)

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<sup>11</sup> Josh Hard received a B.S. in Human Services and a M.E. in Elementary Education from the University of Phoenix. (D27, pp1-3; Tr., pp.298-301 (Hard).) Mr. Hard also earned a master’s in special education from Azusa Pacific University, and he is a certificated special education teacher in the State of Washington. (*Id.*) Mr. Hard has taught for fourteen years, six of those years at the Battle Ground School District. (*Id.*)

<sup>12</sup> James Heberling earned a B.A. in Special Education at Central Washington University, and a Master of Education Teaching and Learning: English at Liberty University Online. (D28, pp.1-3; Tr., pp.247-249 (Heberling).) Mr. Heberling is a certificated special education teacher in the State of Washington. (*Id.*)

39. Both Mr. Heberling and Mr. Hard concluded that the Student did not qualify for special education services in the areas of reading, math, and writing. (D17, pp.14 17; Tr., pp. 272 (Heberling); 315 (Hard).)

40. Ms. Adams completed classroom observations of the Student in English class on May 20, 2022, and Algebra 2 class on May 23, 2022. (D17, p.17; Tr., pp.86 89 (Adams).) Ms. Adams observed that the Student:

*initiated tasks in an appropriate period of time, sustained his attention to the given task, and transitioned between tasks without prompting. He remained seated and used class material as intended and directed by the teachers. He interacted with peers and school staff appropriately. There were no behaviors of concern that were noted in these observations.*

(Id.)

41. In the areas of study skills, Ms. Adams administered the BRIEF questionnaire and provided the checklist to Ms. Welter, the Student's Algebra 2 teacher.<sup>13</sup> (D17, p.19; Tr., pp.91 93 (Adams); 346 34 (Welter).) Ms. Welter, similar to Mr. Eilert and the Student, reported a slightly elevated score in the area of working memory, but in all other areas Ms. Welter reported that the Student "exhibits appropriate self regulatory abilities and cognitive executive functions as within expectation relative to his peers." (D17, pp.18 19; Tr., pp.346 34 (Welter).) In Ms. Welter's experience, the Student turned in his assignments, sought additional help when needed, and did not seem frustrated with the material. (Tr., pp.323 346 (Welter).) Algebra 2 is a difficult class because of the abstract nature of the material and many students have difficulty in the class, but Ms. Welter did not believe that the Student needed special education services to access his education in Algebra 2. (Tr., pp.300 310 (Hard); 323 346; (Welter).)

42. Ms. Adams also asked Ms. Welter to assess the Student's social skills and behavior as part of the BASC 3.<sup>14</sup> (D17, pp.20 21; Tr., pp.92 94 (Adams); 345 352 (Welter).) The results of Ms. Welter's report are consistent with the March 15, 2022, BASC 3 results, but Ms. Welter did identify that the Student "sometimes" engages in picking at hair, nails or clothing, by twirling his hair and putting his hair behind his ears

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<sup>13</sup> Mr. Eilerts, the Parent, and the Student completed the BRIEF checklists as part of the March 15, 2022, Evaluation. (D8; pp.16-17.)

<sup>14</sup> The Parent and Ms. Lamoreaux completed the BASC-3 checklists as part of the March 15, 2022, Evaluation. (D8, pp.20-22.)

multiple times during independent work. (D17, pp.20 23; Tr., pp.101, 105 107 (Adams); 345 352 (Welter).)

43. Ms. Adams also administered the “Transition Planning Inventory Second Edition” (“TPI 2”) to assess the Student’s needs, strengths, preferences, and interests in the areas of working, learning, and living. (D17, pp.24 25; Tr., pp.93 96 (Adams).) The assessment forms were completed by the Student, the Parent, and Mr. Eilerts. (*Id.*) The Student and the Parent both identified that the Student lacks the ability to explain how his Autism diagnosis affects his life situations, like taking the bus and preparing properly to go to work. (Tr., pp.432 434 (Parent).) overall the results showed that the Student was on track to graduate, meet college level requirements, and he had post high school goals for education, employment, and daily living. (D17, pp.24 25; Tr., pp.93 96 (Adams).)

44. The District issued a Notice of Meeting for a June 10, 2022, video conference meeting to conduct an eligibility determination. (D17, p.1; Tr., pp.96 98 (Adams).) After the meeting on June 10, 2022, the Evaluation Team determined that the Student was not eligible for special education services because he “does not demonstrate a need for specially designed instruction or modification to his general education program.” (D17, p.5; Tr., pp.96 98 (Adams); 279 280 (Heberling); 314 315 (Hard); 396 (Clay).)

45. On June 10, 2022, the District issued a PWN “refusing to initiate” an “eligibility category” because the Student “does not meet eligibility criteria for special education services.” (D17, p.26; Tr., pp. 96 98 (Adams).)

### **2022-2023 Academic Year**

46. Based on the Student’s ELA score in the Smarter Balanced Test the Student qualified for “academic acceleration,” and became eligible to register for advanced placement (“AP”) Language and Composition or AP Literature, and / or AP Government. (D16, p.1.) Cheyanne Knight, school counselor for the District, emailed the Parent information about the Student’s 2022 2023 proposed class schedule and his eligibility for AP courses, as well as information about the Battle Ground High School course equivalencies for the [REDACTED]. (*Id.*)

47. On August 22, 2022, Brian Kimber,<sup>15</sup> District school counselor, met with the Parent regarding the [REDACTED]. (D18, p.1; Tr., pp.376 378 (Kimber).) Mr. Kimber followed up the meeting with

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<sup>15</sup> Brian Kimber received his AA degree from Clark College and earned a B.A. in social sciences with an emphasis in Psychology from Washington State University. (Tr., pp.371-372 (Kimber). Mr. Kimber has worked as a school counselor for eleven years. (*Id.*)



an email that informed the Parent that the Student “may be eligible to receive accommodations at [REDACTED] in his classes there because of his 504 plan . . . [the Parent and the Student] can reach out to the disability support services office at [REDACTED] to request accommodations. They will go through their own process, and the 504 plan can be helpful supporting documentation.” D18, p.1; Tr., pp.376 378 (Kimber); 448 (Parent).)

48. The Student enrolled in the [REDACTED] [REDACTED] for the 2022 2023 academic year.<sup>16</sup> (Tr., pp.378 380 (Kimber).) The student earned B grades while attending [REDACTED] during the 2022 2023 academic year but did not request a [REDACTED] 504 Plan until November 2022. (Tr., pp.381 382 (Kimber); 449 451 (Parent).) The Student struggled to turn assignments in on time and resubmitted assignments multiple times before obtaining a 504 Plan at [REDACTED]. (Tr., p.411 (Parent).) As of the date of the hearing, the Student was on track to graduate with a regular high school diploma if he completed a political science class and Washington State History class, but the Student had not completed his “High School and Beyond Plan.” (Tr., pp.383 385 (Kimber).)

49. The Student took the PSAT in the 2022 2023 academic year and received a score of 610 in Evidence Based Reading and Writing Section and a 460 in the Math Section, for a total combined score of 1070 out of 1520. (D1, p.7; Tr., pp.442 445(Parent).) The Student took the PSAT without accommodations. (*Id.*)

50. On November 28, 2022, during a meeting between the Parent and the District, the Parent requested an IEE at public expense. (D19, p.1; Tr., pp.397 401 (Clay).) The District denied the Parent’s request on December 1, 2022, via an email from Ms. Clay. (*Id.*) The District filed a due process hearing request seeking to demonstrate the appropriateness of the March 15, 2022, and June 10, 2022, Evaluations.

51. The District offered to enroll the Student in the “independent living” and the “college and career readiness” classes during the 2022 2023 academic year, but the Parent declined to enroll the Student in the independent living class and did not coordinate with Mr. Kimber to enroll the Student in the college and career readiness class. (Tr., pp.399 401 (Clay); 413 414 (Parent).)

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<sup>16</sup> The District provided Exhibits D20 (“[REDACTED] [REDACTED]”). However, neither of these documents reflect the contract terms or equivalencies in place for the Student during the 2022-2023 academic year, and D20 is not signed by any individual. As a result, no findings of fact are entered based on the language of these documents, but instead all findings reflect the testimony of the witnesses.

## CONCLUSIONS OF LAW

### Jurisdiction

1. OAH has jurisdiction over the parties and subject matter of this action for the Office of 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, in this case the District. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).
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 Act, as follows:

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

*Rowley, supra*, 458 U.S. at 206 07 (footnotes omitted). For a school district to provide Free Appropriate Public Education (FAPE), it is not required to provide a “potential maximizing” education, but rather a “basic floor of opportunity.” *Id.* at 200 01.

### Applicable Law: IEEs and Evaluations Under the IDEA

4. 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. WAC 392 172A 05005(1). If a parent requests an IEE at public expense, the district must provide the parent with certain information on obtaining IEEs and must either initiate a due process hearing within 15 days to defend the appropriateness of its evaluation, or else

ensure that a publicly funded IEE is provided without unnecessary delay. If the district initiates a hearing, and the final decision is that the district's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. WAC 392 172A 05005; see also 34 CFR §300.502.

5. 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 . . ." WAC 392 172A 03020. The group must not use "any single measure or assessment as the sole criterion" for determining eligibility or educational programming. *Id.* The group must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical and developmental factors. *Id.*

6. 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. *Id.* Assessments must be administered by "trained and knowledgeable personnel" and "in accordance with any instructions provided by the producer of the assessments." *Id.* 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 service needs, whether or not commonly linked to the disability category in which the student has been classified." *Id.* 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 (9<sup>th</sup> Cir. 2022) (citing *Avila v. Spokane Sch. Dist.* 81, 686 F. App'x 384, 385 (9<sup>th</sup> Cir. 2017) (rejecting the parents' contention that the district was obligated to administer assessments for dyslexia and dysgraphia when evaluating the student)).

7. 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.

8. 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. See also 34 CFR §300.304 .306.

9. Districts must identify a student’s specific learning disability and “may include the use of: (1) a severe discrepancy between intellectual ability and achievement; or (2) a process based on the student’s response to scientific, research based intervention; or (3) A combination of both within a school district, . . .” WAC 392 172A 03045.

10. A student is eligible for special education if the Student has been evaluated and determined to need special education because of having a disability in the area of emotional / behavioral or autism, and “who, because of the disability and adverse educational impact has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations and needs special education and related services. WAC 392 172A 01035(1)(a).

11. An emotional / behavioral disability means:

*A condition where the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student’s educational performance:*

- i. An inability to learn cannot be explained by intellectual, sensory, or health factors.*
- ii. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.*
- iii. Inappropriate types of behavior or feelings under normal circumstances.*
- iv. A general pervasive mood of unhappiness or depression.*
- v. A tendency to develop physical symptoms or fears associated with personal or school problems.*

WAC 392 172A 01035(2)(e)(i).

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).

**The Assessments were Sufficiently Comprehensive to Identify All of the Student’s Special Education and Related Service Needs.**

13. The Parent challenges the March 15, 2022, and June 10, 2022, Evaluations only on the grounds that the assessments were not sufficiently comprehensive to identify the Student’s special education and related services’ needs.

14. Because the challenge to the appropriateness of the March 15, 2022, and June 10, 2022, Evaluations is limited, it is concluded that the Evaluation Team was comprised of a group of qualified professionals, that used a variety of assessment tools and strategies, to gather relevant functional, developmental, and academic information about the Student, including information from the Parent, as required by WAC 392 172A 03020. Also, the record shows that the Evaluation Team used a variety of technically sound instruments to assess the relative contribution of cognitive, behavioral, physical, and developmental factors, and did not rely on “any single measure or assessment as the sole criterion” for determining eligibility or educational programming. WAC 392 172A 03020.

15. Further, the record supports a conclusion that the assessments were selected and administered to avoid discrimination based on race or culture and are administered in the student’s native language or mode of communication. *Id.* Also, the evidence presented shows that the “trained and knowledgeable personnel” administered the assessments “in accordance with any instructions provided by the producer of the assessments.” *Id.*

16. Finally, the evidence presented supports a conclusion that the Evaluation Teams reviewed existing evaluation data and drew upon a variety of sources to determine if additional data was needed, and produced two evaluation reports that met the criteria of WAC 392 172A 03025 and WAC 392 172A 03035.

**The SLP’s Assessment was Sufficiently Comprehensive to Determine Whether the Student Required Special Education in the Area of Communication**

17. The Parent argues that Ms. Wilhelm’s evaluation of the Student for communication was not sufficiently comprehensive because she did not observe the Student in a social setting to “see how well he understands pragmatics and how well he can implement his knowledge of a subject.” The District argues that Ms. Wilhelm

observed the Student in a social setting and that her evaluation was sufficiently comprehensive as required by WAC 392 172A 03075(1).

18. District personnel charged with the task of evaluating a student “must ensure that a student who is suspected of having a specific learning disability is observed in the student’s learning environment, including a general education classroom setting, to document the student’s academic performance and behavior.” WAC 392 172A 03075(1). A member of the evaluation team must:

- (a) *Use information from an observation in routine classroom instruction and monitoring of the student’s performance that was done before the student was referred for an evaluation; or*
- (b) *Have at least one member of the evaluation group conduct an observation of the student’s academic performance in the general education classroom after the student has been referred for an evaluation and parental consent is obtained.*

WAC 392 172A 03075(2).

19. Ms. Wilhelm chose to observe the Student in general education food science class because the activities reflected an academic and social atmosphere where the Student worked with other students. Ms. Wilhelm observed him interact with others by joking, asking and answering questions, and following instructions. Ms. Wilhelm also observed the Student in general education French class where she observed the student’s academic performance. As a result, Ms. Wilhelm was able to assess the Student’s ability to read body language, use body language gestures, use and understand humor, and converse with others.

20. Ms. Wilhelm also testified that she administered the SLDT A in the manner the assessment requires, and that she had two general education teachers complete the pragmatic profile reports. The reports from the Student’s English teacher and French teacher contained information about their observations of the Student in the routine classroom instruction environment, as well as their monitoring of the Student’s performance.

21. The Parent, on the other hand, has not observed the Student in general education classes and was not able to articulate why the SLDT A was inappropriate beyond a general assertion that additional information about the Student’s communication ability in a social situation was needed. The Parent’s belief that the Student masks his coping behaviors and struggles to understand relationships with peers is not invalid, but her testimony that more information about the Student in a

social situation is simply not required by WAC 392 172A 03075(2). Additionally, it appears that Ms. Wilhelm did obtain information about the Student's social interactions through her observation of the Student in food science class.

22. A parent's experience and concerns are always relevant to the education of their student. However, the issue before this tribunal is whether Ms. Wilhelm's observations of the Student met the criteria of WAC 392 172A 03075(2). The record available supports a conclusion that Ms. Wilhelm's observations of the Student in food science and French class met the criteria of WAC 392 172A 03075(2), and that the communication portion of the March 15, 2022, Evaluation was sufficiently comprehensive.

The OT's and General Education Teachers' Observations of the Student Were Sufficiently Comprehensive to Determine Whether the Student Required Special Education in the Area of Sensory Processing

23. The Parent asserts that Ms. Halverson, OT, and the five general education teachers that participated in the "Adolescent / Adult Sensory Profile" did not carefully observe the Student's sensory seeking behaviors and failed to understand that the Student masks these behaviors when he is stressed, anxious, and upset. The District, however, argues that Ms. Halverson's administration of the assessment was sufficiently comprehensive to determine whether the Student has a sensory seeking or processing behavior disability that prevents him from accessing his education.

24. The Parent has the most experience with the Student's sensory seeking and processing behaviors and knows and understands her child's internal emotional needs. It is clear from the Parent's testimony that the Student previously required services and supports for sensory processing behaviors previously identified at other schools, and that the Student occasionally uses strategies to decrease sound when he is working or distracted.

25. On the other hand, Ms. Halverson observed the Student during her interview with him and did not note any sensory seeking behaviors. Further, only one general education teacher identified "hair twirling" while in class as a noticeable sensory seeking behavior. Otherwise, none of the general education teachers or personnel that observed the Student in the general education environment reported elevated sensory processing issues that interfered with his ability to learn in the classroom. The record in this case shows that Ms. Halverson adequately observed the Student and obtained observational data and reports from five general education teachers which is all that is required by WAC 392 172A 03075(2).

26. Again, while the Parent's personal experience is not discounted, Parent did not observe or have knowledge of the Student's behavior in the general education environment. On balance, the information provided by five general education teachers and Ms. Halverson is a sufficiently comprehensive assessment of the Student's sensory processing and sensory seeking behaviors. It is therefore concluded that the March 15, 2022, Evaluation was appropriate in this area.

The District's Assessments Were Sufficiently Comprehensive to Determine Whether the Student Required Special Education in the Area of Writing

27. The Parent argues that Mr. Heberling's cognitive assessment did not evaluate how well the Student could write an essay, just that he can construct sentences and create bullet points and outlines for essays, not full paragraphs. The District asserts that Mr. Heberling's administration of the WJ IV and a review of the Student's grades, PSAT, and Smarter Balance test scores were sufficiently comprehensive to evaluate whether the Student had a disability in the area of writing.

28. The Parent's argument appeared to be a generalization of the Student's writing ability based on the Parent's personal college experience, not a reflection of the Student's performance on standardized writing tests and general education class work. Also, the Parent was not able to articulate how Mr. Heberling should have assessed the Student's writing skill level beyond the data and assessments he employed.

29. The District, however, has produced an evidentiary record that is replete with information showing that the Student was assessed in a variety of ways (PSAT, Smarter Balance Test, WJ IV) and each assessment result supports a conclusion that he performs at average grade and age levels in the area of writing. Given the circumstances presented, then, it is concluded that Mr. Heberling's assessment of the Student was sufficiently comprehensive, and therefore it is concluded that the June 10, 2022, Evaluation was appropriate in this area.

The District's Assessments were Sufficiently Comprehensive to Determine Whether the Student Required Special Education in the Area of Math

30. The Parent also argues that Mr. Hard's assessments were not sufficiently comprehensive to determine the Student's academic abilities in the area of math. The District, on the other hand, asserts that Mr. Hard's assessments were sufficient because they relied on a review of the Student's grades, test scores, and the WJ IV.

31. The Parent reasons that Mr. Hard's assessment of the Student's in the area of math was not sufficiently comprehensive because the results were incongruent with



the fact that the Student was barely passing Algebra 2. Also, the Parent asserts that the Student received a low math score on the PSAT and Smarter Balanced Test. Additionally, the Parent argues that the WJ IV shows the Student's math ability equates to a [REDACTED], and not a [REDACTED], and that the data and WJ IV did not assess whether the Student could pass a college level math class.

32. The District, however, has shown that it used multiple sources of data and a standardized assessment (the WJ IV) to evaluate the Student in the area of math. The record shows that the Student was passing Algebra 2 at the time of the March 15, 2022, and June 10, 2022, Evaluations, and the Student had performed in the average range on the Smarter Balance Test and the PSAT. Further, the WJ IV showed that for his age and grade level the Student was capable of performing in the average range in math.

33. The Parent is correct that the Student's grades in Algebra 2 and his test scores reflect that the Student does not achieve the same level of academic success in math as he does in other subjects, and that the Student needed the additional supports of his 504 Plan to increase his Algebra 2 grade. However, the District has shown that the assessments used in the June 15, 2022, Evaluation were sufficiently comprehensive to identify whether the Student had a disability in the area of math that required special education services. Therefore, it is concluded that the District has met its burden and the June 15, 2022, Evaluation is appropriate in this area.

The District's Assessments in the Area of Executive Functioning were Sufficiently Comprehensive to Determine Whether the Student Required Special Education Services.

34. The Parent asserts that the District's assessments for executive functioning failed to evaluate whether the Student understands time management, due dates, and study skills. The District, however, argues that it administered a variety of assessments and reviewed significant data about the Student's abilities in the area of executive functioning.

35. The District used the BRIEF to assess the Student's executive functioning and obtained information from multiple general education teachers regarding the Student's ability to manage time, comply with due dates, and study in and out of class. Ms. Adams conducted an interview of the Student, obtained information from the Parent and Student, and reviewed the Student's education records as part of this assessment. The District assessed the Student's executive function in both the March 15, 2022, and June 10, 2022, Evaluations. Given the data collected and the

standardized assessment tool used, the District's evaluation of the Student in this area was sufficiently comprehensive.

36. The Parent's concerns about the Student's mismanagement of time and failing to turn in assignments is certainly supported by her experience of prompting him at home, the notifications she received about late assignments, and the reports that the Student has elevated struggles with working memory. However, the District personnel that testified all reported that the Student's struggle to manage time and comply with due dates was similar to that of his peers. Further, the BRIEF and the Student's educational records show that the Student's executive functioning was average in relation to time management, study skills, and meeting due dates.

37. Again, the District used a technically sound evaluation tool and obtained data from a variety of sources when it evaluated the Student in the area of executive functioning. The record shows that this assessment was sufficiently comprehensive to determine whether the Student had a disability in the area of executive functioning that required special education. Given the record, then, it is concluded that the District's evaluation of the Student in the area of executive functioning is appropriate in this area.

#### The District has Shown that the Student Fully Participated in the Assessments.

38. The Parent argues that the Student did not understand the questions being asked during the assessments and could not fully participate in the Evaluations. The District asserts that the Student's ability to comprehend the assessments and fully participate is supported by the evidentiary record.

39. The District personnel that assessed the Student all testified that during the assessments the Student did not express confusion or frustration, answered assessment questions, and completed tasks asked of him. The Parent was not present during the assessments, and she did not have personal knowledge about the Student's ability to participate during the assessments. A review of the record shows that beyond the Parent's testimony, there is no evidence that the Student could not or did not fully participate in the assessments when they were administered.

40. However, the record does show that the Student did not complete the self reported portion of the BASC 3 during the March 15, 2022, Evaluation, and it is unknown why. The Parent has not specifically identified that this failure rendered the BASC 3 results invalid or insufficient. Regardless, it is concerning that the Student did not fully participate in the BASC 3 assessment, but also unclear how the Student's missing self report would render the BASC 3 assessment insufficient to determine whether the Student has a disability in the area of behavior / social emotional.

41. Given that the Student completed a self report form for the BASC 3 for the June 10, 2022, Evaluation, as well as Ms. Adams' observations and interview with the Student, the Student's self report as part of the BRIEF, and the fact that Ms. Adams, the Parent, and the Student's general education teachers participated in the BASC 3, it cannot be concluded that the BASC 3 assessment results without the Student's self report rendered the March 15, 2022, Evaluation insufficiently comprehensive. The District has met its burden and has shown that its March 15, 2022, and June 15, 2022, were sufficiently comprehensive because the Student was able to fully participate in the assessments.

The District's Age Appropriate Transition Assessment as Sufficiently Comprehensive to Determine Whether the Student Required Special Education Services.

42. Even though the Student will graduate with a regular diploma and maintains average grades, the Parent argues that the Student is not capable of managing college classes and independent living and should be eligible for special education services to transition him to college. The District asserts that the Transition Planning Inventory Second Edition results reflects that the Student can transition to college and independent living without special education services.

43. The District evaluated the Student in the areas of working, learning, and living, using a standardized assessment tool, and the results showed that the Student has plans to participate in the Running Start Program, go to college, live independently, and continue to work at a job. The Student's records and witness testimony show that after the June 10, 2022, Evaluation, he enrolled in college classes and worked at a local business but does not currently drive or use public transportation.

44. The Parent expressed significant concern about the Student's ability to drive, arrive for work on time prepared for the weather, navigate college and independent living, and ride public transportation. However, the Parent did not identify what additional assessments or information are needed to evaluate the Student's age appropriate transition, or if the District is obligated to evaluate the Student's ability to transport himself to college and work.

45. Regarding the Student's age appropriate transition to college and independent living, it is concluded that the District's June 10, 2022, Evaluation of the Student is sufficiently comprehensive.

## The District's Eligibility Determination is Not Properly Before this Tribunal

46. The Parent firmly believes that if the District had performed a sufficiently comprehensive assessment and understood the depth and breadth of the Student's autism diagnosis, then the District would conclude that the Student is eligible for special education services. The District responds that the assessment results show that the Student does not suffer any "adverse educational impact" from his autism diagnosis such that he is eligible for special education services.

47. 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). This group must include a general education classroom teacher and "at least one individual qualified to conduct individual diagnostic examinations of students, such as school psychologist, speech language pathologist, or remedial reading teacher." *Id.* A Student must not be determined eligible if the Student does not "otherwise meet eligibility criteria including presence of a disability, adverse educational impact, and need for specially designed instruction." WAC 392 172A 03040(2)(b).

48. As set forth above, WAC 392 172A 05005(2)(a) specifically states that "a parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district." (*Emphasis added.*) This narrow provision does not state that a parent has a right to an IEE if the parent disagrees with the District's eligibility determination.

49. In contrast, WAC 392 172A 05080 provides that "a parent or a school district may file a due process hearing request on any of the matters relating to the identification, evaluation, educational placement, or the provision of FAPE to the student." Thus, to challenge an eligibility determination, the Parent must file a due process hearing request as per WAC 392 172A 05080. See, *South Kitsap Sch. Dist.*, Special Education Cause No. 2008 SE 0095, 110 LRP 66270 (WA SEA 2009) (reasoning that, under Schaffer, the school district has the burden of proof regarding issue of appropriateness of an evaluation but the parent has the burden regarding whether the District denied FAPE by exiting the Student from special education); and *Anaheim City Sch. Dist.*, 110 LRP 15988 (CA SEA 2010) (denying an IEE at public expense and stating that the "statutory validity of testing, however, does not require agreement on inference or conclusions resulting from the assessment.").

50. Here, the District filed the due process hearing request identifying the issue as whether the District's March 15, 2022, and June 10, 2022, Evaluations are appropriate. That is the sole issue before this tribunal. The issue of whether the District made correct eligibility determination is not proper before this tribunal. Therefore, the Parent's challenge to the eligibility determination is not addressed.

**ORDER**

Based on the above findings of fact and conclusions of law, the Battle Ground School District's March 15, 2022, and June 10, 2022, Evaluations are appropriate. The Parents are not entitled to an IEE at public expense.

Served on the date of mailing.



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COURTNEY E. BEEBE  
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, Legal Services, PO Box 47200, Olympia, WA 98504 7200. To request the administrative record, contact OSPI at [appeals@k12.wa.us](mailto:appeals@k12.wa.us).

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that true copies of this document were served upon the following as indicated:

Parents

██████████  
██████████

via E mail

██

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Dated April 26, 2023, at Seattle, Washington.

*Jazmyn Johnson*  
\_\_\_\_\_  
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cc: Administrative Resource Service, OSPI