

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

IN THE MATTER OF:

OSPI CAUSE NO. 2020-SE-0088

OAH DOCKET NO. 06-2020-OSPI-01074

LAKE STEVENS SCHOOL DISTRICT

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

A videoconference hearing in the above-entitled matter was held before Administrative Law Judge (“ALJ”) Jason Kinn on August 11 and 12, 2020. The Parent of the Student whose education is at issue¹ appeared with her attorney Shannon McMinimee, attorney at law. The Lake Stevens School District (“District”) was represented by Carlos Chavez, attorney at law. Miriam Tencate, District Representative, also attended.

ISSUE

Whether the District’s June 2019 evaluation of the Student was appropriate under the Individuals with Disabilities Education Act and, if not, whether the parents are entitled to an Independent Educational Evaluation (IEE) at the District’s expense.

PROCEDURAL HISTORY

The District filed a due process hearing request on June 10, 2020. A prehearing conference was held on July 1, 2020, and the second prehearing conference was held on July 16, 2020. Paragraph 32 of the Second Prehearing Order provides that the due date for the written decision is 45 days after the close of the record. The record closed on September 21, 2020 when the parties filed their closing briefs. Therefore, the due date for a written decision is November 5, 2020.

EVIDENCE RELIED UPON

Joint exhibits J-1 to J-10 were admitted.

The following witnesses testified under oath: the Parent; Megan Swett, Heartspring School (Heartspring)² school psychologist who was the Student’s evaluation case manager; Keri Joseph, Director of Special Services for the District; Isaac Williams, registered behavior

¹ The names of the Parents and the Student are omitted from this decision. The Student has two Parents. When the singular “Parent” is used in this order, I am referring to the Student’s mother, who was present throughout the hearing.

² As will be discussed below, Heartspring School was the Student’s residential placement starting April 30, 2019. Although Heartspring staff conducted the evaluation, it was a contractor of the District.

technician at Heartspring; Beth Schneider, speech language pathologist at Heartspring; Kay Benjamin, occupational therapist at Heartspring.

FINDINGS OF FACT

The Student and Heartspring School

1. The Student was 10 years old and in fourth grade at the time of the re-evaluation at issue in this administrative hearing.³ The Student was previously evaluated by the District in December 2017. He was found eligible for special education and related services. After the evaluation on December 13, 2017, the Student only returned to the District for one day for the rest of the 2017-18 school year.⁴

2. In September 2018, the Student began attending school in the District again.⁵ He attended school for about 75 or 80 days in the District.⁶

3. The District placed the Student at Heartspring School (Heartspring), a private residential school in Wichita, Kansas on about April 30, 2019.⁷ Heartspring was a contractor of the District.⁸

4. The students who attend Heartspring do not live with their parents; they live at a residential home at the institution.⁹ The Students are between the ages of 5 and 22.¹⁰ The students spend each weekday from 7:30 a.m. to 3:30 p.m. in school, and the rest of the time in and around their homes on campus.¹¹

Information exchanged at intake

5. Heartspring has an admission process. During that process, the school district placing a student provides information regarding the incoming student and the parents of the student are given the opportunity to provide information.¹²

6. The Parents provided information to Heartspring during that admission process, including that he had been diagnosed with a number of physical and mental health conditions.¹³

³ Exhibit J-9 at 1; Tr. at 150.

⁴ Tr. at 425. The record does not make clear why he did not attend a District school for the rest of 2017-18.

⁵ Tr. at 34, 425-26.

⁶ Tr. at 31.

⁷ Tr. at 18, 74.

⁸ Tr. at 155.

⁹ Tr. at 15, 276, 318.

¹⁰ Tr. at 53.

¹¹ Tr. at 324.

¹² Tr. at 279-80.

¹³ Tr. at 454.

7. Heartspring asked for the Student's providers' information on the admissions questionnaire.¹⁴ The Parents responded to this request, specifically naming the Student's neurologist and his psychologist.¹⁵

8. Heartspring has a policy of conducting an evaluation of every student within the first 60 days of enrollment. Parents are always informed about this at the time of intake meeting.¹⁶ The District also believed that a substantial change in school and home environment was a good reason to re-evaluate the Student.¹⁷

9. Heartspring's typical practice is to discuss the areas to be assessed for a new student in an intake meeting with the student's team, including parents, Heartspring staff and staff from the home school district of the student.¹⁸

10. Typically, an intake meeting at Heartspring happens before enrollment of the student. That means that, for the Student, that meeting would have taken place before April 30, 2019, the date of his enrollment.¹⁹ This meeting is not documented in the record. This means that the decision-making process regarding which areas would be re-evaluated is not documented. The record does not make clear how those areas were selected.²⁰

11. On about April 19, 2019, the Parent signed a release for the authorization of medical records, including medical records maintained by the law firm that had represented the Parents earlier. The records maintained by the law firm would have included every medical, mental health, SLP, OT or PT evaluation of the Student up to April 19, 2019. The Parents did not withhold consent for any of these kinds of records for the Student.²¹

Prior to the re-evaluation

12. On April 29, 2019, the District drafted a Prior Written Notice (PWN) to the Parents. The District notified the Parent that it was proposing to re-evaluate the Student and develop a new individualized education program (IEP) after the evaluation period at his new residential placement. The PWN states that "Notice of Procedural Safeguards for Special Education Students and Their Families has been provided to parents/guardians."²²

13. The District's Re-evaluation Notification / Consent is found at Exhibit J-5. It is undated and unsigned. It was directed to the Parents, and purported to notify them that the re-evaluation

¹⁴ Tr. at 280.

¹⁵ Tr. at 455-56.

¹⁶ Tr. at 54, 281-82, 289.

¹⁷ Tr. at 431-32 (testimony of Ms. Joseph).

¹⁸ Tr. at 231.

¹⁹ Tr. at 290, 415

²⁰ See Exhibit J-5 (unsigned, undated notification/consent regarding areas to be evaluated).

²¹ Tr. at 456-57

²² Exhibit J-3.

would address the following areas: (a) general education; (b) behavior; (c) behavior / social emotional; (d) communication; (e) gross motor; (f) review of existing data; (g) audiology; (h) adaptive; (i) cognitive; (j) academic; (k) fine motor; (l) vision/orientation and mobility; (m) student observation; (n) sensory processing; and (o) social skills.²³

14. Rachel Bournival, Heartspring Special Services Coordinator and the person responsible for the getting the signature of the parents, gave the Parents the wrong form to sign. She should have given them Exhibit J-5, the Notification/Consent, but she gave them Exhibit J-3, the PWN, to sign instead.²⁴ The Parent's signature on J-3 does not indicate her consent to a re-evaluation. There is no statement above the Parent's signature in J-3 that she is consenting to the re-evaluation. What is immediately above her signature on J-3 is the statement that she has received the notice of procedural safeguards, so it is likely she was signing to agree with that statement.²⁵ There is no evidence in the record that the Parents ever received Exhibit J-5, the Notification / Consent with all of the proposed areas of evaluation.²⁶ Exhibit J-3, which the Parent signed, indicates that "[t]he team will conduct necessary evaluations," but does not identify which evaluations will be necessary or how it is proposed to get the information needed, or what areas the District sought to evaluate.

15. On May 16, 2019, the District sent a Notice of Meeting to the Parents.²⁷ It set the meeting for June 26, 2019 at 9:30 a.m.²⁸ The May 16, 2019 notice of meeting was sent to the Parent's e-mail address. Keri Joseph, District Director of Special Services, was copied. That e-mail also attached procedural safeguards.²⁹

The Parent testified that she did not receive this e-mail or the Notice of Meeting.³⁰ I find that, although she may not have opened or read the e-mail in which the Notice of Meeting was contained, the District sent her the notice by e-mail – for the following reasons: (a) the fact that the notice was sent was documented; (b) the notice would have been sent in the normal course of business; (c) the Parents each appeared for the June 26, 2019 meeting in person, in Kansas, so clearly the notice of meeting was conveyed in an effective manner; (d) it's possible that the Parents did not see the e-mail or did not remember it. The Parent did not provide any testimony about her use of e-mail, how often she checked it, how frequently material was put in a junk or spam folder, or other aspects of her use of e-mail; (e) the Parent in her testimony demonstrated a poor memory for dates and for actions taken by the District.³¹

²³ Exhibit J-5 at 1.

²⁴ Tr. at 163-64.

²⁵ See Exhibit J-3.

²⁶ See Tr. at 163-67 (Ms. Joseph testifying that she has never seen a version of J-5 signed by the parents and does not know if they ever got it.)

²⁷ Exhibit J-4; exhibit J-7.

²⁸ Exhibit J-4.

²⁹ Tr. at 419, 422.

³⁰ Tr. at 20.

³¹ See Tr. at 34-37 (Parent unable to recall December 2017 evaluation of Student performed by the District, saying that she would remember if provided a document).

16. The Notice of Meeting indicated that the purpose of the meeting was to review evaluation reports and a functional behavioral assessment. The people invited were the Parents; Megan Swett, Heartspring school psychologist; Marie Robinson, Student's special education teacher at Heartspring; Valerie Burns, Heartspring occupational therapist; June Henkelman, Heartspring administrator/designee; Beth Schneider, Heartspring speech language pathologist; Chris Kamau, home coordinator at Heartspring; Alyssa Tucker, home coordinator assistant at Heartspring; Ashley Dysarz, BCBA at Heartspring; Isaac Williams, behavior specialist at Heartspring; Anne Ngaruiya, registered nurse at Heartspring; Travis Glover, adaptive physical education teacher at Heartspring; Keri Joseph, District representative, and; Miriam Tencate, District representative.³²

Re-evaluation

17. Megan Swett is the Division Director at Heartspring. She oversees the school and residential program. Ms. Swett was the evaluation case manager for the Student's re-evaluation. Ms. Swett earned a master's degree in education and a specialist degree in school psychology from Wichita State University.³³

18. Isaac Williams administered several assessments of the Student during the relevant time frame. This means that he handed out rating scale forms for several assessments of the Student and collected them.³⁴ Mr. Williams is a registered behavior technician.³⁵ He had not read the protocols or instructions for the assessments he administered since around the time of his hire in June 2018. He does not know for certain that the scales that he handed out were completed in a manner consistent with the instructions for the assessments.³⁶ For purposes of this matter, Mr. Williams merely served as a conduit through which the scales were distributed to the appropriate persons and collected from them.³⁷ The scales had instructions for the people filling them out that Mr. Williams trusted them to follow.³⁸ To the extent that the assessment Mr. Williams used had student rating scales, Mr. Williams did not administer those to the Student because the Student would have been functionally unable to complete them.³⁹

19. Mr. Williams's department's assistant, Karime, scored the assessment forms that Mr. Williams collected.⁴⁰ She used a computer program. Karime did not attend the June 26, 2019 meeting. Mr. Williams did not double-check her work to make sure that the data was being entered and scored correctly. However, presuming the data was entered correctly, there is little

³² Exhibit J-4 at 1; exhibit J-7 at 1; see Tr. at 84-88 (Ms. Swett identifying positions and acronyms associated with these individuals).

³³ Tr. at 52-53

³⁴ Tr. at 234-35.

³⁵ Tr. at 66.

³⁶ Tr. at 333.

³⁷ Tr. at 333-39; see also Tr. at 116 (Q. Well, he's identified as the examiner, correct? [Ms. Swett:] Yes. He's the one that hands out the assessment.").

³⁸ Tr. at 342-44.

³⁹ Tr. at 345.

⁴⁰ Mr. Williams did not know Karime's last name, and it is not in the record.

or no possibility of error in generating results – the computer programs generates the reports without additional human input.⁴¹

20. The Areas of Evaluation document produced as part of the re-evaluation is found between pages 7 and 25 of exhibit J-9. The re-evaluation is divided into several areas, which are bolded below.

21. In the area of **medical-physical**, The District reviewed information from December 2017 and earlier. The Evaluation Summary does not have any medical information about the Student from 2018 or 2019.⁴² The last date of a medical event cited in the evaluation form at J-9 is November 13, 2017, when he was seen at Seattle Children's Hospital for ongoing and severe aggression.⁴³

22. The Student's documented medical history through 2017 shows that the Student had severe problems with aggression and self-injury. As of 2017 he had been diagnosed with autism spectrum disorder with severe intellectual disability and language impairment; unspecified disruptive, impulse control, or conduct disorder, and; attention deficit hyperactivity disorder.⁴⁴

23. Heartspring did not seek out any additional medical information about the Student for the purpose of completing the re-evaluation.⁴⁵ The Parents signed releases, but the actual updated medical information from the Student's providers did not find its way into the Evaluation Summary and was not considered.⁴⁶

24. On the other hand, the Parents did not express concern in June 2019 (during the re-evaluation meeting) or October 2019 (when the Parent signed the final version of the re-evaluation document) that the re-evaluation was inaccurate.⁴⁷ The Parents did not specifically ask that the re-evaluation team include the Student's doctors.⁴⁸

25. In the area of **audiology**, audiologist Molly Lyon attempted to perform a middle ear check or Otoacoustic Emissions testing, but the Student would not tolerate the probe. He was unable to provide a conditioned response to pure tone stimuli. The audiologist concluded that the Student had hearing within normal limits for speech in at least one ear.⁴⁹

26. The Student was not evaluated in the area of **general education** because he was placed in full-time residential care.⁵⁰

⁴¹ Tr. at 334-39

⁴² Tr. at 310.

⁴³ Exhibit J-9 at 7.

⁴⁴ *Id.*

⁴⁵ Tr. at 311.

⁴⁶ Tr. at 244-45, 456-57; exhibit J-9.

⁴⁷ Tr. at 460-61.

⁴⁸ Tr. at 427.

⁴⁹ Exhibit J-9 at 8.

⁵⁰ Exhibit J-9 at 8.

27. In the area of **adaptive**, Ms. Swett decided that the Student's adaptive behavior should be measured using the Adaptive Behavior Assessment Scale-3 (ABAS-3). Heartspring uses the ABAS-3 for every student who needs adaptive behavior assessed because it is a comprehensive behavior assessment. Ms. Swett's professional opinion is that the ABAS-3 is a better assessment than other possible inventories, like the Vineland Adaptive Behavior Skills, Third Edition – or the Brigance Inventory of Early Development III.⁵¹

28. Mr. Williams administered the ABAS-3. Mr. Williams distributed a teacher rating scale to the Student's classroom teacher Marie Robinson and a parent rating scale to Christopher Kamau who, although not the Student's parent, was the supervisor in the group home in which the Student lived at Heartspring, and he observed the Student while he was working.⁵² Mr. Kamau did not live on campus; he worked there, four ten hour shifts per week.⁵³ Ms. Joseph of the District agrees that it was appropriate to use Mr. Kamau for the parent scale, because the person who had the best opportunity to observe how the Student was performing adaptively in his then-home living environment was Mr. Kamau.⁵⁴ However, the evaluation coordinator, Ms. Swett, testified that normally parents are asked to complete an ABAS-3 parent scale, and she does not know why that was not done in the Student's case. "Normally," Ms. Swett testified, "it's both the parent – biological parent, as well as the house manager that completes the rating scale."⁵⁵ At the time Mr. Kamau filled out the ABAS-3 scale, June 20, 2019, Mr. Kamau had known the Student for less than two months.⁵⁶

29. On the ABAS-3, there was not much difference between the result of the teacher rating scale filled out by Ms. Robinson and the parent rating scale filled out by Mr. Kamau. In the conceptual domain of the ABAS-3, the Student had a standard score of 56 on Ms. Robinson's scale and a standard score of 53 on Mr. Kamau's scale (both within the extremely low range). In the social domain, the Student had a standard score of 59 on Ms. Robinson's scale and a standard score of 51 on Mr. Kamau's (both within the extremely low range). On the practical domain, the Student has a standard score of 59 on Ms. Robinson's scale, and 50 on Mr. Kamau's scale (both within the extremely low range).⁵⁷

30. In the area(s) of **behavior / social / emotional**, Ms. Swett decided to administer two standardized tests to the Student – the Behavior Assessment System for Children-3rd (BASC-3) and the Autism Spectrum Rating Scale. However, she did not administer these tests and did not double-check the work of the assessors.⁵⁸ Mr. Williams was responsible for administering the BASC-3 and the Autism Spectrum Rating Scale. Ms. Robinson completed the teacher rating

⁵¹ Tr. at 114-15, 237-39.

⁵² Tr. at 322-24

⁵³ Tr. at 88, 117, 294.

⁵⁴ Tr. at 429

⁵⁵ Tr. at 116.

⁵⁶ See Exhibit J-9 at 9 (date of ABAS-3).

⁵⁷ Exhibit J-9 at 9-10.

⁵⁸ Tr. at 237-39.

scale and Mr. Kamau completed a rating scale, although it is not clear which one. The Parents were not asked to provide any information.⁵⁹ At the time Mr. Kamau filled out the the BASC-3 scale, June 20, 2019, he had known the Student for less than two months.⁶⁰

31. The Autism Spectrum Rating Scale is a nationally-standardized, norm-referenced instrument to effectively identify symptoms, behaviors and associated features of Autism Spectrum Disorder.⁶¹ Ms. Swett chose to use it to assess the severity of the behaviors associated with the Student's autism.⁶² The results of the scales filled out by Mr. Kamau and Ms. Robinson were slightly different from each other. Ms. Robinson's rating scale resulted in the "very elevated range," indicating that the Student has many behavioral characteristics similar to youth diagnosed with autism. Mr. Kamau's completed rating scale indicated that the Student scored in the elevated range. Overall, the Autism Rating Scale was highly consistent with the Student's diagnosis of autism spectrum disorder.⁶³

32. The record is unclear on whether Mr. Kamau filled out a teacher rating scale or a parent rating scale for this Autism Spectrum Rating Scale. Mr. Williams selected Mr. Kamau to fill out this rating scale because Mr. Kamau was the supervisor in the group home in which the Student lived.⁶⁴ Exhibit J-9, page 11 states that Mr. Kamau was given the teacher rating scale. Mr. Williams testified that he gave Mr. Kamau the parent rating scale.⁶⁵ At the time that Mr. Kamau filled out the scale, Mr. Kamau had known the Student for less than two months.⁶⁶

33. The evaluation coordinator, Ms. Swett, chose the BASC-3 because it looks at attention, overt behavior, covert behavior, learning problems, and other subareas.⁶⁷ Mr. Williams administered it. He gave the teacher or parent rating scales to Mr. Kamau, but not to either of the Parents. He gave the teacher rating scale to Ms. Robinson.⁶⁸

34. The results of the BASC-3 rating scales are found at pages 13 and 14 of exhibit J-9. The BASC-3 resulted in findings that the Student "often approaches tasks in a haphazard fashion, has difficulty planning, and is typically disorganized," that he is a picky eater, and that he loses control when he is angry, among other findings.⁶⁹

35. In the area of **cognitive**, Ms. Swett decided to use the Stanford-Binet Intelligence Scales, Fifth Edition (SB-5) and the Comprehensive Test of Nonverbal Intelligence (CTONI-2).

⁵⁹ Tr. at 324.

⁶⁰ Exhibit J-9 at 15.

⁶¹ Exhibit J-9 at 11-12.

⁶² Tr. at 132.

⁶³ Exhibit J-9 at 11-12.

⁶⁴ Exhibit J-9 at 11; Tr. at 131-32, 322-24

⁶⁵ Tr. at 322-23.

⁶⁶ See Exhibit J-9 at 11 (date of Autism Rating Scale).

⁶⁷ Tr. at 118-19.

⁶⁸ Exhibit J-9 at 13-15; Tr. at 118-19. Exhibit J-9 states that Mr. Kamau received the teacher rating scale. Ms. Swett testified that was probably an error in the document.

⁶⁹ Exhibit J-9 at 15.

These assessments relate to the Student's cognitive abilities. Ms. Swett conducted those assessments herself. She chose the SB-5 because it uses manipulatives and allows the person being assessed to use their hands.⁷⁰ She attempted the SB-5 on May 24, 2019 and the CTONI-2 on June 24 and 25, 2019, both in the special education classroom.⁷¹ On the SB-5, the Student was generally not able to answer in the manner required to earn credit. On the CTONI-2, the Student struggled with the "point to" format of the test.⁷²

36. Both the SB-5 and the CTONI-2 resulted in full scale IQ scores for the Student.⁷³ But the results from these tests are questionable, as the attempted administration of the tests resulted in an oppositional response from the Student:

During the testing sessions [the Student] did display aberrant behavior including self-injurious behavior, perseveration, property destruction, and refusal to accept directives.⁷⁴

37. Ms. Robinson, a special education teacher at Heartspring, conducted the **academic** portion of the Student's assessment.⁷⁵ She determined that the Developmental Assessment for Individuals with Severe Disabilities – Third Edition (DASH-3) should be administered to the Student, and she administered it.⁷⁶ The DASH-3 is a functional academic assessment.⁷⁷ The raw data for the DASH-3 was reviewed by a team at Heartspring that did not include either of the Student's parents.⁷⁸ The results of the DASH-3 show, in reading, that the Student can recognize upper case alphabet letters and pictures. In math, he could not identify the ten digits or shapes.⁷⁹

38. In the area of **communication**, Heartspring speech language pathologist (SLP) Beth Schneider performed the evaluation. She administered the Expressive One-Word Picture Vocabulary Test 4th Edition (EOWPVT-4) and the Receptive One-Word Picture Vocabulary Test 4th Edition (ROWPVT-4).⁸⁰ Ms. Schneider earned a master's degree at Kansas State University in communication sciences and disorders and she did a clinical fellowship. She has the clinical competence certification. She has worked as an SLP at Heartspring for six years.⁸¹

⁷⁰ Tr. at 135-36.

⁷¹ Exhibit J-9 at 15-16; Tr. at 59, 239.

⁷² Exhibit J-9 at 16.

⁷³ Exhibit J-9 at 16.

⁷⁴ Exhibit J-9 at 16.

⁷⁵ Tr. at 272.

⁷⁶ Tr. at 232.

⁷⁷ Tr. at 272.

⁷⁸ Tr. at 233.

⁷⁹ Exhibit J-9 at 17.

⁸⁰ Exhibit J-9 at 17-19.

⁸¹ Tr. at 347-48, 352, 357.

39. The EOWPVT-4 measures a student's expressive communication skills. The ROWPVT-4 measures the ability to comprehend verbal communication.⁸² Ms. Schneider administered these to the Student in the Student's classroom, so there was some background noise. Ms. Schneider believes that the results of these tests should be interpreted with caution for that reason. The reason the EOWPVT-4 and the ROWPVT-4 were administered in the classroom was for his safety and so he would feel comfortable with the people around him.⁸³

40. Ms. Schneider also interviewed Mr. Kamau and Ms. Robinson about the Student's ability to communicate, and she observed the Student in the classroom herself. The Student makes only one-word utterances.⁸⁴

41. Ms. Schneider did not assess in the communication subareas of pragmatic communication, articulation skills, or executive functioning skills (as those relate to communication). She did not assess in the subarea of alternative and augmentative communication. There are instruments to measure these skills. It was Ms. Schneider's professional judgment to focus on expressive and receptive communication. Nobody had told her about any concerns with articulation or pragmatic skills, but she cannot say for certain that the Student does not need specially designed instruction in these areas.⁸⁵ Ms. Schneider only asked Heartspring staff about what the Student's communication deficits were. She did not communicate with the Parents or District employees to ask about his communication deficits. Only Heartspring staff were present at the evaluation planning meeting that Ms. Schneider attended.⁸⁶

42. Ms. Schneider did not evaluate the Student in the subarea of pragmatic language even though she was aware he had been diagnosed with a pragmatic language and skill disorder.⁸⁷

[Parent's attorney:] Did anyone ever make you aware that Student had been diagnosed with a pragmatic language and social skill disorder?

[Ms. Schneider:] So there were past documents, but at Heartspring, we kind of go with our personal—professional opinion and the evaluation we think needs to be done, as well as looking at those past reports.

...

⁸² Tr. at 352-53

⁸³ Tr. at 353-54.

⁸⁴ Tr. at 354-55.

⁸⁵ Tr. at 359-67.

⁸⁶ Tr. at 375-76.

⁸⁷ Tr. at 378-379.

[Parent's attorney:] It sounds like you were perhaps aware that – in past reports – concerns about Student's social and pragmatic language were raised. Is that correct?

[Ms. Schneider:] Yes.⁸⁸

43. As school psychologist Ms. Swett conceded, when a student has an autism diagnosis, generally a pragmatic communication assessment is warranted.⁸⁹ There is no evidence in the record showing that the District or Heartspring considered a pragmatic communication assessment for the Student. There is no evidence regarding why it was not included in the re-evaluation.

44. Ms. Schneider does not know if the Parents received any notice that Heartspring would only be evaluating in expressive and receptive language.⁹⁰

45. The Student was assessed in the area of **gross motor** by an adaptive physical education teacher at Heartspring, Travis Grover. Mr. Grover is not a physical therapist. It is not unusual at Heartspring for an adaptive P.E. teacher to conduct a functional gross motor assessment. There is no record of any standardized measure of gross motor abilities being administered to the Student.⁹¹

46. In the area of **fine motor**, the Heartspring assessor was occupational therapist (OT) Kay Benjamin. Ms. Benjamin has been working for Heartspring for about a year and a half. She has been continually employed as an OT for 40 years. She earned a bachelor of science in occupational therapy from the University of Kansas.⁹²

47. For the assessment, Ms. Benjamin observed the Student. In the classroom, she looked at his handwriting, how he manipulated small items, his scissor skills, and how he worked puzzles. She asked him to copy shapes, write his name and trace his name. She observed him brushing his teeth in the classroom. She observed other fine motor behaviors in the classroom also. Ms. Benjamin then had the Student go to a multisensory environment to see how he responded to different stimuli. Ms. Benjamin also observed the Student in the group home, where she observed his shower routine, the evening meal, dressing skills, toothbrushing, handwashing and toileting.⁹³

48. Ms. Benjamin administered the Beery-Buktenica Developmental Test of Visual-Motor Integration to the Student. She did not administer other standardized assessments to the

⁸⁸ Tr. at 378-79.

⁸⁹ Tr. at 78.

⁹⁰ Tr. at 380.

⁹¹ Tr. at 88, 241, 285, 411.

⁹² Tr. at 384.

⁹³ Tr. at 386-87, 391.

Student because, in her professional opinion, there were no standardized assessments that would help develop the Student's goals.⁹⁴ She considered administering the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT-2), an assessment which measures dexterity and balance. She did not administer the BOT-2 because it has specific instructions for the student taking it and is too complex.⁹⁵

49. The result of Ms. Benjamin's assessment in the area of fine motor was a recommendation of 20 minutes of direct OT weekly for the Student. Based on her assessment she was able to write appropriate functional goals for the Student.⁹⁶

50. Ms. Benjamin attended the meeting on June 26, 2019. She does not recall any concerns raised by the Parents or anybody else regarding her part of the evaluation.⁹⁷

51. The District did not assess the Student in the area of **visual / mobility**.⁹⁸

52. Mr. Williams also completed a **functional behavioral assessment (FBA)**. The purpose of the FBA was to target a student's behaviors that posed the greatest safety risk to themselves or others.⁹⁹

53. The FBA that Heartspring completed for the Student is found at Exhibit J-8. It is dated June 26, 2020 – the date of the re-evaluation meeting.¹⁰⁰ The FBA's sections include a list of the participants in the FBA (which was the same as that listed for the May 16, 2019 Notice of Meeting), the Student's strengths, the summary of data collection, and contributing factors.¹⁰¹ Then it identifies two target behaviors, including for each a description of the targeted behavior, prior interventions, a hypothesis, and recommendations for the IEP team. The first identified target behavior is physical aggression. The second identified target behavior is self-injurious behavior.¹⁰²

54. The data collected for the FBA included: (a) the Cipani EO School Behavioral Interview Form; (b) observation within the group home; and (c) observation within the school environment; and (d) information from the home coordinator and classroom teacher.¹⁰³

⁹⁴ Tr. at 388, 396.

⁹⁵ Tr. at 3987-98, 409

⁹⁶ Tr. at 389.

⁹⁷ Tr. at 411-12.

⁹⁸ Tr. at 401.

⁹⁹ Tr. at 326-28.

¹⁰⁰ Exhibit J-8

¹⁰¹ Exhibit J-8; see also Exhibit J-4 (May 16, 2019 Notice of Meeting).

¹⁰² Exhibit J-8.

¹⁰³ Exhibit J-8 at 1-2; Tr. at 179.

Student remained eligible under re-evaluation

55. The Student was eligible for special education and related services upon arrival at Heartspring based on his autism, as determined by the District's 2017 evaluation.¹⁰⁴ At the end of the re-evaluation at issue, the evaluation team continued to find him eligible for special education services based on the disability category of autism.¹⁰⁵ Autism is his most prevalent presenting condition.¹⁰⁶ He might also have been eligible under the category of multiple disabilities, but Heartspring did not consider changing his category to multiple disabilities because autism was his prevalent presenting condition.¹⁰⁷ At no point in June through October 2019 did the Parent object to the District or Heartspring about his eligibility category.¹⁰⁸

Evaluation results meeting at Heartspring on June 26, 2019

56. The Parents and the rest of the Student's re-evaluation team met on June 26, 2019 at Heartspring.¹⁰⁹ Each of the Parents was physically present at Heartspring, in Kansas, for the meeting.¹¹⁰ The Parents did not have legal counsel present.¹¹¹ Ms. Joseph of the District was present by phone.¹¹² Also present were members of the Student's re-evaluation team.¹¹³

57. During the June 26, 2019 meeting, each staff member who completed a portion of the evaluation discussed their evaluation results with the entire team, and discussed next step recommendations for his programming, and offered the Parents the opportunity to ask questions.¹¹⁴

58. Normal Heartspring practice would have been to have a copy of the re-evaluation report (in this case, the document found at exhibit J-9) ready for the participants to review at a meeting like that held on June 26, 2019.¹¹⁵ Ms. Swett testified that it was completed by June 26, 2019 in the Student's case.¹¹⁶ However, I find: (i) there was a written document that the team reviewed, containing the results of some assessments (this draft document is not in the record); (ii) that the written evaluation found at exhibit J-9 was not in its final form prior to the June 26, 2019 meeting, for the following reasons:

¹⁰⁴ Tr. at 271.

¹⁰⁵ Exhibit J-9 at 2.

¹⁰⁶ Tr. at 147.

¹⁰⁷ Tr. at 37, 112-13, 200.

¹⁰⁸ Tr. at 38, 61, 148-49.

¹⁰⁹ Tr. at 269.

¹¹⁰ Tr. at 453.

¹¹¹ Tr. at 462-63.

¹¹² Tr. at 58.

¹¹³ Exhibit J-7 at 1; Tr. at 84-88.

¹¹⁴ Tr. at 146.

¹¹⁵ Tr. at 269-70.

¹¹⁶ Tr. at 269.

- Ms. Swett was very uncertain about whether the Evaluation Summary was complete prior to the meeting.¹¹⁷
- Ms. Joseph's recollection is that, as of the meeting on June 26, 2019, the re-evaluation document reviewed by the team needed to be formatted appropriately.¹¹⁸
- The CTONI-2 assessment was attempted on June 24 and 25, 2019. The meeting took place on June 26, 2019.¹¹⁹ This makes it less likely that the results of the CTONI-2 would be included in anything the team reviewed during the June 26, 2019 meeting.¹²⁰ Ms. Joseph's recollection was that the cognitive assessments were not in the draft circulated on June 26, 2019.¹²¹
- The re-evaluation document was not signed on the date of the meeting. If it had been in its final form, it would have been easy to pass it around at the end of the meeting for signatures. That did not happen, making it more likely that the document in its final form did not exist.¹²²

59. At the June 26, 2019 meeting, the Student's team reviewed the FBA of the Student that was conducted by Mr. Williams.¹²³ The Parents expressed concern about the results of the functional behavioral assessment.¹²⁴ The nature of the concerns are not clear from the record.¹²⁵

60. At the June 26, 2019 meeting, the Parents did not raise any questions or express concerns about the areas of evaluation. The Parents did not make any objections to the recommendations.¹²⁶ They expressed more concern about the FBA than any other part of the re-evaluation.¹²⁷

¹¹⁷ Tr. at 269-70.

¹¹⁸ Tr. at 432-33.

¹¹⁹ Tr. at 291.

¹²⁰ Tr. at 292, 306.

¹²¹ Tr. at 433.

¹²² See Exhibit J-9 at 5, 6 (signature pages).

¹²³ Tr. at 326.

¹²⁴ Tr. at 314.

¹²⁵ See Tr. at 63:

Q. [from District attorney] Do you recall whether there were any disagreements raised with this FBA at that meeting on June 26th?

A. [Ms. Swett] I don't remember any disagreements. I remember that there was a lot of communication around the functional behavioral assessment. But I don't remember a disagreement, no.

Q. What do you mean by there was a lot of discussion around –

A. I just know that we took a long time to discuss the results and things that we had seen as part of the functional behavioral assessment at Heartspring.

¹²⁶ Tr. at 149.

¹²⁷ Tr. at 63.

61. For a reason that the record does not make clear, the re-evaluation team members present did not sign the re-evaluation document (or any other document in the record) on June 26, 2019. The signatures on the re-evaluation document (page 5 of exhibit J-9) are dated June 26, 2019 (Keri Joseph, Kay Benjamin), September 9, 2019 (Beth Schneider, Chris Kamau), September 13, 2019 (Travis Grover, Isaac Williams), and October 3, 2019 (Parent).¹²⁸ Ms. Joseph, who was attending by phone, backdated her signature to reflect the date of the meeting, so the actual date that she signed it is not clear.¹²⁹ The fact that Ms. Joseph backdated her signature to the date of the meeting also makes it likely that Ms. Benjamin did the same. There is no explanation in the record regarding why it took so long to get signatures on the re-evaluation report.¹³⁰

62. Other members of the re-evaluation team did not sign the re-evaluation document at all. Those who did not sign include: Ms. Tencate of the District; Ms. Tucker, home coordinator assistant at Heartspring; Administrator/designee June Henkelman; Student's father; nurse Anna Ngaruiya; and the Student's special education teacher Marie Robinson.¹³¹ There is no other evidence in the record that these participants certified that they shared the opinion of the group regarding the re-evaluation.

63. The District provided a final version of the re-evaluation document to the Parents for their signature in October 2019.¹³² There is no evidence that there was any substantive change in the eligibility category and recommendations between June 26 and October 2019. The evaluations discussed in exhibit J-9 were all finished by June 2019.¹³³

June 26, 2019 Prior Notice

64. On June 26, 2019, the District prepared a PWN, found at exhibit J-6. The PWN notified the Parents that the Student continued to be eligible to receive special education services. It explained that Heartspring required a re-evaluation. It also explained that some areas that were in the evaluation consent forms were not actually evaluated:

There exists discrepant information in the evaluation consent form and the actual areas that were evaluated. General Education, Audiology and Vision/Orientation and Mobility were originally identified as areas to be addressed in the assessment in these areas. The intent of assessing in the areas of Vision and Audiology was to provide a vision and hearing screening. These screening results are located in the Medical-Physical findings section of the evaluation. Thus, formal Audiology and Vision/Orientation and Mobility assessments were

¹²⁸ Exhibit J-9 at 5-6.

¹²⁹ Tr. at 191-92.

¹³⁰ See Tr. at 94 (Ms. Swett testifying "I don't recall why I signed it on the 9th.")

¹³¹ Exhibit J-9 at 5.

¹³² Tr. at 432-33.

¹³³ See Tr. at 446-47 (Ms. Joseph of the District testifying that no substantive changes had been made).

not conducted. A formal General Education assessment was not conducted as [Student] is currently placed in a full time residential program at Heartspring in Kansas. No data is available about his participation in general ed as he does not currently participate in a general education setting at this time.¹³⁴

Re-evaluation Summary

65. The Re-evaluation Summary has six parts – (a) identifying information, including the Student's name and birth date; (b) review of existing data; (c) eligibility decision; (d) recommendations to the IEP team; (e) assurances that the evaluation complied with the procedures established in the Washington Administrative Code, and; (f) a signature page.¹³⁵ There is no evidence regarding whether the Evaluation Summary (as opposed to all of Exhibit J-9, which I found above was not available to the participants in its final form) was available to the team on June 26, 2019 or at a later date, when the re-evaluation was completed.¹³⁶

66. In the Review of Existing Data section of the Evaluation Summary, Heartspring states that it did not review any data from the period between December 13, 2017 and the time of the evaluation:

Background information was obtained during a review of special education records by Monique Thacker, School Psychologist, for evaluation report date 12/13/2017. No new information was provided during the current evaluation report provided by Heartspring.¹³⁷

The information covered in the Review of Existing Data was primarily from the years 2012, 2013, and 2014.¹³⁸ The only more recent information cited in this section was the following, brief section:

In February of 2017, home based ABA services through Center for Autism Related Disorders (CARD) was started in the [Parents'] Marysville residence. It was determined by [Student's] family and CARD that these services were not productive and too intrusive to the family routine. Subsequently, there [sic] were discontinued. [The Student] aged out of the program at R[ising] S[tar] A[cademy] and during the transition CARD provided behavior technician[s] to delivery services at RSA from around 5/29/17 to his last day of 6/09/2017. In July of 2017, [Student] began attending CARD's center based services.¹³⁹

¹³⁴ Exhibit J-6 at 1.

¹³⁵ Exhibit J-9 at 1-6.

¹³⁶ See discussion above regarding lack of clarity about what was reviewed at the June 26, 2019 meeting. Exhibit J-9, which includes the Evaluation Summary, was not in its final form. Whether the Evaluation Summary portion of it was or was not in its final form for the June 26, 2019 meeting is not clear.

¹³⁷ Exhibit J-9 at 1.

¹³⁸ Exhibit J-9 at 1-2.

¹³⁹ Exhibit J-9 at 2.

Thus, it appears that the re-evaluation team reviewed no information about the Student from the period starting December 13, 2017 and ending April 29, 2019.¹⁴⁰ Ms. Swett testified that she reviewed the Student's admission packet as part of the re-evaluation, but that seems unlikely since no information from December 13, 2017 to April 29, 2019 is referred to in any part of Exhibit J-9.¹⁴¹ If anybody from Heartspring did review the more recent information that the District sent Heartspring, it was not seriously considered as part of the Student's re-evaluation.¹⁴²

67. The District had provided updated information to Heartspring regarding the 2018-19 school year, including information about the Student's hospitalization(s) during that period. It provided his most recent evaluation (from December 2017), the assessment revision and his most current IEP. The District also provided Heartspring information about his behavior in the classroom up to the week prior to his entry into Heartspring. A person from Heartspring came to Washington state in April 2019 to review the Student's documentation and see if he was a good fit. He took notes but did not take any additional physical documents (beyond those included in the application materials) with him when he returned.¹⁴³

68. On page 7 of J-9, the Evaluation Summary provides that there is an "attached Seattle Children's Hospital psychiatry/psychology consultation note," but this note is not in fact attached to J-9.¹⁴⁴

October 3, 2019: Parent signs re-evaluation

69. The Parent signed the re-evaluation document, Exhibit J-9, on October 3, 2019. She reviewed it before she signed it. She did not make any objections to its contents, its recommendations, or anything else about it before signing it. She did not express any objections to Heartspring or to the District.¹⁴⁵

70. The Parent testified that she did not know that she could object to or express disagreement with the re-evaluation.¹⁴⁶ Her testimony is not credible because the re-evaluation page that she signed, page 5 of exhibit J-9, contains the following language:

Group Signatures (the date and signature of each professional member of the evaluation group below certifies that the evaluation report represents his/her

¹⁴⁰ *Id.*

¹⁴¹ See Tr. at 99; Tr. at 106 (Ms. Swett unable to answer whether the District provided Heartspring any information from the period after December 13, 2017).

¹⁴² See Exhibit J-9 (no information for period between December 2017 and April 2019).

¹⁴³ Tr. at 210-16.

¹⁴⁴ Tr. at 130, 247.

¹⁴⁵ Exhibit J-9 at 5.

¹⁴⁶ Tr. at 38-39.

conclusions. If the evaluation report does not reflect his/her conclusions, he/she must include a separate statement representing his/her conclusions.):¹⁴⁷

This language was not buried. It was the only substantive information on the page that she signed. She knew by virtue of reading this language that, when she signed it, she was certifying that its conclusions were her conclusions. She also knew that she had an opportunity to provide a separate statement representing her conclusions, but she did not do so.¹⁴⁸

71. The Parent did not request any further assessments of the Student before signing it. She did not know she could ask for further evaluations.¹⁴⁹

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 pursuant to these federal and state 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, in this case the District.¹⁵⁰

Applicable Law: IEEs and Evaluations

3. Washington Administrative Code sections 392-172A-3015 through -3040 apply to evaluations and re-evaluations.

4. Washington Administrative Code 392-172A-03015 provides when a re-evaluation must be conducted. In this case, the District (in coordination with its contractor, Heartspring) determined that the educational or related service needs warranted re-evaluation, so it was appropriate for the District to conduct a re-evaluation under WAC 392-172A-03015(1)(a).

¹⁴⁷ Exhibit J-9 at 5.

¹⁴⁸ Exhibit J-9 at 5; see Tr. at 38-40 (by stating that she did not know she could object, implying that she did not in fact object as page 5 of exhibit J-9 indicates that she was able to do).

¹⁴⁹ Tr. at 45.

¹⁵⁰ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

5. Under WAC 392-172A-03015(3)

Reevaluations shall be completed within:

- (a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent;
- (b) Thirty-five school days after the date the refusal of the parent was overridden through due process procedures or agreed to using mediation;
- (c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

In this case, neither Parent of the Student provided written consent for an evaluation. The District argues that exhibit J-3, which was signed by the Parent, is a written consent for an evaluation, but it is not. Exhibit J-3 is a Prior Written Notice proposing a change in the IEP and a reevaluation. There is no written consent to reevaluation in the record from the parents. There is no refusal to provide consent. There is also no documented time period other than 35 days.

Because there is no written consent to re-evaluation from either Parent, and the District has not presented evidence indicating that the exceptions in (b) or (c) of the rule apply, it is impossible to determine if the District complied with the requirement to complete the assessment within 35 school days of receiving a written consent for re-evaluation. There is no starting point from which to measure the 35 days.

6. Under WAC 392-172A-03020(1), “[t]he 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.” The District did not comply with this requirement. There is no evidence that the Parent ever received exhibit J-5, which describes the evaluation procedures the District proposed to conduct. The Parent received and signed exhibit J-3, which does not describe the areas to be evaluated or the evaluation procedures.

7. To be appropriate, a school district’s evaluation must be sufficiently comprehensive to identify all of the student’s special education and related service needs.¹⁵¹ When a school district conducts a special education evaluation, a “group of qualified professionals selected by the school district” must use a “variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent”¹⁵² The group cannot use “any single measure or assessment as the sole criterion” for determining eligibility or educational programming. The group must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical and developmental factors.”¹⁵³ “Trained and knowledgeable personnel” must administer the assessments and do so “in accordance with any instructions provided by the

¹⁵¹ WAC 392-172A-03020; see also 34 CFR §300.304.

¹⁵² *Id.*

¹⁵³ *Id.*

producer of the assessments.”¹⁵⁴ Students must be assessed “in all areas related to the suspected disability” and the evaluation must be “sufficiently comprehensive to identify all of the student’s special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.”¹⁵⁵

In the Student’s case, the District did not evaluate the Student in all areas related to the suspected disability. Heartspring, a contractor of the District, knew that the Student should be assessed for pragmatic speech in the area of communication, because it knew he had a pragmatic language and speech disorder. Ms. Schneider, the person responsible for evaluating the student for communication, disregarded this information and did not assess him in this area; nor did she provide a reason for *not* assessing him.

It is also questionable whether Heartspring even *knew* what all of the areas of suspected disability might be for the Student. There is no evidence that Heartspring considered any of the information the District provided it in his application materials, other than his December 2017 assessment. There is no evidence that Heartspring used the releases signed by the Parent to get updated medical information. In short, neither the prior written notice found at J-3 nor the re-evaluation itself contains any information about the Student from the period of December 13, 2017 to April 29, 2019, a period of over 500 days immediately before his enrollment at Heartspring. The reasons for why Heartspring chose to assess the Student in the areas that it did are not clear from the record. It appears that Heartspring was using old information from 2017 and earlier.

The District also did not meet its burden to show that trained and knowledgeable personnel administered assessments in accordance with any instructions provided by the producer of the assessments.¹⁵⁶ For the Autism Rating Scale, the BASC-3, and the ABAS-3, the “parent” rating scale was given to Mr. Kamau, who was not the Student’s parent and had known him for less than two months. Mr. Williams, who was responsible for administering these scales, could not have known whether giving the “parent” rating scale to somebody who was not the Student’s parent would affect the validity of those scales – because Mr. Williams had not read the instructions for these scales in the year prior to handing them out in the Student’s case. Ms. Swett agreed that these scales should have been given to the Parent in *addition* to Mr. Kamau. Further leading to doubt about these assessments’ validity is that, for the Autism Rating Scale and the BASC-3, the written documentation for those assessments shows that Mr. Kamau was given the *teacher* rating scale and that nobody was given the parent rating scale. That may be a typographical error – but it may not be. Even if it is only a typographical error, it suggests that these evaluations and their results were not recorded carefully.

By the admission of Ms. Schneider, the validity of the results of the EOWPVT-4 and the ROWPVT-4 are in question because those assessments were given in a classroom

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ See WAC 3920172A-03020(3)(a)(iv), (v).

environment for the Student's safety and comfort – an environment that may have distracted the Student from the assessment. Although the instructions for the EOWPVT-4 and ROWPVT-4 are not in the record, the implication of Ms. Schneider's admission is that the instructions for the EOWPVT-4 and the ROWPVT-4 indicate that these assessments should be given in a quiet environment, and that those instructions were not followed.

The failure of Mr. Williams to get the Parents to fill out the parent rating scales on the Autism Rating Scale, the BASC-3, and the ABAS-3 is part of an overall pattern of a failure of the District and Heartspring to gather information from the Parents, in violation of WAC 392-172A-3020(2)(a). The District did not get the Parent's knowing consent to the evaluation, providing her with a PWN to sign instead of the consent notification with the areas to be evaluated. Although the Parent's signature on the PWN indicates her understanding that a re-evaluation would take place, there is no evidence in the record that the Parent(s) knew what areas would be evaluated. The District and Heartspring did not use the releases for medical information that the Parent signed when the Student entered Heartspring, even though the Student had been hospitalized in the previous year. Heartspring did not use any parent input the Parent had provided to the District between December 13, 2017 and April 29, 2019, because the re-evaluation team did not consider *any* information about the Student from that time period. Then, for the June 26, 2019 meeting, for which the Parent travelled from Washington to Wichita, neither Heartspring nor the District had a finalized version of the areas of evaluation for the parent or the rest of the team to review. Instead, the document was still in a draft format. It was not finished until sometime in September 2019.

8. Under WAC 392-172A-03040(1), "Upon completion of the administration of assessments and other evaluation measures,...(b) the school district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parents." In this case, neither the District nor Heartspring provided a copy of the re-evaluation report to the parents until October 2019, over three months after the re-evaluation meeting. The District did not comply with this rule.

9. Under WAC 392-172A-03035(1), a re-evaluation report must include 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.¹⁵⁷

In this case, the re-evaluation report does not contain the date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusions. Members of the team who did not so certify include the Student's special education teacher at Heartspring; Heartspring's administrator/designee; and the Heartspring nurse.

¹⁵⁷ WAC 392-172A-03035; *see also* 34 CFR §300.304-.306.

10. If the parent of a student eligible for special education disagrees with a school district's re-evaluation, the parent has the right to obtain an IEE, which is an evaluation conducted by a qualified examiner not employed by the school district. If a parent requests an IEE at public expense, the district must provide the parent with certain information on obtaining IEEs, and must either initiate a due process hearing within 15 days to defend the appropriateness of its evaluation, or else ensure that a publicly-funded IEE is provided without unnecessary delay. If the district initiates a hearing, and the final decision is that the district's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense.¹⁵⁸

11. "The IDEA does not prescribe substantive goals for an evaluation, but provides only that it be 'reasonably calculated to enable the child to receive educational benefits.'"¹⁵⁹ Minor procedural defects in a district's reevaluation, where the validity of the evaluation overall is not impacted, does not warrant the award of an independent educational evaluation at public expense.¹⁶⁰ In this case, the validity of the evaluation overall was affected by the defects in the re-evaluation. These defects include:

- The District's failure to inform the Parents about the areas to be evaluated or to obtain their consent for the evaluation (including their consent for the areas to be evaluated);
- The District's failure, through its agent Heartspring, to consider any information about the Student from the period of December 13, 2017 through April 29, 2020, the more than 500 days immediately prior to the District's placement of the Student at Heartspring;
- The District's failure to evaluate the Student in all areas of suspected disability;
- The District's failure to ensure that all of the assessments were done by qualified personnel in accordance with the instructions to the assessments;
- The possible unreliability of the assessments done in the areas of communication and cognitive. The communication assessments were done with background noise present and the cognitive tests were given while the Student, through his behavior, was acting in opposition to the assessor.
- The District's failure to involve the Parents in "parent" rating scales, and failure to read the instructions to determine if that affected the validity of the scales;
- The District's failure to have the entire re-evaluation team sign the re-evaluation report certifying that they agreed with the conclusions of the re-evaluation until months after the June 26, 2019 meeting.

These are not minor procedural defects. Especially in combination with each other, these defects impacted the validity of the re-evaluation. Accordingly, the District's re-evaluation was not appropriate.

¹⁵⁸ WAC 392-172A-05005; see also 34 CFR §300.502.

¹⁵⁹ *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175, 1185 (W.D. Wash. 2002).

¹⁶⁰ See, *Ford v. Long Beach Unified Sch. Dist.*, 291 F.3d 1086, 1089 (9th Cir. 2002); *RZC v. Northshore Sch. Dist.*, 3 IDELR 139 (9th Cir. 2018); *W.G. v. Bd. Trustees of Target Range Sch. Dist.*, 960 F.2d 1479, 1484 (9th Cir. 1992); and *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1129 (2003).

Conclusion

12. The District has failed to show by a preponderance of the evidence that it met the requirements of WAC 392-172A-03020 and 03025 and that the June 2019 re-evaluation was appropriate. Under WAC 392-172A-05005(2)(b), “[a] parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.” In this case, the Parents are entitled to one independent educational evaluation at public expense.

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

ORDER

The Lake Stevens School District’s June 2019 re-evaluation of the Student was not appropriate. The Parents, therefore, are entitled to an independent educational evaluation at public expense.

Served on the date issued.



JASON KINN
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.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served this document on each of the parties listed below. I emailed via secure email or mailed a copy to the parties at their addresses of record using Consolidated Mail Services or U.S. Mail.

Parents

[REDACTED]

Miriam Tencate, Executive Director of Special Services
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Dated November 5, 2020 at Seattle, Washington.

lan

Representative
Office of Administrative Hearings
600 University Street, Suite 1500
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cc: Administrative Resource Services, OSPI