

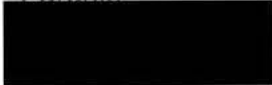


STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
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October 10, 2018

Parents



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In re: Northshore School District
OSPI Cause No. 2017-SE-0107
OAH Docket No. 11-2017-OSPI-00435

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,

Jacqueline Becker
Administrative Law Judge

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

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OCT 11 2018

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. 2017-SE-0107

NORTHSHORE SCHOOL DISTRICT

OAH DOCKET NO. 11-2017-OSPI-00435

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

A due process hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Jacqueline Becker in Bothell, Washington, on July 30 and 31, 2018¹. The Mother of the Student whose education is at issue² appeared and the Parents were represented by Angela Shapow, attorney at law. The Northshore School District (the District) was represented by Carlos Chavez, attorney at law. Kim Durkin, District elementary special education director, appeared for the District.

STATEMENT OF THE CASE

The District filed a Due Process Hearing Request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on November 28, 2017. The Complaint was assigned Cause No. 2017-SE-0107 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered November 30, 2017. The Parents filed their Response to the Complaint on December 11, 2017.

Prehearing conferences were held on December 14, 2017, March 2, 2018, March 26, 2018, and May 23, 2018. Prehearing orders were entered on December 21, 2017, March 8, 2018, March 27, 2018, and May 25, 2018.

Evidence Relied Upon

Exhibits Admitted:

District's Exhibits: D1 – D7; and

Parents' Exhibits: P2 pages 31 and 32 only, P7, and P10.

¹ The hearing initially commenced on January 22, 2018, before ALJ Anne Senter. No evidence was taken at that time and the matter was continued at the request of the parties so they could pursue settlement discussions. The hearing was continued to May 10, 2018, and again to July 30, 2018. In the interim, the case was reassigned to ALJ Becker.

² In the interests of preserving the family's privacy, this decision does not name the parents or student. Rather, they are identified as "Parent(s)," "Mother," "Father," and "Student."

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Witnesses Heard (in order of appearance):

Allison Wells (formerly known as Allison Bennett), District school psychologist;
Jennifer Ross, District speech and language pathologist;
Karen Rogers, District occupational therapist;
The Student's Mother; and
Dr. Leihua Edstrom, educational psychologist.

Post-Hearing Briefs

The parties agreed that post-hearing briefs would be filed and exchanged by September 11, 2018. The post-hearing briefs were timely filed.

Due Date for Written Decision

As set forth in the Prehearing Order of December 21, 2017, the due date for a written decision in this case was continued to thirty (30) calendar days after the close of record on the District's motion. The record closed with the receipt of the post-hearing briefs on September 11, 2018, so the due date for the written decision is **October 11, 2018**.

ISSUE

As set forth in the Prehearing Order of December 21, 2017, the issue to be addressed in the due process hearing is whether the District's October 17, 2016, and March 14, 2017 evaluations of the Student are appropriate and, if not, whether the District should pay for an independent educational evaluation of the Student.

FINDINGS OF FACT

Background

1. The Student at issue is 9 years old.
2. The Student initially qualified for special education and related services through an evaluation by a [REDACTED] school district in January of 2013. D1, p. 1.³ The Student qualified under the eligibility category of Developmental Delay, and it was recommended that he receive specially designed instruction (SDI) in the areas of motor skills and social/emotional skills. *Id.* The Student moved to the District in September of 2013, and the District completed its own evaluation of the Student in October of 2013. The District evaluation team determined that the Student continued to qualify for special education services in the areas of behavior and social/emotional. D1, p. 2. The Student was specifically assessed in the motor area and was found to be ineligible for continued therapy in motor services. D1, p. 11-12.

³ "D" and "P" refer to the specified exhibit, and "Tr." refers to the transcript of proceedings.

3. During the 2016-17 school year, the Student was in second grade in a self-contained special education classroom that provided a program to support students with intense social, emotional, and behavioral challenges that were resistant to a lower level of support. D3, p.1; D4, p. 1.

The October 2016 Reevaluation

4. In September and October of 2016, the Student's required triennial reevaluation was conducted by the District. The reevaluation case manager was Allison Wells,⁴ school psychologist. At the time of the reevaluation, the District was aware that the Student would be evaluated at the University of Washington "to determine if he is impacted by ADHD." D3, p. 28. This evaluation was initiated and arranged by the Parents, and was set to begin on October 28, 2016. *Id.*; Tr. 55 (Wells).

5. Ms. Wells noted in the reevaluation that the Student had been diagnosed with attention deficit-hyperactivity disorder by Dr. Belarmino at Allegro Pediatrics. Dr. Belarmino noted in his "Physician's Evaluation of Health Impairments" that the Student was adversely impacted by excessive inattention, distractibility, impulsivity, emotional lability, hyperactivity, and impaired communication abilities. D3, p. 5; D2. Dr. Belarmino did not testify at the due process hearing, and the "Physician's Evaluation of Health Impairments" document consists of a small one-page checklist with several boxes checked by hand. The date on which the evaluation was performed, and what the evaluation consisted of, cannot be determined from Exhibit D3. Almost the entire report, including the diagnosis, is illegible. Little weight is given to this evidence.

6. During the District's October 2016 reevaluation, the Student was assessed in the areas of medical-physical, social/emotional, behavior, academic, communication, and motor. D3. A cognitive assessment was considered but not conducted "due to concerns about the Student's engagement and the ability to obtain results reflective of his cognitive ability without the confounds of behavior and engagement." D3, p. 11. The evaluation report states, "The team agreed that the need for data around cognitive reasoning abilities was outweighed by Student's need to develop academic behaviors and engagement. It may be more appropriate to consider cognitive assessment at the next re-evaluation." *Id.* It was noted, however, that the Student completed the academic testing portion of the evaluation in four sessions and was engaged throughout, as long as sessions were kept to 15-20 minutes and a rich reinforcement schedule was used. *Id.*

7. The Student's handwriting had been identified as an area of concern, and a motor assessment was conducted by District Occupational Therapist (OT) Karen Rogers.⁵ Tr. 119 (Rogers). Ms. Rogers administered a variety of assessments to the Student, including the Beery-Buktenica Developmental Test of Visual-Motor Integration, Sixth Edition (VMI-6); the Beery VMI

⁴ Ms. Wells holds an undergraduate degree in psychology and a master's of education with a specialty in school psychology, both from Central Washington University. She has been a school psychologist for approximately ten years and has experience assessing students with a variety of disabilities. Tr. 24-25, 82 (Wells).

⁵ Ms. Rogers holds a bachelor's degree in occupational therapy and has been an occupational therapist for 38 years. She has worked in a variety of settings, including inpatient mental health, private practice, and schools. Tr. 113-114 (Rogers).

Developmental Tests of Visual Perception and Motor Coordination; and the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT-2) Fine Motor Composite.

8. The Student's handwriting was also assessed using "The Quick Brown Fox" sentence. D3, p. 16. This assessment is not used as a qualifying criteria. It provides "a little more information about the child's handwriting," according to Ms. Rogers. Tr. 121-122 (Rogers). The Student's writing speed was slow, but his word legibility "wasn't horrible" per Ms. Rogers. He received a score of 79 on the Quick Brown Fox, whereas the District "looks for a score of 80," which would indicate that there is no problem with handwriting. *Id.*

9. The Student's scores on motor testing varied greatly, from above average to just below average, and Ms. Rogers determined that his motor skills did not appear to be significantly impacting his ability to participate and make progress in his academic program. His functional ability to write in the classroom was not observed. Tr. 129-130 (Rogers). Motor therapy was not recommended. *Id.*

10. Communication was identified as an area of concern, and the Student was evaluated by the District's Speech Language Pathologist (SLP), Jennifer Ross.⁶ The only area that was evaluated was articulation, which is the motor skill set used in pronouncing speech sounds. D3, p. 14; Tr. 88 (Ross). Ms. Ross administered the Goldman Fristoe 2 Test of Articulation and determined that the Student had difficulty with numerous phonemes. D3, p. 14. His voice and fluency were within normal limits.

11. "Language" was not identified as an area of concern for reevaluation. *Id.* According to Ms. Ross, "language" has two components: receptive and expressive. Tr. 89 (Ross). Receptive language is the knowledge of words. Expressive language is the ability to put known words into a formation, such as a sentence. Part of the expressive component is "pragmatic" language, which is the ability to share information in a give-and-take situation. *Id.* Ms. Ross is able to test pragmatic skills and has access to assessments that can be used for that purpose. Tr. 104 (Ross). According to her, the Student was getting "pragmatics" language training as part of the social skills curriculum in his special education classroom. *Id.* Had anyone "raised the flag" that the Student had pragmatic problems, Ms. Ross would have tested him in that area, but she stated that no one raised that concern. Tr. 108-09 (Ross).

12. Ms. Ross characterized the Student's language skills as "exceptional." Tr. 98, 101-102 (Ross). Ms. Ross did not see and was unaware of Dr. Belarmino's report, and did not know that he had identified the Student as having "impaired communication skills." Tr. P. 96 (Ross). She opined, however, that "impaired communication skills" signifies that the Student needs speech services, and articulation is under the umbrella of speech services. *Id.* Ms. Ross determined that the Student qualified for special education services under the category of communication in that services were needed "to address his articulation errors at the word, sentence, reading, structured narrative and conversational speech." D3, p. 14.

⁶ Ms. Ross holds a bachelor's degree from Central Washington University, and a master's of science degree in speech-language pathology from the University of Washington. She has worked as an SLP for approximately 40 years. Tr. 85-86 (Ross).

13. The Student's other identified areas of suspected disability were assessed by Ms. Wells. She administered the Behavior Assessment System for Children, Third Edition (BASC-3); and the Kaufman Test of Educational Achievement, Third Edition (KTEA-3). She also performed a functional behavioral assessment by observing the Student several times over a month-long period, and by reviewing daily behavior data that was collected in the classroom. Tr. 32-33, 71 (Wells).

14. In the area of social/emotional, the Student was noted to demonstrate the following: distractibility, deficits in organizational skills, and clinically significant deficits in his ability to express ideas in a way others can easily understand. D3, pp. 7-8. Under "learning problems," the Student's classroom teacher noted that the Student "almost always has trouble keeping up in class" and "often had confused or disorganized speech." D3, p. 7. In the area of behavior, the Student demonstrated distracting, disruptive and destructive behaviors. He experienced "melt-downs" in which he would put his head down and moan or cry, slide out of his chair, and cry on the floor. He was noted to often tear papers, throw items, and strike out physically at staff and other students. D3, p. 9.

15. For the academic assessment, subtests in the areas of reading, math and written expression were administered. The Student's reading skills were determined to be significantly below those of his same-age peers. D3, p. 12. His reading comprehension was at the 5th percentile and his foundational reading abilities were significantly below those of his peers. *Id.* He was not able to read a complete sentence "of any level." D3, p. 2.

16. On the written expression subtest, the Student's composite score was "very low." *Id.* He was not able to complete all items at the kindergarten level, so grade-level tasks were not administered to him. His performance was comparable to or higher than only 0.1% of his same-age peers. He demonstrated a high number of "reversals" when writing both letters and numbers. *Id.* His spelling ability was at the 0.4 percentile and was considered to be very low.

17. The Student's math skills were also below those of his peers. D3, p13. He was unable to correctly calculate simple single-digit problems containing numbers above 5. *Id.* His math composite standard score placed him in the 12th percentile, which is below average, and his math computation standard score was within the average range. Verbally framed "word problems" were more difficult for him and he placed in the 4th percentile for this skill. D3, pp. 12 & 21.

18. Pursuant to the October 2016 reevaluation, the Student was determined to be eligible for special education and related services under the disability category of "Health Impairments." The Student was determined to demonstrate reading, writing and math skills that were significantly below his same-age peers, and his learning was "impeded by behavioral challenges associated with ADHD, including difficulty attending and maintaining focus to complete tasks." D3, p.2.

19. The Student was determined eligible for SDI in reading (build basic skills), math (build basic calculation skills and apply concepts to solve problems), written language (learn letter-sound correspondence and work toward creating well-composed sentences and paragraphs), social emotional (develop strategies for emotional regulation and positive relationships), behavior (learn positive strategies to replace maladaptive behaviors), and communication. D3, p. 3.

20. At the due process hearing in this matter, Ms. Wells testified about the decision to omit cognitive testing from the October 2016 reevaluation. "There were concerns about the ability to get a valid measure at that time, and it [cognitive] wasn't identified as being an area necessary in order to determine qualification or areas of service." Tr. 34 (Wells). She was concerned that, due to the Student's behaviors and level of engagement, cognitive testing would provide a measurement that did not reflect the Student's actual intellectual ability. Tr. p. 60 (Wells).

21. The October 17, 2016 reevaluation "Evaluation Summary" was signed by the Mother and all other identified team members, except a general education teacher. No input from a general education teacher appears to be included in the reevaluation. No "dissenting opinion" was noted by any team member. D3, p.4.

The PEARL Evaluation

22. On December 7, 2016, Dr. Mark Stein, PhD, clinical psychologist, issued a "psychiatry outpatient clinic note" from the Program to Evaluate and Enhance Attention Regulation and Learning (PEARL) Clinic of Seattle Children's Hospital, documenting his evaluation of the Student. D4. The Student had been referred to Dr. Stein by his pediatrician, Dr. Belarmino, and the evaluation had been arranged by the Parents. *See paragraph 4, above.* According to Dr. Stein's note, the purpose of the evaluation was "to assess for attentional difficulties, learning disabilities, and to further understand academic and cognitive strengths and weaknesses." D4, p. 1. The Student was tested on a day on which he did not receive his Tenex medication.⁷ D4, p. 3.

23. Dr. Stein reviewed Ms. Hemp's⁸ "teacher report questionnaire," some of the testing done by the District as part of the October 2016 reevaluation, and the Student's medical/developmental history. He noted reports from Ms. Hemp that the Student lacked age-appropriate communication skills, and from the Mother that the Student was withdrawn at school and was uncomfortable interacting with same-age peers. D4, p. 1. Dr. Stein and/or his assistants administered the Multidimensional Anxiety Scale for Children (MASC-2), the Children's Depression Inventory (CDI-2), the Adaptive Behavior Assessment System (ABAS-3), the Behavior Rating Inventory of Executive Functions (BRIEF), the Wechsler Intelligence Scale for Children-Fifth Edition (WISC-V), the Wechsler Individual Achievement Test-Third Edition (WIAT-III), and the Beery-Buktenica Development Test of Visual-Motor Integration (VMI).⁹ D4, pp. 3-4.

24. The Student was noted to yawn and rub his eyes frequently during the testing, though he denied being tired. He became fidgety over time. The assessor noted pouting, noncompliance, and resistance to completing the reading and writing tasks. D4, p. 3.

25. The WISC-V test of cognitive functioning determined that the Student has a full scale IQ of 84, which is in the low average range of cognitive ability. Dr. Stein's report notes, "However, due

⁷ No evidence was presented at the hearing as to the purpose, side effects, or therapeutic effects of Tenex.

⁸ Ms. Hemp was the Student's special education classroom teacher.

⁹ The VMI's standardization limits advise against administering the assessment more frequently than once per year. Tr. 124 (Rogers).

to significant variability in index scores, the full scale IQ is not an adequate index of his intellectual potential." D4, p. 4. His verbal comprehension and working memory were determined to be "very low." *Id.* His performance on the VMI was below average, as was his math fluency. D4, p. 5. His executive functioning showed several areas of clinically significant deficit. D4, pp 5-6. The MASC-2 showed varied degrees of anxiety, and the ABAS-3 showed below average adaptive functioning. D4, p. 7.

26. Dr. Stein concluded that the Student met the criteria for attention deficit hyperactivity disorder, combined type, and also met the criteria for a "learning disorder, with impairment in expressive ability." D4, p. 8. Dr. Stein also diagnosed the Student as having a developmental coordination disorder (fine motor) and anxiety disorder (by history). *Id.*

27. Under his Summary and Recommendations, Dr. Stein noted, "Student also meets criteria for a Language disorder with impairment in expressive ability, and despite at least average non verbal intellectual ability, is functioning 1-2 grade levels below his current placement. He has a reduced vocabulary, is limited in his ability to generate proper sentences in terms of rules of grammar, and has severe impairments in discourse. His nonverbal communication is adequate." D4, p. 8.

28. In his Prognostic Statement, Dr. Stein noted, "Prognosis is good for symptoms of inattention and hyperactivity, but in the absence of more intensive special education efforts targeting his verbal deficits and low achievement, he is at risk for continued academic underachievement, behavior problems, and demoralization." *Id.*

29. Dr. Stein recommended that the Student's Individualized Education Program (IEP) be revised to address his "verbal learning disorder." He also suggested nine specific strategies to improve focus and provide alternative ways to respond in the classroom, including a visible daily report card, seating in the front of the class, and frequent breaks. D4, p. 9.

The March 14, 2017 Reevaluation

30. The District reevaluated the Student in March of 2017 in order to review and incorporate Dr. Stein's report. Tr. 69 (Wells). Specifically, existing data was reviewed to determine, among other things, the Student's present levels of performance and educational needs, and if any additions or modifications to the special education and related services were needed to enable the Student to meet the measurable annual goals set out in his IEP. D5, p.1.

31. The testing performed by Dr. Stein and the test results were integrated into the March 14, 2017 reevaluation. *See D5, pp. 9-12.*

32. The Prior Written Notice provided to the Parents pertaining to the March 2017 reevaluation states that the evaluation team reviewed areas of service and considered potential changes to the Student's eligibility category and areas of service. D5, p. 20. A change in eligibility category was rejected because the previously noted adverse impact of ADHD continued to be present. Additional areas of service were considered, but the team determined that Dr. Stein's report did not provide data that would indicate a need for additional service areas. *Id.* The team also determined that no new testing was necessary. D5, p. 23.

33. All evaluation team members, including the Mother, signed the March 2017 Evaluation Summary and no one indicated a dissenting opinion. D5, p. 5.

34. The March 2017 reevaluation's "Notification/Consent" document notified the Parents that no additional data was needed to determine whether the Student continued to be eligible for special education services or to determine the Student's educational needs. D5, p. 23. That document clearly states, "No new testing is necessary." The reasons for that determination was, "The team reviewed areas of service and recommendation and considered potential changes to qualification category and areas of service... A change in qualification category was rejected as Student continues to display adverse impact due to ADHD." D5, p. 20. The team recommended only that the data contained in the PEARL report be incorporated.

35. Ms. Wells testified at the hearing about whether the District considered assessing the Student for a Specific Learning Disability (SLD). Ms. Wells defined an SLD as the inability to learn in one of seven identified areas that is not explained by lack of instruction, health impairment, or other factors that would prevent a student from progressing in those areas. Tr. 55 (Wells). She acknowledged that children with a health impairment can also have an SLD. Tr. 66 (Wells).

36. The student was not assessed by the District for an SLD because of his ADHD, which the District considered to be a health impairment and an "exclusionary factor." Tr. 66 (Wells). Moreover, in Ms. Wells' opinion, SLD was not identified as an area of concern by Dr. Stein's report or anything else. Tr. 65 (Wells). Ms. Wells had concerns about the Student's potential underperformance and engagement on Dr. Stein's testing, as well as the impact of behavior on the Student's cognitive and academic assessments.

37. The District uses the "discrepancy model" in order to determine whether a student has an SLD. The discrepancy model is a formula that considers whether there is a gap between cognitive ability and academic performance. Tr. 55 (Wells).

38. The "Identification of Students with Specific Learning Disabilities – State of Washington Severe Discrepancy Table WAC 392-172A-03045-03080," dated December 2014, is published by the Washington State Superintendent of Public Instruction. Appendix A is the discrepancy table. P7, p. 14. For a student with an IQ of 84, the criterion score that indicates a severe discrepancy is 72 or below. The WISC-V, the WIAT-III, and the KTEA-III were all administered to the Student, the first two by Dr. Stein and the latter by Ms. Wells. These tests are appropriate tests for use with the discrepancy table. P7, p. 12-13.

39. Very little evidence was presented at the hearing as to the Student's relevant criterion scores and whether he would be deemed to have an SLD based on the discrepancy model. When asked whether the Student's scores on the KTEA-III, which she administered, would indicate an SLD using the discrepancy model, Ms. Wells was not able to definitively respond. She stated, "I cannot answer whether or not Student would meet criteria [for an SLD] based on those scores given the factors." Tr. 64 (Wells). The "factors" include "behavior, engagement, the same things that Dr. Stein identified as impacting both cognitive and academic performance." *Id.*

40. When asked to compare the Student's criterion scores to the discrepancy table, Ms. Wells stated, "Based on the scores, looking at the table, there's a discrepancy. For the Student, we would have to go through all of the requirements, including ruling out other factors, such as health

impairment. ...We couldn't determine criterion knowing that there was an exclusionary factor of health impairment." Tr. 66 (Wells). She went on to state that consideration of an SLD in October of 2016 would not have been appropriate because "we couldn't get good valid scores." *Id.* When asked about the scores obtained from Dr. Stein, she indicated that there was concern about underperformance and engagement. *Id.*

41. When asked whether, if the Student had been identified as having an SLD, there would have been any different areas of SDI recommended for him, Ms. Wells opined that there would have been no different recommendations. Tr. 78 (Wells).

42. Ms. Ross, the District SLP, was asked whether she should have evaluated the Student's language based on the concerns identified in the PEARL report. She stated that, when she saw the PEARL report, "I had had multiple opportunities of working with Student. Student easily engaged. We had phenomenal conversations, narrative information, because I would use what language he was using, even if we talked about Halo¹⁰, which he thoroughly enjoyed and could talk a lot about." Tr. 101 (Ross). "I had had so many interactions with Student where he was so appropriate with me, I kind of went, 'What?' And I don't know if maybe it's because he wasn't... on that medication, Tenex, I don't know..." Tr. 102 (Ross). She went on to state, "The wonderfully engaged, creative student I worked with was verbose, loved telling stories [sic]. I had absolutely no concerns with his language skill set." *Id.*

43. Ms. Ross had worked one-on-one with the Student since November of 2016. Tr. 94 (Ross). Their sessions were "pull out," meaning that she would pick him up at his classroom and take him to her speech-language room for use of specialized tools. Tr. 95 (Ross). He was doing well and progressing toward his objectives and, in Ms. Ross' opinion, there were no "red flags." She opined that her previous testing and results remained an accurate reflection of the Student's needs. Tr. 94 (Ross).

44. The Mother sought the assessment by Dr. Stein because, even though the Student's main concern was ADHD, she felt that "something else must be going on because he made no progress." Tr. 147 (Mother). In her opinion, issues that were identified by Dr. Stein were not addressed in the District's March 2017 reevaluation. Tr. 148 (Mother).

June 2017 Through the Present

45. The Student's IEP Team met at the request of the Mother on June 12, 2017. The purpose of the meeting was to "review evaluation data from 2016-17 and provide additional graphs of academic data." D6, p. 1. According to the Prior Written Notice regarding the meeting, "The circumstances in which a re-evaluation would be necessary were discussed and members were asked if there were additional concerns about the qualification category, areas of service, additional information available from outside providers or any other changes or concerns." *Id.* The team proposed requesting additional records from Seattle Children's Hospital and other agencies where the Student received therapies, but that option was rejected by the Mother who indicated that she would obtain the records herself. Consequently, no action was taken by the team. *Id.* The

¹⁰ Halo is a video game.

Prior Written Notice gives no indication that additional cognitive testing had been requested by the Mother.

46. The Student's IEP team met again on June 14, 2017 to address "parent concerns." P2, pp. 31-32. At that meeting, the Parent requested a "reevaluation to test cognitive." *Id.* That request was not resolved at the meeting and the District agreed to address the request for cognitive testing at a future meeting, as coordinated with the Parents. *Id.* No evidence was presented as to whether a future meeting occurred, or its outcome.

47. The Mother testified that she requested cognitive testing of the Student on five different occasions: prior to the October 17, 2016 reevaluation meeting, at the October 17, 2016 meeting, at the March 14, 2017 meeting, and two additional times after the March 2017 reevaluation. Tr. 149-151 (Mother). This testimony is not supported by the testimony of other witnesses or by the exhibits. The only documented evidence that the Mother requested cognitive testing is a June 14, 2017 Prior Written Notice of an IEP Team meeting to address parental concerns, one of which was a request for cognitive testing. P2, pp. 31-32.

48. The undersigned finds that the only request by the Parents for cognitive testing of the student occurred on or about June 14, 2017, three months after the March 2017 reevaluation was completed.

49. A lengthy School Neuropsychological Evaluation was performed on the Student at the Parent's request by Dr. Leihua Edstrom¹¹ in April and May of 2018. P10. She issued a report on July 9, 2018. *Id.*

50. Dr. Edstrom's report is of marginal relevance to the matters at issue here because her evaluation of the Student occurred over a year after the District's most recent reevaluation. She testified at the hearing, however, in her capacity as an expert in school psychology. Dr. Edstrom opined that it is "very important to understand completely and in a very comprehensive way what the child's neuropsychological capacities are in order to understand how the child learns and how best to design an appropriate educational program." Tr. 183 (Edstrom). She opined that ADHD and SLDs often occur together, and if weaknesses associated with SLDs are not addressed in educational programming, the program will be insufficient to meet the child's needs. Tr. 183-184 (Edstrom). In her opinion, the October 2016 reevaluation was inappropriate because there was insufficient information upon which to design a program matched to the Student's individual needs, due to the lack of neurocognitive testing. Tr. 189 (Edstrom).

51. According to Dr. Edstrom, "In cases of children who have had a long history of difficulties in school achievement, in addition to a history of anxiety, it is important to have a comprehensive understanding of the child's neuropsychological functioning in order to match, to provide an educational program that's also comprehensive and appropriately matched to the child's

¹¹ Dr. Edstrom holds a bachelor of science degree in psychology from the University of Washington (UW), a master's degree in education with a specialization in school psychology from the UW, and a doctorate in educational psychology with a specialization in school psychology from the UW. She attended a neuropsychology post-doctorate program and is a Diplomate in school neuropsychology.

neurocognitive profile.” Tr. 184 (Edstrom). “Behavioral issues might be explained by someone’s challenges in learning and the frustration that results because the child is not able to perform what is being asked of him or her.” Tr. 186-87 (Edstrom).

52. Dr. Edstrom diagnosed the Student as having SLDs in reading, written expression, and mathematics. P10, p. 41; Tr. 180 (Edstrom). However, Dr. Edstrom concluded, based on her own evaluation, that the Student was better characterized as having a health impairment rather than an SLD. Tr. 208 (Edstrom).

53. Dr. Edstrom did not offer an opinion as to the appropriateness of the District’s March 2017 evaluation.

54. According to the Complaint filed by the District in this matter, the Parents requested an Independent Educational Evaluation (IEE) at public expense on November 13, 2017, based upon their disagreement with the District’s October 17, 2016 reevaluation. The District denied the request for an IEE based upon the appropriateness of the District’s March 14, 2017 reevaluation, and, alternatively, based upon the appropriateness of the District’s October 17, 2016 reevaluation. The Parents’ Response to the Complaint denies only that the March 14, 2017 reevaluation of the Student was appropriate. In their post-hearing brief, however, the Parents contend that neither reevaluation was appropriate, and they request reimbursement for the evaluations conducted by both Dr. Stein and Dr. Edstrom.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

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

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

The IDEA

3. The IDEA and its implementing regulations provide federal 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).

4. A "free appropriate public education" consists of both the procedural and substantive requirements of the IDEA. The *Rowley* court articulated the following standard for determining the appropriateness of special education services:

[A] "free appropriate public education" consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" [FAPE] as defined by the Act.

Id. at 188-189.

5. A district is not required to provide a "potential-maximizing education" in order to provide FAPE, but only a "basic floor of opportunity" that provides "some educational benefit" to the Student. *Id.* at 200-01.

Independent Educational Evaluations (IEE's)

6. Parents have a right to obtain an IEE if they disagree with a school district's evaluation of their child, under certain circumstances. WAC 392-172A-05005(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, at district expense. WAC 392-172A-05005(c)(i); 34 CFR 300.502(b). If a parent requests an IEE, a district must either ensure that an IEE is provided at public expense without unnecessary delay or initiate a due process hearing within 15 calendar days to show that its evaluation is appropriate. WAC 392-172A-05005(c).

Evaluations and Reevaluations

7. A reevaluation must be conducted at least every three years unless the parent and the district agree that a reevaluation is unnecessary. WAC 392-172A-03015(2)(b); 34 CFR §300.303(b)(2). Reevaluations must be completed within 35 school days after the date that written consent for an evaluation has been provided to the district by the parent. WAC 392-172A-03015(3).

8. 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.

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

Review of existing data for evaluations and reevaluations.

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

- (1) Review existing evaluation data on the student, including:
 - (a) Evaluations and information provided by the parents of the student;
 - (b) Current classroom-based, local, or state assessments, and classroom-based observations; and
 - (c) Observations by teachers and related services providers.
- (2)(a) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:
 - (i) Whether the student is eligible for special education services, and what special education and related services the student needs; or
 - (ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum; and
- (b) The present levels of academic achievement and related developmental needs of the student.
- (3) The group described in this section may conduct its review without a meeting.
- (4) The school district must administer such assessments and other evaluation measures as may be needed to produce the data identified in subsection (1) of this section.
- (5)(a) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs, the school district must notify the student's parents of:
 - (i) That determination and the reasons for the determination; and
 - (ii) The right of the parents to request an assessment to determine whether the student continues to be a student eligible for special education, and to determine the student's educational needs.
- (b) The school district is not required to conduct the assessment described in this subsection (5) unless requested to do so by the student's parents

See also 34 CFR 300.305.

10. 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.

The October 17, 2016 Reevaluation and the PEARL Evaluation

11. The Parents' Response to the District's Complaint denies only the appropriateness of the March 14, 2017 reevaluation, although the Complaint states that the Parents requested an IEE based on their disagreement with the October 17, 2016 reevaluation. The District denied the Parents' request for an IEE based on the appropriateness of the March 2017 reevaluation and, alternatively, the appropriateness of the October 2016 reevaluation. The law is clear that parental rights to request an IEE at public expense do not vest until a school district has completed an evaluation of a student. *See, e.g., D.Z. v. Bethlehem Area Sch. Dist.*, 54 IDELR 323 (Pa. Commw. Ct. 07/27/10); *Hudson Pub. Schs.*, 109 LRP 42523 (SEA MA 2009). In the present case, the Student had been referred to Dr. Stein by Dr. Belarmino, who had assessed the student prior to the commencement of the District's October 2016 reevaluation, and the Parents had arranged for the evaluation by Dr. Stein before the October 17, 2016 reevaluation was completed. The fact that the evaluation by Dr. Stein had already been scheduled is noted in the body of the October 2016 reevaluation itself, and the evaluation by Dr. Stein was set to begin on October 28, 2016, less than two weeks after the completion of the District's October 2016 reevaluation. It is clear from this timeline that the evaluation by Dr. Stein was not requested by the Parents in response to the District's reevaluation.

12. WAC 392-172A-05005(1)(a) and (2)(a) clearly provides that *parents have the right to obtain an IEE at public expense if the parent disagrees with an evaluation conducted or obtained by the school district*, subject to certain conditions (emphasis added). In the present case, the Parents

had nothing with which to disagree at the time they requested and arranged their own evaluation of the Student by Dr. Stein. Consequently, they are not entitled to reimbursement from the District for that IEE.

13. It is less clear whether parents may disagree with only the last evaluation completed at the time the request for an IEE at public expense is made, or whether they may disagree with any and/or all evaluations completed over the two years preceding the request.¹² No statute or regulation could be found that directly addresses this issue. However, the Washington State Office of Administrative Hearings has addressed the issue in a prior ruling and has determined that parents may disagree only with the Student's most recent evaluation as of the time they request an IEE at public expense.¹³ This interpretation of the regulations encourages the prompt exercise of a parent's right to dispute the appropriateness of an evaluation. This benefits students to the extent it may reduce the period of time they are receiving special education services that are not appropriate to address their disabilities.

14. In the present case, neither the District nor the Parents have argued that the March 14, 2017 reevaluation was merely a review of existing data, or some process other than a reevaluation. The Parents affirmatively assert in their post-trial brief that the March 2017 review constituted a reevaluation. (Parent's Closing Statement, p. 27.) Therefore, the March 14, 2017 reevaluation is the Student's most recent reevaluation.

15. For these reasons, the October 17, 2016 reevaluation is not properly at issue in this matter and the parents may not request an IEE based on their disagreement with that reevaluation.¹⁴

The March 14, 2017 Reevaluation

16. Whether the March 2017 reevaluation was appropriate is the question properly at issue in this proceeding.

¹² The two-year statute of limitations in WAC 392-172A-05080 effectively bars parents from requesting an IEE at public expense on the basis that they disagree with an evaluation completed more than two years prior to the request, absent evidence establishing a specific exception.

¹³ *Seattle School Dist.*, Cause No. 2010-SE-0105: Order Granting Motion to Amend Complaint (SEA WA 2011). A copy of this order is available from the Office of Superintendent of Public Instruction, Administrative Resource Services, at (360) 725-6130.

¹⁴ The Parents contend that it was a procedural violation when the District failed to include input from a general education teacher in the October 2016 reevaluation. That contention need not be reached since the appropriateness of the October 2016 reevaluation is not at issue. However, were the issue to be reached, the undersigned would conclude that the lack of input from a general education teacher was not a procedural violation and does not render the October 2016 reevaluation inappropriate. The Student was in a self-contained special education classroom during the 2016-17 school year, and placing him in a general education classroom was not considered as an option. Input was received from his special education classroom teacher, Ms. Hemp, and she was a member of the reevaluation team.

17. The District provided the Parents with prior written notice of the March 14, 2017 reevaluation that described the reevaluation. The Mother signed the reevaluation notification/consent on March 14, 2017.

18. 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). The March 2017 reevaluation was conducted by a group of qualified professionals. The education, training, and experience of the individuals who participated in the reevaluation provided the qualifications necessary to conduct the reevaluation. The District has offered more than sufficient evidence to establish those qualifications and the Parents have not raised any challenge to that evidence.

19. The District has demonstrated that it used a variety of assessment tools and strategies to gather of relevant information about the Student. A multitude of standardized assessments were administered to the Student by a variety of professionals. Information was gathered from the Parents and the special education classroom teacher, and the Student was observed several times by Ms. Wells.

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

21. As set forth above, when conducting evaluations, districts must ensure that a child is assessed in "all areas related to the suspected disability." WAC 392-172A-03020(3)(e); 34 § CFR 300.304(c)(4).

22. The Parents argue that the District failed to assess the Student for one or more SLD's, and that the District knew or should have known that an SLD was an area of suspected disability. WAC 392-172A-03055 sets out the process by which the presence of an SLD should be determined:

WAC 392-172A-03055 Specific learning disability—Determination.

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

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

- (a) Oral expression.
- (b) Listening comprehension.
- (c) Written expression.
- (d) Basic reading skill.
- (e) Reading fluency skills.
- (f) Reading comprehension.

(g) Mathematics calculation.

(h) Mathematics problem solving.

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

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

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

(a) A visual, hearing, or motor disability;

(b) Intellectual disability;

(c) Emotional disturbance;

(d) Cultural factors;

(e) Environmental or economic disadvantage; or

(f) Limited English proficiency.

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

(a) Data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel; and

(b) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.

(5) The district or other public agency must promptly request parental consent to evaluate the student to determine if the student needs special education and related services, and must adhere to the time frames for an initial evaluation under WAC 392-172A-03005:

(a) If, prior to a referral, a student has not made adequate progress after an appropriate period of time when provided instruction, as described in subsection (4)(a) and (b) of this section; or

(b) Whenever a student is referred for an evaluation.

23. “[A] disability is ‘suspected,’ and therefore must be assessed by a school district, when the district has notice that the child has displayed symptoms of that disability.” *Timothy O. v. Paso Robles Unified Sch. Dist.*, 882 F.3d 1105, 1119 (9th Cir. 2016), *cert. denied*, 137 S. Ct. 1578, 197 L. Ed. 2d 704 (2017). “Informed suspicions” of a disability on the part of the student’s parents or an outside expert necessitate a full assessment in the area of the suspected disability. *Id.* at 1120. “[T]his requirement serves a critical purpose: it allows the child’s IEP Team to have a complete picture of the child’s functional, developmental, and academic needs, which in turn allows the team to design an individualized and appropriate educational plan tailored to the needs of the individual child.” *Id.* at 1119.

24. It is clear that the Student did not achieve adequately for his age or meet grade-level standards in several of the areas set forth in WAC 392-172A-03055(1): written expression, basic reading skills, reading fluency skills, and reading comprehension. The Student, a second grader, could not read a sentence at any level, and could not complete kindergarten-level written expression assessment tasks. He had constant trouble keeping up in class. Dr. Stein specifically assessed the student for learning disabilities, and diagnosed him with a learning disorder. Ms. Wells admitted that the Student’s test scores, when applied to the state discrepancy table, indicated a discrepancy. All of this constituted more than adequate cause for the District to suspect an SLD. *See N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202 (9th Cir. 2008) (school district failed to assess a student in all areas of suspected disability when it did not evaluate him for autism after an outside expert reported that the student exhibited behavior consistent with autism spectrum disorder); *K.I. v. Montgomery Pub. Sch.*, 805 F. Supp. 2d 1283 (M.D. Ala. 2011) (school district failed to assess in all areas of suspected disability when it failed to perform a cognitive or assistive technology evaluation of a student with severe physical disabilities and was therefore unable to assess her general intelligence, communicative status, or academic performance as required); *Highland Park Independent Sch. Dist.*, 57 IDELR 147 (SEA TX 2011) (school district failed to assess in all areas of suspected disability when it failed to evaluate for an emotional disturbance despite the student’s extreme withdrawal and failure to interact with others, and “significant information to suspect the presence of an emotional disturbance.”)

25. The fact that the District did not believe it had adequate data with which to assess the Student for an SLD does not excuse it from performing the assessment. Rather, the District should have attempted to use other assessment tools in order to obtain additional and reliable data with which to accurately assess for an SLD.

26. The District appears to assert that it did not have to assess for an SLD because it believed that another factor, other than an SLD, was the primary cause of any discrepancy. The rationale articulated by the District is not consistent with the requirements of WAC 392-172A-03055. The District was mistaken when it determined that ADHD was “an exclusionary factor” that prevented or excused it from assessing the Student for an SLD. WAC 392-172A-03055(3) provides that the evaluation team must determine that a discrepancy between achievement and intellectual ability is not primarily the result of “a visual, hearing, or motor disability,” among other things. It does not say that a “health impairment” is an “exclusionary factor” as asserted by the District. A child can have both ADHD and an SLD. The District would have had to rule out the factors listed in WAC 392-172A-03055(3) as a cause of any discrepancy it identified, but it would first have had to apply the discrepancy model to see if a discrepancy existed.

27. Moreover, the District's assertion that the Student's SDI would have been no different had he been diagnosed with an SLD is purely speculative. Such an assertion cannot be made without knowing the nature of the SLD and does not excuse the District from assessing for an SLD.

28. Because the District failed to assess the Student for a suspected SLD, the March 2017 reevaluation is not appropriate.

29. Although the additional bases asserted by the Parents as to why the March 2017 reevaluation is inappropriate need not be reached in light of the above conclusion, the undersigned has nonetheless carefully considered the other bases and will set forth conclusions of law as to some.

30. The Parents contend that the District should have assessed the Student for a language impairment beyond merely articulation. Dr. Stein identified the Student as having a "severe impairment in discourse" and a "learning disorder with impairment in expressive ability." The Student often exhibited confused or disorganized speech, as well as clinically significant deficits in his ability to express ideas in a way that others could easily understand. Ms. Ross, the District SLP, had ample opportunity to observe the Student's language skills, however, and she had "absolutely no concerns about his language skill set." Although Ms. Ross's opinion is entitled to significant weight, her testimony at the hearing was not persuasive. She did not address how the observations made by others about the Student's confused speech and deficits in expression could be reconciled with her own observations. She maintained merely that language was not identified as an issue, and did not explain why the disorganized and confused speech did not give rise to a suspected language disorder.¹⁵ When asked to reconcile her observations with those of Dr. Stein, she stated, "I don't know if maybe it's because he wasn't...on that medication, Tenex, I don't know...". The District should have attempted to find out. Here, as in *Timothy O.* and the cases cited therein, the District's "assertion of ignorance" is "plainly contradicted by the record." 822 F.3d at 1120. The District had adequate cause to suspect a language disorder and its failure to assess the Student in this area violated the IDEA's procedural requirements.

31. The Parents further contend that the District failed to appropriately assess the Student's handwriting ability and fine motor control. This argument is not supported by the evidence. Ms. Rogers, the District's OT, administered three different assessments to the Student, in addition to the Quick Brown Fox sentence assessment. His scores varied greatly, from above average to just below average. Notably, Dr. Stein administered only one assessment to the Student (the VMI) on which the Student performed in the below average range. This assessment had been administered by Ms. Rogers only a few month earlier. Ms. Rogers's expert opinion that the student did not need motor therapy in order to participate in and make progress in his academic program is entitled to great weight. On balance, the PEARL report does not refute her opinion. Therefore, the District's determination that the Student did not qualify for motor therapy was appropriate.

¹⁵ Ms. Ross determined that the Student qualified for special education services under the category of "communication." However, there is no such eligibility category. "Speech or language impairment" is the term used in WAC 392-172A-01035(1)(a) in the listing of eligibility categories.

32. The District has not established by a preponderance of the evidence that it fully complied with the evaluation procedures set forth in WAC 392-172A-03020 when it conducted the March 2017 reevaluation of the Student. The March 2017 reevaluation was not appropriate because it did not assess the student in all areas of suspected disability. The Parents are therefore entitled to an independent educational evaluation at public expense.

ORDER

The Parents are entitled to an independent educational evaluation at public expense. The District is ordered to reimburse the Parents for the IEE conducted by Dr. Edstrom in accordance with the District's criteria for evaluations, including allowable cost. The Parents are ordered to inform the District of the amount of reimbursement they seek. If that amount exceeds the District's criteria for its own evaluations, the parties are directed to bring the matter to the Office of Superintendent of Public Instruction to decide the appropriate amount of reimbursement.

Signed at Seattle, Washington on October 10, 2018.

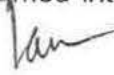


Jacqueline Becker
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed 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



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