



MAILED

JUL 14 2014
SEATTLE - OAH

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
One Union Square • 600 University Street • Suite 1500 • Seattle, Washington 98101
(206) 389-3400 • (800) 845-8830 • FAX (206) 587-5135 • www.oah.wa.gov

July 14, 2014

Parents

Andrea Schiers, Assistant General Counsel
Seattle Public Schools
PO Box 34165, MS 32-151
Seattle, WA 98124-1165

Curtis M. Leonard, Attorney at Law
Preg O'Donnell & Gillett PLLC
901 Fifth Ave, Suite 3400
Seattle, WA 98164

**In re: Seattle School District
Special Education Cause No. 2014-SE-0040**

Dear Parties:

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

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

Sincerely,

Michelle C. Mentzer
Administrative Law Judge

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

MAILED

JUL 14 2014

SEATTLE - OAH

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

IN THE MATTER OF:

SEATTLE SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 2014-SE-0040

**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 Seattle, Washington, on July 10, 2014. The Seattle School District (District) was represented by Curtis Leonard, attorney at law. The Parents of the Student whose education is at issue¹ did not appear at any stage of these proceedings. The following is hereby entered:

STATEMENT OF THE CASE

The District filed a due process hearing request on May 27, 2014. A prehearing conference was held on June 17, 2014, and a prehearing order was issued on that date.

The due date for the written decision was continued to thirty (30) days after the close of the hearing record, pursuant to the District's request for continuance. See First Prehearing Order of June 17, 2014. The hearing record closed on July 10, 2014. Thirty days thereafter is August 9, 2014. The due date for the written decision is therefore August 9, 2014.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence: District Exhibits D-1 through D-4.

The following witnesses testified under oath: Debra Vilhauer, PhD, District school psychologist; and Sherry Studley, EdD, District special education supervisor.

ISSUE

The issue for hearing is: Whether the District's April 2013 evaluation of the Student was appropriate, and if not, whether the Parents are entitled to an independent educational evaluation (IEE) at public expense. See First Prehearing Order of June 17, 2014.

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

FINDINGS OF FACT

District Evaluation

1. The Student is seven years old and attended 1st grade in the 2013-14 school year. When the Student was in kindergarten, the District conducted an evaluation and found the Student eligible for special education under the category Emotional Behavioral Disability (EBD). The evaluation was completed in April 2013. D-1.

2. The evaluation team was led by Debra Vilhauer, PhD, a District school psychologist. Dr. Vilhauer holds a master's degree in counseling psychology and a PhD in educational psychology, both from the University of Oregon. Her employment history includes 15 years at the Ryther Child Center, where she worked with the District's most emotionally disturbed students. Testimony of Vilhauer.

3. The evaluation assessed the Student in the following areas: medical-physical, motor skills, cognitive, communication, math, reading, written language, and social-behavioral. D-1. The Student was cooperative and pleasant in working with Dr. Vilhauer, and she is confident that his scores accurately reflected his abilities. Testimony of Vilhauer. The evaluation was administered with the understanding of test limitations that may result in bias because of cultural, economic, environmental or behavioral factors. Such limitations were considered and determined not to be a significant factor in test results. The evaluation determined that its findings were not primarily due to a lack of instruction in reading or math, or due to limited English proficiency. D-1, p. 7. Dr. Vilhauer believes the Student was assessed in all areas of suspected disability. Testimony of Vilhauer. Dr. Vilhauer is found to be a credible witness, and her opinions expressed herein are adopted.

4. The team that reviewed the assessment results and adopted the written evaluation report consisted of: Dr. Vilhauer, the Mother, a District administrator, a District speech-language pathologist, a District physical therapist, a District special education teacher, and an unidentified person named Carla Arellano who signed the report with the designation "F.S.W." after her name. D-1, p. 8.²

5. *Medical-Physical Assessment:* The Student's vision and hearing tests revealed no problems. The school nurse obtained input from the Mother regarding the Student's health, and the Mother expressed no concerns. *Id.*; Testimony of Vilhauer.

6. *Motor Skills Assessment:* A District physical therapist, Doreen Burris, conducted the Student's motor skills assessment. She used the Bruininks-Oseretsky Test of Motor Proficiency – 2nd Edition. It assesses both fine and gross motor skills. The Student's scores were all within the average range. His teacher reported no concerns in this area. No need for specially designed instruction in motor skills was found. D-1.

² Next to each person's signature there was a space for marking whether the person had a "Dissenting Opinion." D-1, p. 8. No one marked that they did, except possibly the Mother. It is unclear whether she did: There is a handwritten square next to the Mother's name in the area for Dissenting Opinion, but the square is empty, with no check mark or "X" in it. No dissenting comments from the Mother were attached to the evaluation.

7. *Cognitive Assessment:* Dr. Vilhauer administered the Wechsler Preschool and Primary Scale of Intelligence – 3rd Edition (WPPSI-3). The Student's full scale intelligence quotient (FSIQ) was found to be 90, on the low end of the average range. D-1.

8. *Communication Assessment:* A District SLP, Teri Elrand, conducted the communication portion of the evaluation. The SLP used four standardized assessments, and also received input from the Student's teacher. The Student scored at the 77th percentile³ on the Receptive One Word Picture Vocabulary Test (ROWPVT). He scored at the 92nd percentile on the Expressive One Word Picture Vocabulary Test (EOWPVT). The SLP also administered selected subtests from the Clinical Evaluation of Language Fundamentals – 4th Edition (CELF-4). The Student's composite score on those subtests, called the Core Language Score, was at the 7th percentile, which is in the delayed range. The Student's teacher and his in-class tutor completed the Children's Communication Checklist – 2nd Edition (CCC-2). The Student's General Communication Composite (GCC) score from this assessment was at the 5th percentile. This indicates delayed functional communication in the classroom, which can have social as well as academic impacts. *Id.* The SLP concluded that the Student had a moderate communication delay in listening comprehension and oral expression, despite very strong single-word vocabulary skills in receptive and expressive language. She recommended specially designed instruction to address his weak areas in communication. *Id.*

9. *Math Assessment:* Dr. Vilhauer administered the Kaufman Test of Educational Achievement – 2nd Edition (KTEA-2) to assess the Student's academic skills. His math calculation skills were at the 39th percentile compared to same-age peers, which is at the low end of the average range. His math reasoning skills were at the 13th percentile, which is in the low-average range. Specially designed instruction in math was recommended. *Id.*⁴

10. *Reading Assessment:* The Student's word decoding skills were at the 18th percentile, and his sight word reading was at the 37th percentile. Although he could identify individual letter names and some letter sounds, he was not able to read common sight words and did not appear to have a reasonable strategy for phonetic decoding. Specially designed instruction in reading was recommended. D-1; Testimony of Vilhauer.

11. *Written Language Assessment:* The Student's written expression skills scored at the 30th percentile. However, his teacher reported he was not successful in completing writing assignments in class unless he worked one-on-one with an adult. He was unable to write his last name, but could write some individual letters from dictation. Specially designed instruction was recommended. D-1.

12. *Social-Behavioral Assessment:* Dr. Vilhauer reviewed social-behavioral information provided by the Student's teacher and reviewed the Student's disciplinary records. She also

³ All percentile scores herein refer to the Student's score as compared with a nationwide sampling of same-age peers.

⁴ In math and several other areas, the evaluation report lists only the Student's "standard scores." D-1. Because percentiles are easier to understand for laypeople, the exact percentile scores that correspond to his standard scores are listed herein, in place of the standard scores.

used two standardized assessments, one based on teacher responses and one based on Student responses. The Student's kindergarten teacher and an in-class tutor completed the Teacher Report Form of the Achenbach System of Empirically Based Assessment. The teacher and tutor reports were consistent in finding the Student's adjustment well outside of the normal range on four of the six scales of the assessment. They indicated the Student was more than two standard deviations above the norm in characteristics of sadness or worthlessness, attention deficit/hyperactive behaviors, oppositional/defiant behaviors, and conduct problems. In the area of conduct problems (i.e., aggression, threats, destructiveness), he was 3.8 standard deviations above the norm. D-1. This is a highly unusual elevated score. Testimony of Vilhauer and Studley.

13. By contrast, the Student's self-report on the Behavior Assessment Scale for Children – 2nd edition (BASC-2), conducted by verbal interview, indicated he did not view himself as having significant problems. His responses indicated he saw himself as normally adjusted. He denied any propensity to be anxious, depressed, or socially distressed. He appeared to hold positive attitudes toward school and his teachers. He did, however, endorse three items of concern: "I get scared a lot," "I have friends other people cannot see," and "My classmates make fun of me." D-1. He declined to elaborate on any of these three areas. *Id.*; Testimony of Vilhauer.

14. Anecdotal reports from the teacher related instances of hitting, kicking, placing hands around a peer's neck, mimicking peers, lifting a chair in a threatening manner, throwing objects, yelling at school staff and the principal, erratic moods, leaving class without permission, and refusing to comply with adult directives. In a six-week period in winter 2013, the Student had 14 documented disciplinary referrals. *Id.* However, as soon as the teacher sat down and worked with the student one-on-one, he would relax, cooperate, and focus on work. Testimony of Vilhauer.

15. Dr. Vilhauer conducted a structured classroom observation. She used 10-second intervals to record on-target and off-target behavior during a 30-minute period. Other than when the teacher worked with him one-on-one, the Student demonstrated on-target behavior only 11% of the time. Dr. Vilhauer witnessed some agitated, angry affect, loud behavior, flipping chairs, talking loudly, and a high degree of physical restlessness. D-1.

16. Dr. Vilhauer concluded the Student's disability category was EBD, and that he required specially designed instruction in this area. The Student's maladaptive behavior pattern had persisted despite the teacher's use of interventions such as one-on-one supervision for parts of the day, ignoring inappropriate behavior where possible, reinforcing appropriate behavior, disciplinary referrals to the principal, suspensions, and parent-teacher conferences. The evaluation report concluded that the Student's academic delays are not explained by cognitive factors. Rather, they are related to frequent emotional dysregulation, which interferes with his ability to benefit from instruction. *Id.*

Events Subsequent to Evaluation

17. The Student's first IEP of May 2013 placed him at a public elementary school, where he received specially designed instruction plus speech-language therapy for 770 minutes of his 1650-minute week (47%). D-3, p. 68. The successor IEP of March 2014 placed the Student at a private school for children with disabilities, CHILD on Mercer Island, at public expense. D-3, p. 15.

18. By letter dated May 8, 2014, the Mother requested in IEE. She asked for a complete psycho-educational assessment, including an assessment for auditory processing disorder (APD) by an audiologist and an assessment for attention deficit hyperactivity disorder (ADHD). D-4.

19. Regarding ADHD, District policy allows only licensed health care professionals to make this diagnosis. Nevertheless, Dr. Vilhauer is qualified and capable of making the diagnosis. She did not suspect ADHD in the case of this Student. His scores on attentional problems were much lower than his scores on emotional-behavioral problems. She observed the Student to be focused, not fidgety, during her assessments. Regarding ADHD, Dr. Vilhauer explained that APD is a term usually used by SLPs, and that a differential diagnosis between APD and ADHD is difficult, and may depend on the background of the evaluator. Had the Student been diagnosed with ADHD and/or APD, his IEP services would not have been different than they were. His services were driven by the needs he manifested, both in the classroom and in testing, and not by diagnoses. Testimony of Vilhauer.

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 Regulations⁵

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

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. Assessments must be administered by "trained and knowledgeable personnel" and in accordance with the test producer's instructions. 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 its evaluation met the requirements of WAC 392-172A-03020. Most importantly, a group of qualified professionals used a variety of assessment tools and strategies to gather relevant information, including input from the Mother, and did not use a single measure as the sole criterion to determine eligibility. Qualified personnel (school psychologist, SLP, and a physical therapist) selected and administered technical instruments that assessed the relative contribution of many factors, and that avoided discrimination based on race or culture. The evaluation was comprehensive and assessed the Student in all areas of suspected disability. The evaluation was sufficiently comprehensive to identify all of the Student's special education and related services needs, including numerous needs outside his disability category.

8. Former⁶ WAC 392-172A-03025 concerns the review of existing data for evaluations. It

⁵ 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.

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

9. The District has established that it complied with WAC 392-172A-03025 and -03040. Dr. Vilhauer reviewed existing data about the Student and obtained additional data from numerous assessment instruments. A group of qualified professionals including the Mother met to determine the Student's eligibility for special education. His eligibility was not based a lack of appropriate instruction in reading or math, or based on limited English proficiency.

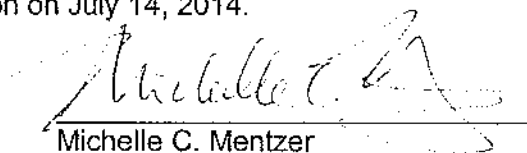
10. Finally, WAC 392-172A-03035 concerns evaluation reports. It requires that they include: a statement of whether the student has a disability that meets eligibility criteria; a discussion of the assessments and review of data that supports the eligibility conclusion; a discussion of how the disability affects the student's progress in the general education curriculum; and the recommended special education and related services the student needs. *Id.*; see also 34 CFR §300.304-.306. The District's evaluation report met each of these requirements. It was thorough, detailed, and well-supported.

11. For all of the foregoing reasons, the District has established that its April 2013 evaluation of the Student was appropriate.

ORDER

The Seattle School District's April 2013 evaluation of the Student was appropriate. The Parents are therefore not entitled to an independent educational evaluation at public expense.

Signed at Seattle, Washington on July 14, 2014.



Michelle C. Mentzer
Administrative Law Judge
Office of Administrative Hearings

⁶ 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.

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.

Parents



Andrea Schiers, Assistant General Counsel
Seattle Public Schools
PO Box 34165, MS 32-151
Seattle, WA 98124-1165

Curtis M. Leonard, Attorney at Law
Preg O'Donnell & Gillett PLLC
901 Fifth Ave, Suite 3400
Seattle, WA 98164

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

* See footnote 6 in decision, above.

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.