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STATE OF WASHINGTON

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November 22, 2016

Spokane School District
Spokane, WA 99201-0282

Parent


Lisa Pacheco, Director of Special Education
Spokane School District
200 N Bernard Street
Spokane, WA 99201-0282

Gregory L. Stevens, Attorney at Law
Stevens Clay PS
421 W. Riverside, Suite 1575
Spokane, WA 99201-0402

In re: **Spokane School District**
OSPI Cause No. 2016-SE-0056
OAH Docket No. 05-2016-OSPI-00074

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,

Handwritten signature of David G. Hansen in black ink.

David G. Hansen
Administrative Law Judge

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

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Superintendent of Public Instruction
Administrative Resource Services

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

MAILED
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SEATTLE-OAH

IN THE MATTER OF

OSPI CAUSE NO. 2016-SE-0056

SPOKANE SCHOOL DISTRICT

OAH DOCKET NO. 05-2016-OSPI-00074

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) David G. Hansen in Spokane, Washington, on October 13, 2016. The Parents of the Student whose education is at issue¹ failed to appear for the October 13, 2016 hearing and did not request a postponement. The Spokane School District (District) appeared and was represented by Gregory L. Stevens and Alex Fern, attorneys at law.

STATEMENT OF THE CASE

The District filed a due process hearing request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on May 20, 2016. The Complaint was assigned Cause No. 2016-SE-0056 and forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered May 23, 2016, which assigned the matter to ALJ David Hansen.

Prehearing conferences were held on June 23, 2016, and July 8, 2016. An Order Continuing Prehearing Conference and Striking Due Process Hearing was issued on June 3, 2016; an Order Continuing Prehearing Conference was issued on June 27, 2016; a Prehearing Order and Notice of Hearing was issued on July 17, 2016; and an Amended Prehearing Order and Notice of Hearing was issued on September 13, 2016.

Evidence Relied Upon

Exhibits Admitted:

District Exhibits: D-1 through D-12, with accompanying declarations of Karen Uppinghouse, District speech and language pathologist, and Casey Traver, District occupational therapist.

Witnesses Heard

Amy Mazur, District school psychologist.

¹ To ensure the family's privacy, the names of the family members are not used.

Post-Hearing Briefs

The District timely submitted a post-hearing brief on October 27, 2016.

Due Date for Written Decision

The due date for a written decision in this matter was continued to thirty (30) days after the close of record on the District's motion. The record closed with the receipt of the District's post-hearing brief on October 27, 2016, so the due date for the written decision is **November 26, 2016**.

ISSUES

As set forth in the Amended Prehearing Order and Notice of Hearing issued September 13, 2016, the issues for the due process hearing are whether the District's April 25, 2016 evaluation of the Student is appropriate and, if not, whether the Parents are entitled to an independent educational evaluation (IEE) at District expense.

FINDINGS OF FACT

1. On February 10, 2016, the District received a referral for a special education evaluation from the Parents. Exhibit D-1. The reason for the referral was the Parents' concerns over academic progress and language skills. The Student was a first grader in one of the District's elementary schools at the time. The Student had previously been diagnosed with dyslexia and dysgraphia by an outside provider.
2. The District's evaluation team met on February 23, 2016, at which time a Prior Written Notice was prepared and subsequently provided to the Parents. Exhibit D-2. The notice informed the Parents that the District was proposing to initiate a referral in response to the Parents' concerns related to the Student's educational performance. On the same date, the District prepared and issued an Invitation to Attend a Meeting to the Parents. Exhibit D-3. The invitation scheduled the meeting for March 3, 2016, and informed the Parents that the school psychologist, general education teacher, special education teacher, speech language pathologist, and school principal would be in attendance. A Notice of Procedural Safeguards was attached to the invitation.
3. The Parents and the District met as scheduled. A second Prior Written Notice was prepared and issued to the Parents. Exhibit D-5. The notice informed the Parents that the District was proposing to initiate an initial evaluation of the Student. The Parents consented to the proposal. Exhibit D-6.
4. On March 15, 2016, the District's speech and language pathologist, Karen Uppinghouse, evaluated the Student's communication skills. Exhibit D-11. Ms. Uppinghouse has been a speech and language pathologist for 37 years, of which 30 years has been with the District. She possesses a bachelor's and a master's degree in communication disorders. When administering standardized tests to the Student, Ms. Uppinghouse followed the protocols established by the creators of the tests.

5. Ms. Uppinghouse reviewed the Communication Disorder Checklist (CDC) completed by the Student's classroom teacher. She found that while the Student's speech was generally intelligible, the Student exhibited noticeable articulation errors. The CDC also showed concerns about the Student's difficulty understanding material that was presented verbally, along with a demonstrated difficulty successfully communicating in the classroom.

6. Ms. Uppinghouse administered the Photo Articulation Test-Third Edition (PAT-3) to the Student. This test elicits speech sounds and identifies articulation errors. The test scores indicated that the Student's articulation skills were delayed when compared with other children of the same age and gender. Ms. Uppinghouse administered the Oral and Written Language Scales-Second Edition (OWLS-II). This test assesses receptive and expressive skills in children and young adults, and consists of two subtests; listening comprehension and oral expression. The Student's OWLS-II test scores indicated that the Student's development in oral expression and comprehension of spoken language was within normal limits when compared with other children of her age and gender.

7. Ms. Uppinghouse concluded that the Student had a significant delay in her articulation/phonological skills. She found that this delay impacted the Student's ability to clearly express thoughts, feelings, and ideas in the classroom, and that the Student was in need of specially designed instruction to improve communication skills.

8. On March 14, and 17, 2016, the District's school psychologist, Amy Mazur, evaluated the Student's cognitive abilities and academic achievement. Ms. Mazur has been a school psychologist for twelve years and possesses both a bachelor's and master's degree. Ms. Mazur administered the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV), which assessed the Student's intellectual skills to be in the average range. The Student was found to be in the average range in working memory and processing speed. The Student was found to be in the low average range in verbal comprehension and perceptual reasoning. The Wechsler Individual Achievement Test-Third Edition (WIAT-III) was also administered to the Student. The results showed that the Student's math and writing skills were within the average range. When administering these standardized tests to the Student, Ms. Mazur followed the protocols established by the creators of the tests.

9. On April 14, 2016, the Student was evaluated in the areas of fine and visual motor skills by the District's occupational therapist, Casey Traver. Exhibit D-12. Ms. Traver possesses a bachelor's degree in music and a master's degree in occupational therapy. She has been an occupational therapist for five years, all with the District. When administering the standardized tests to the Student Ms. Traver followed the protocols established by the creators of the tests.

10. Ms. Traver administered the Beery-Buktenica Developmental Test of Visual-Motor Integration 5th Edition (VMI-5) to the Student. This is a standardized test consisting of three subtests: visual motor integration; visual perception; and motor coordination. The test results showed the Student to be in the average range in visual motor integration and visual perception, while below average in motor coordination. In addition to the test, Ms. Traver used curriculum-based assessments, observation of the Student, and general education teacher reports to determine the Student's current skills and level of performance. Ms. Traver concluded that the Student "does not demonstrate an educationally significant delay with... fine or visual motor skills and does not qualify for occupational therapy." Exhibit D-12, p. 3.

11. The District and the Parents met on April 25, 2016. At that time, the District's Evaluation Report was presented and discussed. Exhibit D-9. The Evaluation Report concluded that while the Student's "academic skills were below average, they are not significantly discrepant from her cognitive ability level. Severe ability-achievement discrepancies are not apparent" *Id.* at 5. Accordingly, the Report concluded that the Student did not meet the criteria to be considered a student with a specific learning disability. The Evaluation Report further concluded that the Student has a documented disability in the area of speech and language. "The adverse impact of the disability greatly reduces involvement and progress in the general education curriculum..." *Id.* The Evaluation Report concluded that the Student has a disability and is in need of specially designed instruction under the eligibility category of speech or language impairment. Each member of the District's evaluation team signed the Evaluation Report, indicating their agreement. The Parents declined to sign.

12. On May 13, 2016, the Parents requested an IEE at the District's expense. The District considered its initial evaluation to be appropriate. It declined to provide an IEE at District expense and filed the Complaint. Throughout the evaluation process the Parents' input was offered, sought by the District, and considered by the District. Exhibits D-7 and D-8. Specifically, the Parents advised the District that home work has been difficult and frustrating for the Student and considerable assistance is required to complete assignments. The Parents also provided the District a brief medical and developmental history of the Student.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

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

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. See *Schaffer v. Weast*, 546 U.S. 49 (2005). As the District is the party seeking relief in this case, it has the burden of proof.

The IDEA

3. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *Board of Education of Hendrick Hudson Central School District 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.

Id. at 206-207 (footnotes omitted).

Independent Educational Evaluations (IEEs)

4. Parents have a right to obtain an IEE if they disagree with the school district's evaluation under certain circumstances. WAC 392-172A-05005(1); 34 CFR 300.502(a)(1). An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district. WAC 392-172A-05005(1)(c)(i); 34 CFR 300.502(a)(3). If a parent requests an IEE *at public expense*, a school district must either ensure that an IEE is provided at public expense without unnecessary delay or initiate a due process hearing within 15 days to show that its evaluation is appropriate. WAC 392-172A-05005(2)(c)(emphasis added).

5. The District is required to follow the requirements for evaluations set forth in WAC 392-172A-03020, which provides:

Evaluation procedures.

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

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

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

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

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

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility 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.

See also 34 CFR 300.304.

6. The District is also required to follow the requirements for evaluations set forth in WAC 392-172A-03025, which provides:

Review of existing data for evaluations and reevaluations.

As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must:

(1) Review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based, local, or state assessments, and classroom-based observations; and

(c) Observations by teachers and related services providers.

(2)(a) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

(i) Whether the student is eligible for special education services, and what special education and related services the student needs; or

(ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum; and

(b) The present levels of academic achievement and related developmental needs of the student.

(3) The group described in this section may conduct its review without a meeting.

(4) The school district must administer such assessments and other evaluation measures as may be needed to produce the data identified in subsection (1) of this section.

(5)(a) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs, the school district must notify the student's parents of:

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the student continues to be a student eligible for special education, and to determine the student's educational needs.

(c) The school district is not required to conduct the assessment described in this subsection (5) unless requested to do so by the student's parents

See also 34 CFR 300.305.

7. Likewise, the District is required to follow the requirements for evaluation reports set forth in WAC 392-172A-03035, which provides:

Evaluation report.

(1) The evaluation report shall be sufficient in scope to develop an IEP, and at a minimum, must include:

(a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;

(b) A discussion of the assessments and review of data that supports the conclusion regarding eligibility including additional information required under WAC 392-172A-03080 for students with specific learning disabilities;

(c) How the student's disability affects the student's involvement and progress in the general education curriculum or for preschool children, in appropriate activities;

(d) The recommended special education and related services needed by the student;

(e) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;

(f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group must include a separate statement representing his or her conclusions.

(2) Individuals contributing to the report must document the results of their individual assessments or observations.

8. As set forth above, a "group of qualified professionals" must conduct the evaluation, and assessments and other evaluation materials must be administered by "trained and knowledgeable personnel." WAC 392-172A-03020(2), (3)(iv).

9. The District has established that the evaluation of the Student was appropriate. The District provided prior written notice, obtained parental consent, conducted the evaluation with a group of qualified individuals, and used a variety of appropriate assessment tools. The District reviewed and considered existing evaluation data, including the Parents' input and the observations of the classroom teacher. The District prepared a comprehensive Evaluation Report finding the Student eligible for special education under the category of speech or language impairment, but not under the category of specific learning disability. The general education teacher, the special education teacher, the school psychologist, the school principal, the speech and language pathologist, and the occupational therapist concurred in the Report. The District complied with the evaluation procedures set forth in the regulations. Accordingly, the District's evaluation of the Student was appropriate and the Parents are not entitled to an IEE at District expense.

ORDER

The Spokane School District's April 25, 2016, initial evaluation of the Student was appropriate. The Parents are not entitled to an independent educational evaluation at District expense.

Signed in Seattle, Washington on November 22, 2016.



David G. Hansen
Administrative Law Judge
Office of Administrative Hearing

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. *W*

Parent



Lisa Pacheco, Director of Special Education
Spokane School District
200 N Bernard Street
Spokane, WA 99201-0282

Gregory L. Stevens, Attorney at Law
Stevens Clay PS
421 W. Riverside, Suite 1575
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cc: Administrative Resource Services, OSPI
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator