

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

MAILED

JAN 30 2014

SEATTLE - OAH

IN THE MATTER OF:

SPECIAL EDUCATION
CAUSE NO. 2013-SE-0092

LAKE WASHINGTON SCHOOL DISTRICT

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Michelle C. Mentzer in Redmond, Washington, on December 16, 2013. The Parent of the Student whose education is at issue¹ appeared and was represented by Jenny Cochran, attorney at law. The Lake Washington School District (District) was represented by Lynette Baisch, attorney at law. The following is hereby entered:

STATEMENT OF THE CASE

The District filed a due process hearing request on October 11, 2013. Prehearing conferences were held on October 23 and November 6, 2013. Prehearing orders were issued on October 23 and November 7, 2013.

The due date for the written decision was continued to 30 days after the close of the hearing record, pursuant to a District request for continuance that was not opposed by the Parent. See First Prehearing Order of October 23, 2013. The hearing record closed with the filing of post-hearing briefs on January 3, 2014. Thirty days thereafter is February 2, 2014. The due date for the written decision is therefore February 2, 2014.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Court Exhibits: C-1 and C-2.²
Joint Exhibits: J-1 through J-3.
Parent Exhibits: P-1 through P-3; and P-4 (except for page 1 of P-4).
District Exhibits: D-1 through D-4.

The following witnesses testified under oath: Jaclyn Reed and the Parent.

¹ In the interests of preserving the family's privacy, this decision does not name the parents or student.

² Exhibit C-2 is the Parent's response to the due process hearing request, dated October 16, 2013 and received by the Office of Administrative Hearings (OAH) on October 21, 2013. It was admitted after the hearing based on a written stipulation of the parties, which stipulation is contained in the OAH case file.

ISSUE

Whether the District's most recent evaluation of the Student was appropriate, and if not, whether the Parent is entitled to an independent educational evaluation (IEE) at public expense. See First Prehearing Order of October 23, 2013.

FINDINGS OF FACT

1. The Student is 9 years old and in 3rd grade at one of the District's elementary schools. He lives with both parents and has attended the same elementary school since kindergarten. Prior to that, he attended a developmental preschool. J-3:4;³ Testimony of Parent.
2. The District first evaluated the Student for special education in September 2010, when he was in kindergarten. He was diagnosed with ADHD by his primary care physician, and found eligible for special education under the category of Health Impairment. J-3:4; Testimony of Reed. The Student began taking medication to mitigate the symptoms of ADHD toward the end of preschool, and continues to take it. Testimony of Parent. The Student's most recent IEP provided for specially designed instruction (SDI) in behavior/social skills to address: (1) Compliance and following expectations in the classroom – blurting out, transitioning from one activity to another, and impulsivity; and (2) Positive peer interactions. J-3:1.
3. From kindergarten through 2nd grade, the Student participated in a social skills group with special education teacher Heidi Bickler. Testimony of Parent. Ms. Bickler was also the Student's special education case manager. Testimony of Reed. His most recent IEP placed him in general education classes except for the social skills group.⁴ The group met four times a week for either 30 minutes (Testimony of Parent) or 20 minutes (Testimony of Reed).⁵ The social skills group taught the Student to identify when his body felt too fast or too slow, to self-regulate, and taught about accepted and unaccepted behavior and social skills generally. Testimony of Reed. The Parent believes the social skills group was very beneficial for the Student. Also, because it was held first thing in the morning, it gave him a good focus for the day. The Parent also thought Ms. Bickler was a wonderful teacher. Testimony of Parent; C-2:2.
4. A private occupational therapist had recommended compression strategies to help the Student feel calmer, such as a weighted bean bag on his lap or a compression vest around his torso. The compression vest is called a "huggie-vest," and the Parent purchased one for the Student when he was in preschool. He wore it all the time for three years, but less so in 1st and 2nd grade. When the 2nd grade teacher contacted the Parent about the Student being hyperactive, the Parent suggested he resume wearing the huggie-vest. It calmed him, and he

³ Citations to the exhibits are in the following format. The citation "J-3:4" refers to Joint Exhibit 3, at page 4.

⁴ The record does not reflect whether the Student's placement or areas of specially designed instruction were different under prior IEPs.

⁵ The Student's IEP, which would list the number of minutes the social skills group met, is not in evidence. The difference in testimony need not be resolved as it is not material to this decision.

continued wearing it thereafter. The Parent is concerned that the Student feels different from others when wearing the vest, and gets made fun of. Testimony of Parent.

5. The Student's triennial reevaluation was due to be completed by September 23, 2013, early in 3rd grade. On the consent form for the reevaluation, the Parent wrote two areas that she wanted to be considered in assessing the Student: "social - per current IEP" and "impulsive behavior." J-2:2. These areas were assessed in the reevaluation.

6. School psychologist Jaclyn Reed administered the assessments used in the reevaluation, and also conducted classroom observations of the Student for the reevaluation. Ms. Reed received a master's degree in school psychology from Eastern Washington University in June 2006. She has earned 90 graduate credits in addition to her master's degree. Ms. Reed holds a National Certificate of School Psychology. She has been employed as a school psychologist with the District since August 2006. D-1.

7. Ms. Reed was qualified to administer all of the assessments discussed herein. She administered them according to the assessment producer's instructions and in the Student's native language of English. Ms. Reed is not aware of any of the assessments she used discriminating on the basis of a student's race or culture. D-1; J-3:3; Testimony of Reed.

8. Teacher rating scales are used in some of the assessments Ms. Reed administered. These rating scales were completed near the end of 2nd grade by the Student's 2nd grade teacher, Susan Fowler. Ms. Fowler also provided narrative comments for the reevaluation. At the Parent's request, the reevaluation was held open until early in 3rd grade so that input could be obtained from the Student's 3rd grade teacher, Jonathan Hodgson. J-3; P-2. Ms. Reed's cognitive testing of the Student was conducted at the end of 2nd grade. Her classroom observations were conducted approximately three weeks into 3rd grade. J-3.

9. On September 23, 2013, the reevaluation team met to consider the results of the assessments, which results are summarized below. Attending at the meeting were: the Parent, Ms. Reed (school psychologist), Ms. Fowler (2nd grade teacher), Mr. Hodgson (3rd grade teacher) and, for approximately half of the meeting, Leslie Elmer (3rd grade special education case manager).⁶

Classroom Teacher Reports and Classroom Observations by School Psychologist

Second Grade

10. The Student's spring 2013 grades in reading, writing, and math all met or exceeded grade-level standard. On the DIBELS reading evaluation, the Student scored at or above

⁶ In an email sent a week after the reevaluation meeting, the Parent wrote that Ms. Elmer left the meeting after the first 15 minutes. See J-3:21. Ms. Reed, on the other hand, testified that Ms. Elmer attended from 3:30 p.m. (when the meeting began) until 4:15 p.m., for a total of 45 minutes. The meeting lasted one hour and 40 minutes, so according to Ms. Reed, Ms. Elmer attended for almost half the meeting. Testimony of Reed. Ms. Reed's testimony on time of attendance is specific, it was under oath, and she was responsible for running the meeting. Ms. Reed's testimony is therefore adopted over the Parent's email regarding the length of Ms. Elmer's attendance.

standard in all areas. J-3:5; Testimony of Reed. His 2nd grade teacher, Ms. Fowler, provided the following comments:

11. *Communication skills:* The Student communicates appropriately in class. He is able to monitor the volume of his voice, and is making excellent progress in raising his hand and waiting to be called on. He verbalizes thoughts clearly, on topic, and in an organized manner. J-3:5.

12. *Academics:* The Student meets standard in all areas. He stays on task and does his work. He needs to improve his handwriting and has demonstrated the ability to write more neatly. He is a highly motivated student and wants to do well. *Id.*

13. *Organizational/adaptive skills:* The Student does better sitting at his desk when the class is on the carpet; he does not appear distracted by things in or on his desk. He needs to face the front of the room but does not necessarily need to be in the front row. He should sit with children who do not talk a lot. He is starting to demonstrate growth in the ability to keep his desk organized and not save everything. He is showing growth in finding where things belong in his desk and in the classroom, e.g., putting the correct papers in folders, and putting books away in the class library. *Id.*

14. *General comments:* The Student has demonstrated growth in the ability to monitor how he is feeling. When he is feeling "hyper," he tells Ms. Fowler that he's concerned he did not take his medication, or that he feels hyper. His huggie-vest is now in his backpack and he uses it to help calm himself. The compression it provides is an effective strategy, and he is starting to self-check instead of someone else telling him what he needs. The Student is positive, enthusiastic, and eager for what each day holds. He is an academic risk-taker. He asks for help if it is needed, and takes direction with ease. He wants to please and help. He has a good sense of humor and engaging personality. He is demonstrating the ability to manage himself and he will continue to benefit from skill building in helping him manage himself and his ADHD. *Id.*

Third Grade

15. Mr. Hodgson attended the reevaluation team meeting and provided comments for the written report. His observations were based on the first three weeks of the school year, which began September 3, 2013. D-4:2. Mr. Hodgson observed that the Student is doing well in class and keeping up academically. Behaviorally, he noticed only one "off" day, when the Student indicated he did not take his medication. The Student had inattentive behaviors, but seemed able to make it through the day. J-3:6. The Parent confirmed that she forgot to give the Student his medication that morning. Testimony of Parent.

16. The school psychologist, Ms. Reed, conducted two observations of the Student in Mr. Hodgson's class. They were conducted on September 20 and 23, 2013, and were 45 minutes and 30 minutes long, respectively. The first was in the afternoon; the second was in the morning. The class was engaged in different subjects and activities during the two observations. J-3:15-16.

17. The conduct Ms. Reed observed on both dates was similar, and she recorded it in detail. In summary, on the positive side, the Student was generally on task, focused, volunteered to

participate, complied with teacher directions, waited appropriately for instructions, was socially appropriate during recess, and was often the first to finish assignments and the first to comply with directions to transition from one place to another. While working, even when peers tried to distract him, he most often did not engage them. He would remind peers to keep on track or listen to the teacher when they were not paying attention. *Id.*

18. On the negative side, Ms. Reed observed that the Student sometimes got distracted, usually when he had finished an assignment and others were still working. He also sometimes engaged in excited behavior, such as oversharing during a class discussion, or interrupting the teacher to say he had finished an assignment. On each of these occasions, the Student immediately complied with a redirection from the teacher. *Id.*

19. Ms. Reed concluded from her observations as follows: The Student clearly has the skills to self-regulate in class. His behaviors did not stand out as different from his peers. In fact, he often followed directions and behaved more appropriately than most other boys in the class. He readily followed directions and completed classwork. He was an eager and engaged learner, volunteering to share ideas, read, provide input, and help others. Ms. Reed recommended that the teacher give the Student "challenge work" to complete, or other options for continued learning when he has finished assignments before his classmates do. This will help engage him for longer periods in learning and decrease the opportunities for becoming distracted or off-task. *Id.*⁷

Parent's Comments

20. The reevaluation report includes the following observations by the Parent, in addition to the more extensive information she provided in the parent rating scales, which are discussed below: The Student demonstrates inappropriate attention-seeking behaviors and is impulsive. He has headaches, sleeping problems, and eating problems due to his ADHD medication. Homework can become a big issue at home, probably due to medication wear-off. Without medication, his behaviors -- especially impulsivity and inattention -- become more pronounced, causing issues with inadvertent aggression and issues with discipline. J-3:4, 8.

Social/Emotional Assessment

21. The Behavior Assessment System for Children -- 2nd edition (BASC-2) was one of the instruments used to assess the Student's social/emotional well-being and general adaptive skills. The Parent and the Student's 2nd grade teacher, Ms. Fowler, completed BASC-2 rating scales for this assessment. Scores in the "clinically significant" range indicate a high level of maladjustment. Those in the "at risk" range indicate that formal treatment may not be necessary, but there is a potential for developing more severe problems and therefore monitoring is needed. Scores in the "borderline" range are still within the "average" range, but are at the end of the range that is closest to "at risk." J-3:7; Testimony of Reed. The Student's

⁷ The Parent expressed a concern that the Student's tendency to work quickly produced lower-quality work. Testimony of Parent. This concern was not expressed by his 2nd grade teacher, 3rd grade teacher, or the school psychologist, and does not appear to be reflected in the Student's grades, which all met or exceeded standard.

BASC-2 ratings were as follows:

<u>BASC-2</u>	<u>Parent</u>	<u>Teacher</u>
Externalizing Problems (hyperactivity, aggression, conduct problems)	clinically significant	average
Internalizing Problems (anxiety, depression, somatization)	average	average
School Attention Problems	at risk	average
School Learning Problems	(no score)	average
Behavioral Symptoms (atypicality, withdrawal)	at risk	average
Adaptive Skills (adaptability, social skills, leader- ship, study skills, activities of daily living, functional communication)	average	high average

See J-3:7.

22. The Student's social skills were also assessed using the Social Skills Improvement System (SSIS). The percentile numbers below compare the Student to peers in the same grade. In the areas of Social Skills and Academic Competence, higher percentiles are better; in Problem Behaviors, lower percentiles are better. Testimony of Reed.

<u>SSIS</u>	<u>Parent</u>	<u>Teacher</u>
Social Skills (communication, cooperation, responsibility, empathy, engagement, self-control)	41 st %	68 th %
Academic Competence	(no score)	68 th %
Problem Behaviors (bullying, internalizing problems, hyperactivity/inattention, autism)	63 rd %	31 st %

See J-3:7-8. (The reevaluation report also provided standard scores with a mean of 100 and standard deviation of 15 for the SSIS. The percentiles are listed here because they may be easier for laypeople to understand. The reevaluation report provides both.)

23. Summarizing these two assessments, on the BASC-2, the teacher found the Student within the average range in all areas. In one part of Externalizing Problems – hyperactivity --

the teacher rated the Student as in the borderline part of the average range (just below being at risk). J-3:8. On the SSIS, the teacher rated the Student's social skills as being as good or better than 68% of same-grade peers, and having as good or better behavior than 69% of same-grade peers (being at the 31st percentile on problem behaviors). The Parent, by contrast, rated the Student on the BASC-2 as clinically significant or at risk in several areas. On the SSIS, she rated him lower on social skills and higher on problem behaviors than the teacher did. However, the Parent's ratings on the SSIS, like the teacher's, were all within the average range. The Parent's sub-score on the SSIS in the area of hyperactivity/impulsivity was above average. *Id.*

24. The reevaluation report concluded, from the difference in rating scales and from teacher and parent comments, that the Student displays more problem behaviors at home than at school. The report stated this is not atypical, especially if a student is on medication that wears off late in the day. There may also be different routines and task demands at home and at school. J-3:8; Testimony of Reed. The Parent noted a major issue around homework and medication wear-off. J-3:8; Testimony of Parent. The Student takes time-release medication for ADHD early in the morning and again at 3:30 p.m. However, he does not start his homework until 9:00 p.m.,⁸ when it is too late to re-medicate him because it would interfere with his sleep.

Behavior/Executive Functioning Assessment

25. The Student's executive functioning skills were assessed using the Behavior Rating Inventory of Executive Function (BRIEF). The Behavior Regulation section of the BRIEF includes the ability to inhibit behaviors depending on the situation, shift focus easily from one activity to another, and exhibit emotional control. The Metacognition section of the BRIEF includes, among other things, the ability to initiate tasks, process auditory information in the moment (working memory), and monitor one's progress toward a goal. J-3:10. Scores in the "elevated" range indicate fewer skills in an area. "Borderline elevated" indicates the part of the average range that is closest to elevated. Testimony of Reed.

<u>BRIEF</u>	<u>Parent</u>	<u>Teacher</u>
Behavioral Regulation Index (Inhibit, Shift, Emotional Control)	average	average
Metacognition Index (Initiate, Working Memory, Plan/Organize, Organization of Materials, Monitor)	borderline elevated	average
Global Executive Composite	average	average

See J-3:10. The Parent rated the Student better on shifting focus, emotional control, and

⁸ The Student does not start homework until 9:00 p.m. because he participates in gymnastics every day after school from 4:00 to 8:00 p.m., followed by a one-hour drive home, arriving home at 9:00 p.m. Gymnastics and reading books are the two activities that calm and focus the Student the most. Testimony of Parent.

organizing materials than the teacher did. In all other areas, the Parent rated the Student as having fewer skills than the teacher did. The largest discrepancies were in the ability to inhibit behaviors (Parent – significantly elevated; teacher – average) and working memory (Parent – moderately elevated; teacher - average). *Id.*⁹

26. The reevaluation report concluded the Student did not demonstrate problems in the classroom in behavior/executive functioning. One area of the BRIEF was borderline elevated in the classroom: organizing materials. The teacher's narrative comments reflected this as well, though she stated the Student was starting to show improvement. J-3:5, 10.¹⁰ The Parent's ratings indicated that outside of school, the Student had significant problems inhibiting his behaviors appropriately to the setting, and had moderate problems attending to auditory information. J-3:11.

Cognitive Assessment

27. The Student's cognitive abilities were assessed using the Wechsler Intelligence Scale for Children – 4th edition (WISC-IV). The Student's full scale IQ was found to be 114 (82nd percentile). There were no significant discrepancies in the Student's abilities on the four parts of the assessment. His lowest score was in Working Memory (104), which is an auditory test given without visual information. J-3:12-13. This led Ms. Reed to recommend that visual support be provided when the Student is listening to lectures or learning new concepts. J-3:13; Testimony of Reed.

Eligibility Determination and Recommendations

28. The reevaluation concluded that the Student no longer required SDI. It found he was successfully using, in the general education environment, the social thinking and behavioral skills he had learned in social skills group. It concluded that pulling him out of general education for a period of special education would prevent him from being in his least restrictive environment. J-3:1, 17.

29. The reevaluation also concluded that, although the Student was doing well in the areas of regulating behaviors, recognizing when they are dysregulated, and using resources to self-

⁹ The Parent faults the reevaluation report for characterizing scores of 65 – 69 on the BRIEF as "moderately elevated", and scores of 70 or higher as "significantly elevated," because the producer of the BRIEF uses only the single term "elevated" for all scores 65 or higher. Parent's brief at 10; J-3:10; Testimony of Reed. However, the terms used in the reevaluation report track the standard deviations used in the BRIEF. The BRIEF uses a mean of 50 and a standard deviation of 10. J-3:10. "Moderately elevated" is used to characterize scores from 1.5 to just below 2.0 standard deviations above the mean. "Significantly elevated" is used to characterize scores 2.0 or more standard deviations above the mean. The use of such explanatory terms in the reevaluation report is not arbitrary, as the Parent claims, and is unobjectionable.

¹⁰ "He is starting to demonstrate growth in his ability to keep his desk organized and not save everything. He is showing growth in finding where things belong in his desk and in the classroom. For example, putting the correct papers in folders, putting books back in the classroom library instead of his desk." J-3:5, 10.

regulate, he will still require accommodations to support him in the learning environment. A Section 504 plan¹¹ was therefore recommended. J-3:1, 8. All who attended the reevaluation meeting signed the report. No one checked the box indicating he or she had a dissenting opinion. A few days later, the Parent indicated her dissent, as discussed below. J-3:2.

30. The reevaluation report and the prior written notice issued two days later recommended a number of accommodations and teaching strategies: Alternative setting when needed for focus; reduced length of tests/assignments/homework; extended time on tests/assignments; check-in, check-out system for behavior management, including lunch check-in to ensure the Student is eating; positive behavior support plan, including preparation for behavioral expectations during transitions/unstructured time/recess; visual materials when listening to lectures or learning new concepts; visual checklist for strategies; use of sensory strategies when needed, i.e., huggie-vest; seating facing the front of the classroom, with peers who do not talk too much; and challenge work, or other options for continued learning, when the Student finishes assignments before classmates do. J-3:8-11, 13, 16-18.

Participation in Reevaluation

Participation of special education teacher

31. Ms. Reed intended to gather information from both of the Student's 2nd grade teachers -- Ms. Bickler (special education) and Ms. Fowler (general education) -- before the end of 2nd grade. See D-3. She did so with Ms. Fowler, but not with Ms. Bickler. At the beginning of the Student's 3rd grade year, Ms. Reed spoke briefly with Ms. Bickler, but Ms. Bickler was teaching general education for the first time and was very busy. Ms. Bickler said the Student did fine in her social skills group, and referred Ms. Reed to Ms. Fowler. Testimony of Reed. The reevaluation report does not contain any input from Ms. Bickler. J-3. Ms. Bickler was not involved in the reevaluation, according to Ms. Reed. Testimony of Reed. The IEP progress reports that Ms. Bickler presumably wrote are not mentioned in the reevaluation report. J-3.

32. In 3rd grade, the Student's new special education case manager was Ms. Elmer. At the reevaluation meeting, Ms. Elmer spoke about how a Section 504 plan with a check-in, check-out system would be implemented for the Student. Testimony of Reed. Assuming Ms. Elmer was the teacher of the social skills group as well as the Student's case manager, it appears from the evidence that she had the Student in social skills group either not at all, or on one or two occasions prior to the reevaluation meeting. The two possible occasions were Friday, September 20, 2013 and Monday, September 23rd (the reevaluation meeting was held after school on September 23rd, so the social skills group could have met earlier that day). In the first few weeks of school, either the Student was told not to attend, or the pull-out groups had not yet started. See J-3:20-21; Testimony of Parent; Testimony of Reed.

33. The evidence in the record is insufficient to determine whether the Student was in Ms. Elmer's class on zero, one, or two occasions. However, there is no evidence Ms. Elmer had any input in the reevaluation. Ms. Reed did not testify to any input from Ms. Elmer, either oral or

¹¹ This refers to a plan adopted pursuant to section 504 of the Rehabilitation Act of 1973, 29 USC § 701 *et seq.*

written, other than comments at the meeting about how a 504 plan would be implemented if the Student was exited from special education. Testimony of Reed. There is no input from Ms. Elmer documented in the reevaluation report. J-3.

Participation of Parent

34. The Parent played an active and significant role in the reevaluation. Ms. Reed had wanted to finish the reevaluation by the end of 2nd grade, since the 2nd grade teachers knew him well and the reevaluation was due to be completed only three weeks into 3rd grade. Ms. Reed changed that plan in response to the Parent's desire to include input from the Student's 3rd grade teacher. J-2:1; D-2; D-3; Testimony of Reed.

35. The parental consent form invited the Parent to suggest other areas of need that should be considered in the reevaluation, in addition to those listed on the form.¹² The Parent did so, though the areas she listed were already covered in the District's proposed assessment areas. J-2:2; Testimony of Reed.

36. The Parent provided her views of the Student's functioning in rating scales for the BASC, SSIS, and BRIEF assessments, and in comments documented in the Social/Emotional, Behavioral, and Medical-Physical sections of the reevaluation report. J-3: 4, 8, 11. The Parent's rating scales indicated the Student had more severe problems than did the teacher rating scales or the school psychologist's classroom observations.

37. The Parent alleges the District discounted or ignored her rating scales. C-2:2; J-3:19. The evidence does not support this allegation. The District concluded from the differences between the Parent and teacher rating scales that the Student displayed more problems in the home environment than in the school environment. The reevaluation report stated this is not atypical, especially if a student is on medication. It stated that the difference in behavior in the two environments may be due to various factors, including medication wear-off and different routines at home and at school. J-3:8, 11.

38. Prior to the reevaluation meeting, the Parent made several requests, over the course of one or two weeks, to review the assessment results in advance of the meeting. Testimony of Parent. Ms. Reed's general practice is to bring the assessment results to the reevaluation meeting, not to share them in advance of the meeting. However, in response to the Parent's requests, she provided the Parent with the draft reevaluation report (containing the assessment results) on September 20, 2013,¹³ three days in advance of the meeting. Testimony of Reed.

39. At the reevaluation meeting on September 23rd, the Parent shared her view that, without

¹² The consent form listed the following areas in which the Student would be assessed: Review of Existing Data; Social/Emotional; Behavior; Student Observation; Medical-Physical; General Education Teacher Report; Cognitive; and Other: attention/organization. J-2:1.

¹³ The Parent's brief states the draft reevaluation report was provided to her one day earlier than this, on September 19, 2013. However, the evidence at the hearing was that Ms. Reed provided the report to the Parent on Friday morning prior to the Monday, September 23rd meeting. The Friday prior to September 23rd was September 20, 2013.

medication and the social skills group, the Student would be more impulsive and have discipline problems. Testimony of Reed.

40. Near the end of the reevaluation meeting, the Parent shared a September 17, 2013 letter from Dr. Julie Wen, the Student's primary care physician. Dr. Wen's letter stated that she supported the Student having an IEP and endorsed the request to provide accommodations such as: preferential seating, extra time for tests, written assignment lists, and homework monitoring between parent and school. P-1. Because all of the items listed in Dr. Wen's letter were accommodations that could be provided in a 504 plan, and none were SDI requiring an IEP, the District told the Parent that Dr. Wen's suggested accommodations would be considered for the Student's 504 plan. Testimony of Reed.

41. A few days after the reevaluation meeting, the Parent emailed District staff that she felt the plan was dictated to her instead of her being an active participant. She wrote that she wanted the Student to continue in the social skills group that had been so helpful to him. P-4:2. In response, the associate director of special education, Sue Anne Sullivan, asked if the Parent would like to meet with Ms. Reed and her (Ms. Sullivan) to review the evaluation data. The Parent agreed, and a meeting was scheduled for October 4, 2013. The Parent later cancelled the meeting, feeling it would be too upsetting for her and would be futile. The Parent asked that her email be included in the reevaluation report to document her disagreement with the reevaluation. This was done. J-3:19-22.

Additional Matters in Parent's Testimony

42. In addition to the matters discussed above, the Parent addressed the following relevant matters in her testimony. She described the Student as very hyperactive and impulsive, jittery, and lacking an understanding of consequences (for example, when he was young he had to be on a leash so he would not run out in front of cars).

43. The Parent cited an example of the Student's impulsive behavior that resulted in a suspension during 2nd grade. At a cub scout meeting on school grounds, the Student received an age-appropriate knife from the scout master for moving up to the next level of cub scouts. Although the Student knew that knives are not allowed at school, he put it into his pocket the next day and showed it to another student on the school bus. The District declined to remove the suspension from his permanent discipline record, so the Parent hired an attorney and was successful in having it expunged. Testimony of Parent; C-2:2.

44. The Parent does not see a difference in the Student's behavior in 3rd grade as opposed to 2nd grade, either at home or at school. Rather, she explained, the difference in the Student's behavior occurs when he is medicated as opposed to un-medicated. Testimony of Parent.

45. The day after the September 23, 2013 reevaluation meeting, the Parent took the Student off his ADHD medication temporarily so District staff could see how he behaved. On all three days that he was off medication he was sent to the principal's office for being unable to calm down, being disruptive, and blurting out in class. The Parent thereafter restarted the medication because it was a hardship on the Student to go without it. Testimony of Parent.

46. The Parent testified the Student has long-standing handwriting and sensory needs. She provided private occupational therapy (OT) for the Student until he was 6 years old. Testimony

of Parent. She argues these needs should have been assessed by an occupational therapist as part of the District's reevaluation.

47. In the reevaluation report, there is one mention of handwriting by District staff. Ms. Fowler, the 2nd grade teacher, commented: "He needs to improve his handwriting and he has demonstrated the ability to write neater." J-3:5. The Parent's testimony was somewhat similar: When the Student begins his homework, his handwriting is neat, but toward the end it becomes illegible. Testimony of Parent.

48. As mentioned above, the consent form for the reevaluation asked the Parent to list any other areas in which the Student should be assessed. The Parent did not list handwriting, sensory needs, or OT. J-2:2. There is no evidence she raised any of these issues at the reevaluation meeting on September 23, 2013. Nor did she raise them in her written response to the due process hearing request. C-2. Her testimony at the hearing was the first time in the record that the Parent raised these areas as missing from the reevaluation.

CONCLUSIONS OF LAW

The IDEA

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

2. The 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 206-207 (footnotes omitted).

3. 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).

IEEs and Evaluations under the IDEA Regulations¹⁴

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. 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 . . ." 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 and behavioral factors, in addition to physical or developmental factors." WAC 392-172A-03020; see also 34 CFR §300.304.

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

7. The District has established that it fulfilled the requirements of WAC 392-172A-03020. The Parent argues the District failed to assess the Student in all areas of suspected disability because it did not conduct an OT evaluation. The Parent alleges the Student has long-standing OT needs due to handwriting and sensory issues, yet there is no evidence she indicated a desire for an OT assessment prior to her testimony at the due process hearing. A teacher stating that a 2nd grader needs to improve his handwriting and has demonstrated the ability to write more neatly certainly does not establish a suspected disability. Yet that was the only evidence on handwriting in this case prior to the Parent's testimony. The Student's use of a huggie-vest on and off since preschool does not establish a suspected disability. The fact that the Parent purchased private OT for the Student in the past does not establish what his past needs were, and certainly does not establish the need for a current OT assessment. There was no evidence from an OT, or other knowledgeable professional, either written or testimonial, on these matters. For these reasons, the Parent's argument that the District failed to comply with

¹⁴ The Washington regulations on IEEs and evaluations are lengthy. The most pertinent provisions of the regulations at issue in this case are summarized in the decision. The full text of the cited Washington regulations is attached as an Addendum to the decision.

WAC 392-172A-03020 is rejected.

8. Former¹⁶ WAC 392-172A-03025 concerns the review of existing data for evaluations. It provides, in pertinent part, that in any reevaluation, "the IEP team and other qualified professionals, as appropriate," must "[r]eview existing evaluation data on the student." The data reviewed must include, among other things, information provided by the parents, "classroom-based observations," and "[o]bservations by teachers." On the basis of that review, and input from the parents, the group must identify what additional data, if any, are needed to determine whether the student continues to meet eligibility criteria. *Id.*; see also 34 CFR §300.305. The District's compliance with this regulation will be considered below, in conjunction with compliance with WAC 392-172A-03040.

9. WAC 392-172A-03040 concerns eligibility determinations, and provides in pertinent part as follows. Upon completing the evaluation assessments, a group of qualified professions and the parent must determine whether the student is eligible for special education. A student must not be determined eligible "[i]f the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction." In interpreting evaluation data to determine eligibility, the district must "[d]raw upon information from a variety of sources," including "parent input" and "teacher recommendations". The district must also "[e]nsure that information obtained from all of these sources is documented and carefully considered." *Id.*; see also 34 CFR §300.306.

10. The District has established that it fulfilled most of the requirements of former WAC 392-172A-03025 and WAC 392-172A-03040. Concerning input from the Parent, the District obtained and reviewed extensive information from the Parent. There is no evidence the District failed to consider the Parent's information or views. The fact that the Parent disagreed with the District's eligibility determination does not constitute evidence that the District failed to consider her information or views. Decisions about a student are ideally to be achieved by consensus among IEP and evaluation team members. However, agreement is not always possible. If consensus is not achieved, a school district has the duty to go forward, though it must afford parents the right to a due process hearing. A school district has no obligation to grant parents a "veto" on team decisions. See *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 - 1132 (9th Cir. 2003), *cert. denied*, 544 U.S. 928, 125 S. Ct. 1662 (2005).

11. Concerning input from school staff, the reevaluation included extensive information and rating scales from the Student's 2nd grade general education teacher, Ms. Fowler, and classroom observations during 3rd grade by the school psychologist, Ms. Reed, that were detailed and informative. The Student's 3rd grade general education teacher, Mr. Hodgson, provided short comments that were appropriate for the three weeks he had the Student in class.

¹⁵ Some regulations in Chapter 392-172A WAC were amended effective October 25, 2013. The events in this case occurred prior to that date, when the former regulations were in effect. The only regulation cited in this decision that was amended effective October 25, 2013 is former WAC 392-172A-03025. The amendment to that regulation was a single correction in subsection (4) that is not material to this case. The word "former" is not used in discussing the other regulations cited herein, because they were not amended.

12. The reevaluation did not, however, include information from the Student's special education teacher or teachers, as the Parent argues. Parent's brief at 5, 13. The report did not document any information having been received from Ms. Bickler or Ms. Elmer, and if it was received, it was required to be documented in the report. See WAC 392-172A-03040(3)(b) and WAC 392-172A-03035(2). It was not just a documentation error: Ms. Reed did not testify to any information having been received from either of them, except for Ms. Bickler stating the Student did fine in her social skills group. Ms. Bickler's written records, such as IEP progress reports, are not mentioned in the reevaluation report, and Ms. Reed did not testify that any of Ms. Bickler's records were reviewed.

13. The regulations do not specify who must be included in the "group of qualified professionals" that conducts the evaluation. WAC 392-172A-03020(2). The composition of that group is to be "selected by the school district." *Id.* This is different than the composition of an IEP team, where there are very specific regulations as to who must be included in the team. See WAC 392-172A-03095; see also 34 CFR §300.321. Thus, the fact that a special education teacher did not conduct assessments used in the reevaluation, and the fact that Ms. Bickler did not attend the reevaluation meeting, did not put the District out of compliance with the regulations.

14. The problem, however, is that no information or input was obtained from Ms. Bickler, and none of her records were reviewed for the reevaluation. The regulations require the District to "[r]eview existing evaluation data on the student" including "[o]bservations by teachers." Former WAC 392-172A-03025(1)(c). They also require the District to "[d]raw upon information from a variety of sources" including "teacher recommendations". WAC 392-172-03040(3)(a). The regulations do not state that *all* of a student's teachers must provide input for an evaluation. That would certainly not be expected for an older student who may have six different teachers. But this elementary school Student had only two teachers: his general education teacher and his special education teacher. The failure to obtain any input or review any records from Ms. Bickler put the District out of compliance with former WAC 392-172A-03025 (requiring the review of existing data, including observations by teachers) and current WAC 392-172A-03040 (requiring that a variety of sources, including teacher recommendations, be used).

15. However, not all errors in conducting an evaluation ultimately render that evaluation inappropriate. Such errors are procedural violations, which may be significant enough to cause harm (see, e.g., *N.B. v. Hellgate Elem. Sch. Dist.*, 541 F.3d 1202, 1208 (9th Cir. 2008); *Glendale Unif'd Sch. Dist.*, 51 IDELR 146 (SEA CA 2008)) or may be found to be harmless error (see, e.g., *Aaron P. v. Hawaii Dept. of Educ.*, 2011 U.S. Dist. Lexis 126450, 57 IDELR 251 (D. Haw. 2011); *Capistrano Unif'd Sch. Dist.*, 52 IDELR 272 (SEA CA 2009)). See also, *Taylor v. District of Columbia*, 770 F. Supp.2d 105, 110-111 (D.D.C. 2011) (remanding for determination whether procedural violation in connection with evaluation and IEE caused harm).¹⁶

¹⁶ When FAPE is at issue in a case, the provisions of 20 USC §1415(f)(3)(E)(ii), 34 CFR §300.513(a)(2), and WAC 392-172A-05105(2), are applied to determine whether a procedural violation of the IDEA resulted in a denial of FAPE. Here, the provision of FAPE is not at issue. Rather, the appropriateness of a District evaluation is at issue. A harmless error analysis is conducted in cases that adjudicate the appropriateness of district evaluations, whether FAPE is at issue in the case (see, e.g., *Hellgate, supra*; *Aaron P., supra*; *Taylor v. District of Columbia, supra*) or not at issue in a case (see, e.g., *Capistrano Unif'd Sch. Dist., supra*; *Glendale Unif'd Sch. Dist., supra*).

16. In the present case, the District's procedural violation¹⁷ did not ultimately render the reevaluation inappropriate. The social skills taught in Ms. Bickler's social skills group were on display regularly in the Student's 2nd grade classroom with Ms. Fowler (and, for a short period prior to the reevaluation, in his 3rd grade classroom with Mr. Hodgson). Ms. Fowler provided extensive rating scales and narrative comments concerning the Student's social skills and behavior. The Student's achievements and deficits in the social/emotional and behavioral areas were amply covered in this material, as well as in two well-documented classroom observations by the school psychologist, Ms. Reed. The fact that Ms. Fowler's information was from 2nd grade, while Ms. Reed's classroom observations and Mr. Hodgson's comments were from 3rd grade, provided social skills data covering two different environments. For these reasons, the reevaluation was appropriate despite the procedural violation discussed above.

17. WAC 392-172A-03030 provides, in pertinent part, that school districts must reevaluate a student "in accordance with WAC 392-172A-03020 through 392-172A-03080 before determining that the student is no longer eligible for special education services." *Id.*; see also 34 CFR §300.305(e). This restates the requirements of other regulations, and does not add new requirements.

18. WAC 392-172A-03035 concerns evaluation reports and provides, in pertinent part, as follows. Evaluation reports must include, among other things: "a statement of whether the student has a disability that meets the eligibility criteria in this chapter"; "a discussion of the assessments and review of data that supports the conclusion regarding eligibility"; and "[h]ow the student's disability affects the student's involvement and progress in the general education curriculum." The regulation also provides: "Individuals contributing to the report must document the results of their individual assessments or observations." *Id.*; see also 34 CFR §300.304-.306. The District's reevaluation report complied with the requirements of this regulation.

19. Turning to a different regulation, the Parent argues the District violated the rule on parental access to student educational records. See WAC 392-172A-05190; see also 34 CFR §300.613. The Parent asked several times, over the course of one or two weeks, to review the assessment results in advance of the September 23, 2013 reevaluation meeting. The District declined this request several times before agreeing to it and giving the Parent a copy of the draft reevaluation report (which included the assessment results) three days before the meeting.

20. WAC 392-172A-05190(1) provides, in pertinent part, that school districts must permit parents to inspect and review "any educational records relating to the student which are collected, maintained, or used by the district" under this chapter. The regulation further provides that school districts "shall comply with a request promptly and before any meeting regarding an individualized education program or hearing or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student," but in no case shall the district respond more than 45 days after the request was made. *Id.*; see also 34 CFR §300.613(a).

¹⁷ While more than one regulation was implicated, the District's error was a single one, not multiple ones: the failure to obtain input from the Student's special education teacher.

21. It is unclear from the Parent's testimony whether she waited one week or two weeks before receiving the educational records she requested. It therefore cannot be determined whether the District's response was "prompt[]" enough under the circumstances to meet its legal duty. WAC 392-172A-05190(1). (The circumstances would include whether the requested records were readily available, and the difficulty of locating and assembling them.) The regulation also contains a related, but additional duty to provide access to requested records prior to certain meetings.¹⁸ The Parent's request was fulfilled three days before the reevaluation meeting. The record contains no evidence the Parent needed more time to review the records in order to prepare for the meeting. There is no evidence that her opportunity to participate in the meeting was significantly impeded by receiving the records three days in advance, rather than longer in advance of the meeting.

22. The Parent also argues that no meeting was held *prior* to the reevaluation meeting to determine which assessments would be utilized. She cites no regulation or other authority requiring such a meeting.

23. In addition to arguing that the District failed to conduct the reevaluation in accordance with regulations, the Parent also argues the District ultimately reached the wrong conclusion on eligibility. The District, on the other hand, argues that only the former matter is at issue, not the latter. According to the District, the Parent would need to file her own due process hearing request, asserting a denial of FAPE from being exited from special education, in order to obtain a decision on the correctness of the exiting decision.¹⁹

24. The majority of administrative decisions of which this tribunal is aware²⁰ tend to support the District's position. See *Irvine Unif'd Sch. Dist.*, 112 LRP 41895 (SEA CA 2012); *Reading Sch. Dist.*, 112 LRP 9606, n. 9 (SEA PA 2012); *Rowland Unif'd Sch. Dist.*, 110 LRP 15993 (SEA CA 2010); *Anaheim City Sch. Dist.*, 110 LRP 15988 (SEA CA 2010); *Raytown C-2 School District*, 39 IDELR 149 (SEA MO 2003).²¹ But see *Bear Creek Community Charter Sch.*, 112 LRP 49713 (SEA PA 2012). Counsel have cited no court decisions (as opposed to administrative decisions) on this question. In the absence of such authority, and in the absence of briefing on this matter from the Parent, it would be unwise to decide the question unless it

¹⁸ Both the Washington and the federal regulation specifically mention IEP meetings, due process hearings, and resolution meetings, as meetings prior to which access to requested educational records must be provided. See WAC 392-172A-05190(1); 34 CFR §300.613(a). It will be assumed for present purposes, without deciding the matter, that this duty extends to reevaluation meetings.

¹⁹ In a due process hearing filed by the Parent, the Parent would have the burden of proof. In a due process hearing filed by the District, like the present one, the District has the burden of proof. See *Schaffer v. Weast*, *supra*, 546 U.S. 49.

²⁰ The cases cited here are simply the cases of which the tribunal is aware, plus the *Anaheim City School District* case cited by District counsel. They are not the result of comprehensive research.

²¹ *Raytown* cites *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175, 1185 (W.D. WA 2002), on the matter at issue. However, *J.S.* did not address this matter. Rather, *J.S.* held that a district's duty to assess students in all suspected areas of disability should be judged in terms of what was known and reasonable at the time the evaluation was conducted. See *J.S.*, 220 F. Supp. 2d at 1185-1186.

were necessary to do so. It is unnecessary to do so because the Parent would not prevail even if the correctness of the eligibility determination were adjudicated, so the outcome of the decision would not change.

25. If the correctness of the District's eligibility decision were to be adjudicated, the tribunal would conclude, based on the Findings of Fact above, that the District's eligibility decision was justified. The record supports the District's conclusion that the Student is able to receive meaningful benefit from his education solely in the general education environment, with accommodations from a 504 plan. The Parent's testimony lent support to this conclusion. She testified she has seen no difference in the Student's behavior, at home or at school, during 3rd grade as opposed to 2nd grade. This testimony was given in mid-December 2013, when the Student had completed almost half of 3rd grade. The Student has not received SDI in 3rd grade (except for possibly one or two social skills classes in September). Thus the Student's behavior has not deteriorated, according to the Parent, despite the absence of SDI.

26. Attempting to accommodate students, in spite of their disabilities, in the general education classroom rather than pulling them out for special services "is consistent with the concept of mainstreaming, an objective that the school district is legally bound to pursue. See 20 U.S.C. §1412(a)(5) [concerning least restrictive environment]." *Hood v. Encinitas Union Sch. Dist.*, 486 F.3d 1099, 1110 (9th Cir. 2007). The ultimate question is not whether a student would perform better if provided with SDI. The question is whether a student needs SDI in order to receive meaningful benefit from his or her education.²² As the court noted in *Hood* (where a 504 plan was deemed sufficient to provide such a benefit to the student), arguably all students would perform better with more services. *Id.* at 1108.

27. Several other allegations and arguments raised by the Parent are outside the scope of this decision,²³ which concerns whether the District's reevaluation was appropriate, and if not, whether the Parent is entitled to an IEE at public expense. See C-1; Issues section, above.

28. All arguments made by the parties have been considered. Arguments that are not specifically addressed herein have been duly considered, but are found not to be persuasive or not to substantially affect a party's rights.

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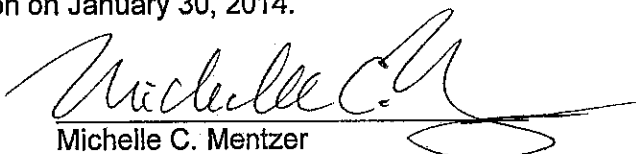
²² The "meaningful benefit" standard is discussed in, e.g., *J.W. v. Fresno Unified School Dist.*, 626 F.3d 431, 432 - 433, (9th Cir. 2010) and *J.L. v. Mercer Island School Dist.*, 575 F.3d 1025, 1038, n. 10, (9th Cir. 2009).

²³ This includes the Parent's allegation that when she requested an IEE at public expense, the District did not provide her with information on where an IEE could be obtained and what criteria were applicable to IEEs. See WAC 392-172A-05005(1)(b); see also 34 CFR §300.502. Because the District's reevaluation was appropriate, and the Parent is not entitled to an IEE at public expense, this allegation is not addressed.

ORDER

The Lake Washington School District's September 2013 reevaluation of the Student was appropriate. The Parent is not entitled to an independent educational evaluation at public expense.

Signed at Seattle, Washington on January 30, 2014.



Michelle C. Mentzer
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

CERTIFICATE OF SERVICE

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

Parent



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

Addendum

392-172A-03020 Evaluation procedures.

(1) The school district must provide prior written notice to the parents of a student, in accordance with WAC 392-172A-05010, that describes any evaluation procedures the district proposes to conduct.

(2) In conducting the evaluation, the group of qualified professionals selected by the school district must:

(a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

(i) Whether the student is eligible for special education as defined in WAC 392-172A-01175; and

(ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities;

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education and for determining an appropriate educational program for the student; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Each school district must ensure that:

(a) Assessments and other evaluation materials used to assess a student:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education. Use of professional judgment shall be documented in the evaluation report;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(d) If necessary as part of a complete assessment, the school district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's educational performance.

(e) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(f) Assessments of students eligible for special education who transfer from one school district to another school district in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(g) In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and

related services needs, whether or not commonly linked to the disability category in which the student has been classified.

(h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

Former* 392-172A-03025 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.

392-172A-03030 Evaluations before change in eligibility.

(1) Except as provided in subsection (2) of this section, school districts must evaluate a student eligible for special education in accordance with WAC 392-172A-03020 through 392-172A-03080 before determining that the student is no longer eligible for special education services.

(2) A reevaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under WAC 392-172A-02000 (2)(c).

(3) For a student whose eligibility terminates under circumstances described in subsection (2) of this section, a public agency must provide the student with a summary of the student's academic achievement

* See footnote 15 in decision, above.

and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

392-172A-03035 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.

392-172A-03040 Determination of eligibility.

(1) Upon completion of the administration of assessments and other evaluation measures:

(a) A group of qualified professionals and the parent of the student determine whether the student is eligible for special education and the educational needs of the student; and

(b) The school district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(2)(a) A student must not be determined to be eligible for special education services if the determinant factor is:

(i) Lack of appropriate instruction in reading, based upon the state's grade level standards;

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(b) If the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.

(3) In interpreting evaluation data for the purpose of determining eligibility for special education services, each school district must:

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

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

(4) If a determination is made that a student is eligible for special education, an IEP must be developed for the student in accordance with WAC 392-172A-03090 through 392-172A-03135.

392-172A-05005 Independent educational evaluation.

(1)(a) Parents of a student eligible for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's evaluation subject to subsections (2) through (7) of this section.

(b) Each school district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsection (7) of this section.

(c) For the purposes of this section:

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

(2)(a) 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.

(b) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the school district must either:

(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense without unnecessary delay, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(3) If the school district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the school district may ask for the parent's reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.

(5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in (a) of this subsection, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.