

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Shoreline School District

Docket No. 02-2024-OSPI-02151

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

Agency: Office of Superintendent of  
Public Instruction

Program: Special Education

Cause No. 2024-SE-0022

A due process hearing was held before Administrative Law Judge (ALJ) Pamela Meotti on May 29 and 30, 2024, via videoconference. The Parents of the Student whose education is at issue<sup>1</sup> appeared and were represented by Ryan Ford and Luke Hackenberg, attorneys at law. The Shoreline School District (District) was represented by Lynette Baisch and Kimberly Shely, attorneys at law. Also present for the District was Amy Vujovich, Co-Director of Early Learning.

**STATEMENT OF THE CASE**

**Procedural History**

On February 21, 2024, the District filed a Due Process Hearing Request (Complaint). The matter was assigned to ALJ Dana Diederich. It was subsequently reassigned to ALJ L’Nayim Shuman- Austin and then to ALJ Pamela Meotti. The Parents filed a response on March 4, 2024.

The due process hearing was set for March 13 and 14, 2024. By agreement of the parties, it was continued to May 29 and 30, 2024. ALJ Meotti issued prehearing orders on March 12, April 2, April 26, and May 2, 2024.

**Due Date for Written Decision**

The deadline for a written decision was extended at the Parents’ request to thirty (30) days after the record of the hearing closes. The record of the hearing closed on July 12, 2024, at 5:00 p.m., when the parties timely submitted post-hearing briefs. The due date for a written decision is August 11, 2024.

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<sup>1</sup> To ensure confidentiality, names of parents and students are not used. Individually, the Parents are referred to as Ms. Parent and Mr. Parent.

## EVIDENCE RELIED UPON

### **Exhibits Admitted:**

District's Exhibits: D1 - D18

Parents' Exhibits: P1, P6 – P7<sup>2</sup>

### **Witnesses Heard (in order of appearance):**

Haeli Higgins, District School Psychologist  
Lionel Enns, PhD, Clinical Psychologist  
Melonie Showlund, District Occupational Therapist  
Jamie Morray, District School Nurse  
Emily Shultz, District Speech Language Pathologist  
Ms. Parent  
Amy Vujovich, District Co-Director of Early Learning

## ISSUE

The sole issue for the due process hearing is whether the District's most recent evaluation of the Student was appropriate and, if not, whether the Parents are entitled to an independent educational evaluation (IEE) at public expense?

## FINDINGS OF FACT

In making these findings of fact, the logical consistency, persuasiveness, and plausibility of the evidence has been considered and weighed. To the extent a finding of fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted has been determined more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue.

### **Background**

1. In May 2022, the Shoreline School District (District) conducted an initial special education eligibility evaluation of the Student, who was then [REDACTED] (initial evaluation). P1p3. The Student was found eligible for special education services in the

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<sup>2</sup> Citations to the exhibits of record are by party (P for the Parent; D for the District) and page number. For example, a citation to P6p1, refers to page 1 of Parents' Exhibit 6. Citations to the transcript of record are to "T" followed by the page number. For example, a citation to T214, refers to page 214 of the transcript.

disability category of autism and qualified for specially designed instruction (SDI) in social-emotional skills. P1p25.

2. During the 2022-2023 school year, the Student attended a full day program at Edwin Pratt Early Learning Center (Edwin Pratt) in the District, which serves preschool students ages 3 to 5. T24. The Student received his SDI in the general education setting. D13p7.

3. On June 8 and 15, 2023, the Student's individualized education program (IEP) team met to discuss his annual IEP. D1pp1-2. The Parents raised concerns regarding the Student's toileting, safety, low frustration tolerance, empathy/emotions, and that he was easily upset. District staff observed the Student's capabilities to be comparable to typically developing three-year-olds but agreed to reevaluate the Student in the fall of 2023 to address the Parents' concerns. D1p1; D2p3.

4. The Parents placed the Student in a private preschool, The Horizon School (Horizon), for the 2023-2024 school year. D2p3.

#### **December 20, 2023 Reevaluation**

5. On October 12, 2023, District School Psychologist Haeli Higgins<sup>3</sup> sought the Parents' consent to reevaluate the Student in the areas of social-emotional, fine motor, daily living/adaptive, and medical-physical.<sup>4</sup> D2pp1-3.

6. By email on October 22, 2023, the Parents consented to a reevaluation.<sup>5</sup> D3p2. The Parents asked to add the area of communication, to which the District agreed. With this addition, the areas to be reevaluated included social-emotional, fine motor, daily living/adaptive, communication, and medical-physical, which were the areas covered by the Student's initial evaluation. D3p1; T28. The Parents did not ask to add any additional areas to the reevaluation. T28.

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<sup>3</sup> Ms. Higgins has a master's degree in educational psychology and an education specialist degree in school psychology. D15p1. She is a nationally certified school psychologist and has been employed by the District as a school psychologist at Edwin Pratt since 2015. D15p1. In her position at Edwin Pratt, Ms. Higgins conducts approximately 50 to 70 evaluations of preschool students each year. T24.

<sup>4</sup> Ms. Higgins gave the Parents the option to return the signed consent form or to provide consent via email. D2p1.

<sup>5</sup> The reevaluation report states that the Parents provided consent on October 27, 2023, but the source of that date is unclear and is given no weight. D13p8.

7. On November 6, 2023, Ms. Higgins provided the Parents with a list of the planned assessment tools and sources of information for each area of the reevaluation. D4p7. The Parents did not ask to add any additional assessments or areas of evaluation. T29. The Parents also declined an offer to meet to discuss the reevaluation. D4p3.

8. On December 20, 2023, the Student's reevaluation team met remotely to review the reevaluation. D13p39. Meeting participants included the Parents and their counsel; Ms. Higgins; Amy Vujovich, District Co-Director of Early Learning; Melonie Showlund, District occupational therapist;<sup>6</sup> Emily Shultz, District speech language pathologist;<sup>7</sup> and counsel for the District. D13p39.

9. During the meeting, team members discussed the reevaluation and a draft reevaluation report, which had been sent to the Parents on December 17, 2023. T36; D7p1.

### **Adaptive Behavior**

10. Ms. Higgins evaluated the Student in the area of adaptive behavior, which "refers to a child's ability to function independently in their environment at an age-expected level, which include real-life skills such as grooming, toileting, getting dressed, avoiding danger, feeding, cleaning, and following and participating in routines." D13p19.

11. Ms. Higgins reviewed the Student's initial evaluation and IEP records and considered his progress toward an IEP goal focused on self-care skills. D13pp20-21. As of June 2023, the Student had met this goal. He had established a clear toileting routine and independently used the bathroom and washed his hands several times each day. Teachers also provided some reminders to use the bathroom. Accidents were minimal during the school day. D13p21.

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<sup>6</sup> Ms. Showlund has a master's degree in occupational therapy and an educational staff associate (ESA) certificate for occupational therapy in Washington state. She has worked as an occupational therapist for the District at Edwin Pratt since 2007. D16; T178-79. Ms. Showlund conducts between 40 and 60 evaluations of preschool students each year. T179.

<sup>7</sup> Ms. Shultz has a master's degree in speech language pathology and has a Certificate of Clinical Competence in Speech-Language Pathology from the American Speech and Hearing Association. D17pp1-2. She has an ESA certificate for speech language pathology in Washington state. D17p2. Ms. Shultz has been a speech language pathologist for twenty-three years. She is employed by the District at Edwin Pratt and has worked with preschool students for most of her career. D17p1; T232. Ms. Shultz conducts approximately 50 evaluations of preschool students each year. T232.

12. Ms. Higgins also reviewed a report from a private occupational therapist who had evaluated the Student prior to starting services with him in August 2023 (private occupational therapy report). D13p20-21; D14pp22-28; T32. The report discussed that the Student was not receiving accurate cues within his body that he needed to go to the bathroom and depended on external cues to help him. The report noted that the Parents had tried strategies to help the Student remember to go to the bathroom but had not been successful in helping him gain independent awareness. D13pp20-21; D14pp27. Private occupational therapy goals included improving the Student's ability to "connect sensations in his body to appropriate recognition of when he needs to use the bathroom." D13pp21; D14p28.

13. Ms. Higgins also considered information from the Student's pediatrician dated August 8, 2023, which stated the Student was "working on using the toilet. He seems to be comfortable with those skills. He frequently still has accidents. It seems like he is distracted or missing the signals." D13p22; D14p19; T33. The pediatrician indicated challenges with reliable toileting were probably related to poor sensation. D14p20.

14. Ms. Higgins interviewed the Parents and Kelli Tellefson, the Student's general education teacher at Horizon. D13pp22-24; T139. Ms. Higgins also observed the Student for approximately 60 minutes in his general education private preschool setting at Horizon. D13p24; T52.

15. The Parents raised concerns about the Student's ability to follow routines, to transition, and to consistently follow safety-related rules. D13p23. However, Ms. Tellefson had no major concerns regarding the Student's adaptive skills or his ability to transition and follow routines in the school setting. D13p24. Similarly, Ms. Higgins observed that the Student "presented with many independent adaptive skills at school. He presented similarly to other children in his classroom and did not require additional instruction or support with the everyday routines and self-care activities during the observation." D13p24.

16. The Parents were also concerned that the Student continued to have toileting accidents on a regular basis that appeared to be atypical for his age. D13p22. Ms. Tellefson stated that some days the Student was able to tell her when he needed to go; other days he was less able to do so. Ms. Tellefson estimated the Student had one accident per week, but the number varied with the Student having no accidents on some days and multiple accidents on other days. D13p24. Aside from reminders to use the toilet to build awareness of when he needed to go, the Student did not require additional supports as compared to other students in the class. T103; D13p24.

17. On the day Ms. Higgins observed the Student, he did not use the toilet when the entire class was given the opportunity to do so. Approximately half of the students did not use the toilet at that time. T102. However, after the Student finished his snack, he walked into the bathroom on his own, although Ms. Higgins did not observe whether he actually used the toilet. D13p24; T102-03.

18. Ms. Higgins considered data the Parents provided for the period between September 6 and November 30, 2023, that tracked toileting accidents at Horizon and at home. D13p22; D14p17. During this period, the Student had a total of 34 accidents at Horizon and 76 accidents at home. D7p23; D14p17; T33. The range of accidents per week was 0 to 6; the range of accidents per week at home was 3 to 10. D7p23.

19. In addition, Ms. Higgins considered toileting data collected by Edwin Pratt during 10 school days in June 2023. The Student had 1 toileting accident during this time and needed a prompt to use the toilet 75% of the time. T45-46. Ms. Higgins considered the percentage of prompts to be on the “higher end,” and therefore recommended accommodations for the Student. D13p22; T46, 157.

20. Ms. Higgins also administered the Adaptive Behavior Assessment System, Third Edition (ABAS-3), which is a standardized, norm-referenced assessment of adaptive skills. Ms. Higgins reviewed and followed the test manufacturer’s instructions for administering the ABAS-3. T53; D13p25.

21. The ABAS-3 and all other assessments administered as part of the reevaluation were administered in English, which was believed to be the Student’s native language. Additionally, there were no concerns that any assessments administered as part of the reevaluation discriminated against students of the Student’s racial and cultural background. T53-54, 108, 180, 236, 238, 240. There is no evidence in the record that English is not the Student’s native language.

22. The ABAS-3 general adaptive composite score provides an overall view of a student’s adaptive behavior skills. D13p25. The Parents and Ms. Tellefson completed ABAS-3 rating scales. D13p25; T52-53. As to overall adaptive skills, the Parent rating placed the Student just into the below average range compared to same-aged peers. The teacher rating placed the Student in the average range. D13p25; T54-55.

23. The teacher rating also placed the Student in the average range for all subscales administered. D13p25. The Parent rating placed the student in the average range on all subscales except for self-direction and self-care. D13pp25-26; T55.

24. It is not uncommon for school and home ratings to differ because raters see children in different contexts and settings. D13p25. Although the Student's home ratings indicated more delayed adaptive skills at home than at school, the Parent rating scale results did not indicate significantly delayed skills at home. T55. School ratings indicated "age-expected adaptive skills across all measured adaptive areas." D13p25.

25. Based on the reevaluation, Ms. Higgins concluded that there were no significant adaptive skill concerns at school with the exception of weekly toileting accidents. The Student was able to perform many adaptive tasks independently and did well at school in following routines, transitioning, managing materials, and completing self-care tasks. D13p26.

26. Ms. Higgins concluded that the Student's adaptive skills did not adversely impact his educational performance. T55. She did not recommend SDI; rather, she recommended that school-related needs could be addressed through general education support, monitoring, and accommodations such as a toileting schedule and individual reminders to use the toilet. D13p27.

### **Social-Emotional**

27. Ms. Higgins also completed the social-emotional section of the Student's reevaluation. D13p28. She reviewed the Student's initial evaluation, IEP, and progress toward IEP goals. D13pp29-31. As of June 8, 2023, the Student had met all four of his IEP goals from the previous year, which focused on establishing positive relationships with peers, managing self-care needs, regulating emotions and behaviors, and demonstrating flexibility and managing feelings when faced with changes to his routine or undesired events. D13p31.

28. Ms. Higgins also considered the private occupational therapy report, including the discussion of the Student's sensory processing needs and emotional regulation capacities. The Student's private occupational therapist included goals to help the Student develop emotional and self regulation skill and improve his flexibility. D13p30.

29. In addition, Ms. Higgins interviewed the Parents and Ms. Tellefson. D13pp31-33; T104. As with adaptive skills, there were differences between the Student's skills at home and at school. Although the Parents raised multiple concerns about the Student's social-emotional skills at home, Ms. Tellefson did not have any major concerns in this area. D33pp33-34.

30. Ms. Tellefson had no concerns about the Student's play or social skills – he was well liked in class, often engaged in play with others, was good at sharing, was not seen to be physically aggressive with other children, and was able to advocate for himself when a social conflict arose. D13p33.

31. As for self-regulation, Ms. Tellefson noted the Student could be silly at times and sometimes needed redirection. The need for redirection varied, with the Student needing only one redirection on some days and needing consistent redirection on other days. D13p33. Silliness is common behavior in a preschool setting. T106.

32. With respect to emotional regulation, the Student did not often get upset at school. Ms. Tellefson had seen him cry only twice, when he seemed upset that another child was not sharing a toy. There were no other major times of dysregulation. D13p33.

33. Aside from reminders to correct silly behavior, the Student did not require more support regarding social-emotional skills than other students in the classroom. D13pp33-34; T106.

34. When Ms. Higgins observed the Student at Horizon, he demonstrated many age-appropriate skills related to social awareness, relationship skills, and emotional regulation. The Student participated in play, engaged and laughed with peers, and seemed comfortable. He seemed to have a secure relationship with his teacher, asked for help when required, and was responsive to redirections and reminders. During the observation, the Student was well-regulated and there were no instances of major dysregulation. D13p34. The Student became too silly on a few occasions but was easily redirected. Usually the Student was being silly with another child who was displaying similar behaviors. D13p34. Even when acting too silly, the Student's actions were not inconsistent with typical behavior for a 4-year-old preschool child. D13p34; T106.

35. Ms. Higgins also administered the Social Responsiveness Scale, 2nd Edition (SRS-2), which is a comprehensive, norm-referenced assessment that examines behaviors associated with Autism Spectrum Disorder. D13p34; T106-07. It looks at social skills, reciprocal social skills, restricted interests, and repetitive behaviors that can interfere with everyday functioning. T107. Ms. Higgins selected the SRS-2 because social communication and other reciprocal social behaviors had been identified as an area of need for the Student. D13p34; T107. Additionally, while the SRS-2 rating scales focus on social skills, social functioning and emotional functioning are intertwined such that performance on the scales is likely impacted by emotional regulation. T168.

36. Ms. Higgins reviewed and followed the test manufacturer's instructions for administering the SRS-2. T107.



37. The Parents and Ms. Tellefson completed SRS-2 rating scales. D13pp34-35. Scores fall within four categories: Normal or Average (below 59); Mild (60-65); Moderate (66-75); and Severe (76 or higher). D13pp34-35.

38. All scores on the teacher rating scale fell within the average range. D13p35. Parent ratings varied, with most scores falling in the mild and moderate range (total score–68; social awareness–68; social cognition–63; social communication–63; social motivation–64; restricted interests and repetitive behavior–78). D13p35.

39. The results of the SRS-2 were consistent with other evaluative data collected. T108. After reviewing the scores of the SRS-2 combined with other sources of information, Ms. Higgins determined additional standardized norm-referenced tests were not needed with respect to emotional functioning. T171.

40. Based on the evaluation, Ms. Higgins concluded that the Student was showing age appropriate social-emotional skills for the most part, particularly at school. T109. Accordingly, SDI was not recommended in this area. D8p8. Although the Student continued to demonstrate social-emotional needs at home, there were no significant social-emotional concerns at school. D13pp35-36. Based on the reevaluation, Ms. Higgins recommended addressing the Student's needs through general education supports and accommodations such as a visit to the classroom to meet the Student's teacher prior to beginning of the school year and explicit teaching around expectations for when silliness is appropriate or inappropriate. D13p36.

### **Fine Motor**

41. Ms. Showlund conducted the fine motor portion of the reevaluation. She reviewed the Student's initial evaluation conducted in May 2022. D13p11. Ms. Showlund also met with the Student and his Parents in person. The Student was pleasant and cooperative. At times, he needed breaks or redirection, but he attempted all of the activities presented. D13p12.

42. Ms. Showlund also spoke with the Parents, who raised concerns that the Student sometimes cut holes in his shirt when using scissors at school due to holding the scissors close to his shirt and that he did not always want to color or do fine motor activities. D13p11; T182, 197.

43. Ms. Showlund administered the Peabody Developmental Motor Scales (PDMS-2), which is a standardized assessment that measures fine motor skills. T179-80. Ms. Showlund reviewed and followed the test manufacturer's instructions for administering the PDMS-2. T180.

44. The Student's overall fine motor score on the PDMS-2 placed him in the 35th percentile, or average range. On the grasping subtest, which measure a student's ability to use their hands, the Student scored in the 16th percentile. On the visual-motor integration subtest, which measures a child's ability to use visual perceptual skills to perform complex eye-hand coordination tasks, the Student scored in the 63rd percentile. D13p11; T181.

45. Ms. Showlund also reviewed the private occupational therapy report and included excerpts in the reevaluation report. This included information regarding sensory issues:

Sensory: [The Student] is a child that presents with a mixed threshold for responses to input; at times, he seems to require stimulation in greater strength or quantity in order for it to register, give meaning, and respond. In other moments, he appears to be overwhelmed by the information coming in from his environment. In this way, rather than thinking of over-or under-responsiveness, it may be more helpful to consider that [the Student] was best able to stay regulated and engaged in moments where he felt that he was able to process his experience with sufficient time to generate a response. When the rate of incoming information outstripped his ability to understand or give meaning to it, or when there were conflicting stimuli, it can often lead to him becoming dysregulated, which can result in him throwing toys and reacting to the stimuli indiscriminately.

D13pp11-12; D14p22.

46. Although the private occupational therapy report referred to sensory differences, the Student did not exhibit any sensory issues when Ms. Showlund was testing him. Although testing is a "strange situation," the Student did a "very lovely job," and Ms. Showlund did not see "the dysregulation behaviors or things like I'm often looking for during that type of scenario." T208. The Student was easy to redirect and engaged. T183.

47. If the Student had exhibited sensory issues during the testing, or if Ms. Showlund believed it to be necessary, she could have conducted additional testing. T201, 208. However, Ms. Showlund considered the private occupational therapy report to be thorough. T183. She did not think another assessment was necessary based on her review of the report and her own observations of the Student. T208.

48. Based on the reevaluation, Ms. Showlund concluded the Student did not demonstrate a delay in fine motor skills that adversely impacted his participation in school related skills and activities. Accordingly, SDI in the area of fine motor was not recommended. The reevaluation report noted that the Student demonstrated “a lot of really strong fine motor skills for entering into kindergarten next school year.” D13p12.

49. In the fine motor section of the reevaluation report, Ms. Showlund did not restate information about toileting that had already been discussed in the adaptive section of the report. T184. She agreed that accommodations such as a toileting schedule and prompts were the best way to build the Student’s awareness of when he needs to use the toilet, and did not believe he required SDI. T188.

### **Communication**

50. Ms. Shultz conducted the communication portion of the reevaluation. She reviewed the Student’s developmental history and educational records, including his initial evaluation. She also reviewed the private occupational therapy report and interviewed the Parents. D13p14. The Parents were present throughout the in-person testing appointment with Ms. Shultz. During the testing, the Student’s participation and attendance to tasks were age appropriate. D13p19.

51. Ms. Shultz conducted a screening of the Students’ ears and referred him to his pediatrician for testing of his right ear. D13p15.

52. Ms. Shultz also conducted a clinical observation of the Student’s oral motor functioning. No concerns were reported or observed. D13p15; T236.

53. Ms. Shultz administered two assessments: the Goldman Fristoe Test of Articulation, Third Edition (GFTA-3) and the Clinical Evaluation of Language Fundamentals, Third Edition, Preschool (CELF-P 3). D13p14.

54. The GFTA-3 is a standardized assessment that tests speech sound development. Ms. Shultz reviewed and followed the test manufacturer’s instructions in administering the GFTA-3. T235-36; D13p14.

55. Average standard scores on the GFTA-3 range from 85 to 115. The Student’s standard score of 83 placed him in the 13<sup>th</sup> percentile. The Student’s speech intelligibility was good to excellent. Ms. Shultz concluded that the Student demonstrated age-appropriate speech sound development. D13p14.

56. The CELF-P 3 is used to identify possible language impairment. It is a widely-used and well-researched measure reliable for preschool age children. D13p16; T237-38. Ms. Shultz reviewed and followed the test manufacturer's instructions in administering the CELF-P 3. T238.

57. The Student scored in the average range on subtests measuring sentence comprehension, word structure, and expressive vocabulary. The Student's core language index score of 99 placed him in the 47<sup>th</sup> percentile and the average range (85 - 115). D13p16.

58. To assess the Student's verbal and nonverbal communication skills in context, Ms. Shultz used the descriptive pragmatics profile of the CELF-P 3 (DPP). D13p16. Ms. Shultz reviewed and followed the test manufacturer's instructions in administering the DPP. T238.

59. Ms. Shultz asked the Parents and Ms. Tellefson to complete DPP rating scales. T239. Average scores range from 8 to 12. D13p16.

60. Ms. Tellefson did not return the completed DPP rating scale before the December 20 reevaluation meeting. However, she had completed the ABAS-3 teacher rating scale, which included a "communication" scale, as part of the daily living/adaptive portion of the evaluation. The ABAS-3 teacher rating placed the Student in the average range with respect to communication. D13pp16-18, 25.

61. The Parents' scaled score of 6 placed the Student in the 9<sup>th</sup> percentile or below average range. D13p16. Ms. Shultz closely examined the areas that the Parents marked as "sometimes" demonstrated, rather than "always" or "often" demonstrated. T240; D13pp16-17. From review of the Parent ratings, she determined these concerns did not require specially designed instruction from a speech language pathologist. T242.

62. Ms. Parent expressed concern to Ms. Shultz that after the Student acquired a language skill, he sometimes would not or could not use it. As an example, Ms. Parent referred to a video in which she was talking to the Student about something that had upset him. He did not answer Ms. Parent verbally or demonstrate a visible nonverbal response. D13p18. Ms. Shultz viewed the video but did not consider the Student's conduct to be outside the range appropriate for his age. T246-47.

63. Based on the reevaluation, Ms. Shultz concluded that the Student did not demonstrate a speech- or language-based disability or adverse educational impact. He was demonstrating largely age appropriate skills in all areas, and any concerns did not require SDI. T248. Therefore, SDI in communication was not recommended. D13p19.

## Medical-Physical

64. Jamie Morray, RN, BSN, performed the medical-physical section of the reevaluation.<sup>8</sup> D13p27; T103-104. She reviewed the Student's health and developmental history and medical records, and interviewed Mr. Parent. D13p27. There were no reported health concerns. D13p28. Following her review of records and conversation with Mr. Parent, Ms. Morray did not believe the District required any additional medical-physical information in order to determine whether the Student was eligible for special education services. Morray T228. Ms. Higgins also believed this information provided sufficient information to determine the Student's overall health status and health needs in the school setting. T103-104.

## Reevaluation Meeting

65. During the December 20, 2023 reevaluation meeting, the team discussed the Parents' concerns about the Student's toileting skills and the range of typical toileting skills for four year olds. The Parents' attorney raised concerns that the District required students to be independent with respect to toileting. D8p8; D6.

66. Ms. Higgins explained that the range of toileting skills in the preschool setting is quite wide. D8p8. Most four-year-old students appear to be independent with respect to toileting. T102. "Independent" generally means a child who can

pull their pants down, sit on the toilet, evacuate as needed, pull their pants back up and wash their hands with maybe some supports or prompting with that. And occasionally accidents. But for the most part they can do the steps of the toileting process on their own.

T170.

67. At the preschool level, toileting times are part of the general education school day. T49. There are numerous prompts and a toileting schedule, meaning there are times when students are not initiating their use of the facilities. T102.

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<sup>8</sup> The Parents objected to the admission of Ms. Morray's testimony at hearing, as discussed later in this order. Findings of fact based on Ms. Morray's testimony are clearly identified by citations that include her last name followed by the transcript page. E.g. Morray T. 228.

Ms. Morray has a bachelor's degree in nursing. Between 2006 and 2020, she was a pediatric nurse in a hospital setting. She has worked as a school nurse since 2020, and has been employed as a part-time nurse at Edwin Pratt since 2023. Morray T226. She holds a current certificate authorizing her to work as a school nurse in Washington state. Morray T227.

68. The team also discussed that the Student was still building awareness of when he needs to use the toilet. It is age-appropriate for preschool students to be working on the skill of being able to listen to their body and communicate a need to use the toilet. T51. Professional members of the team agreed this need was best addressed through accommodations, such as a toileting schedule and prompts, consistent with the recommendation by his pediatrician. T113, 188.

69. The team also discuss the Parents' concerns related to whether the District had included sensory testing as part of the reevaluation. D8p6. Ms. Showlund discussed that assessments, such as the Sensory Profile, can narrow down the areas in which a student is having sensory difficulties but does not indicate what strategies will work for a student, which is a process of trying out different sensory accommodations. T186. The private occupational therapy report had provided extensive information regarding the nature of the Student's sensory challenges. D14pp22-28; T183, 186.

70. At the reevaluation meeting on December 20, 2023, Ms. Higgins, Ms. Showlund, and Ms. Shultz believed they had sufficient data to make decisions regarding the Student's eligibility and to make recommendations to his IEP team. T111, 153, 187-88, 241-42. The team discussed the criteria for students to be deemed eligible for special education and determined that, although the Student has a disability due to his Autism diagnosis, his disability did not adversely impact his educational performance and he did not require SDI or related services. D13p8, T111-12. The team determined the Student was not eligible for special education services and instead recommended a Section 504 plan to meet the Student's needs. D13p8; D8p9; T38, 112.

71. However, the team agreed to extend the reevaluation timeline to allow review of the following additional information, which the Parents wanted the team to consider. T37, 135; D13p8. First, the Parents wanted the team to consider the DPP rating scale that Ms. Tellefson had not completed prior to the reevaluation meeting. Second, the Student's private occupational therapist, Laura Meyer, had not been available to meet prior to the reevaluation meeting. The team agreed to the Parents' request for additional time to obtain this information and extended the reevaluation until January 12, 2024. D8pp5, 9; T37-38; D13p31.

### **Additional Information**

72. On January 11, 2024, the District received the DPP rating scale completed by Ms. Tellefson. D11p2. The teacher's scaled score of 8 placed the Student in the average range. D13p17.

73. A meeting with Ms. Meyer was scheduled for January 12, 2024. D12p1. To allow sufficient time to incorporate new information into the reevaluation, the Parents agreed to extend the reevaluation timeline to January 19, 2024. D12p1; D13p41.

74. On January 12, 2024, Ms. Shultz and Ms. Showlund met with Ms. Meyer and the Parents via Zoom. D13pp11, 18, 31.

75. On January 12, 2024, the Parents provided additional toileting data for the period of December 1, 2023 through January 11, 2024. D13p22.<sup>9</sup>

76. On or about January 17, 2024, the reevaluation report was updated to incorporate the additional information provided by the Parents as follows:

- The fine motor section was updated to include information from Ms. Meyer that the Student's occupational therapy sessions included work on emotional regulation, planning and play, exploring power in play, transitions, and interoception in regard to toileting. D13pp11-12.
- The communication section was updated to include the results of the DPP rating scale completed by Ms. Tellefson and to reflect that Ms. Meyer was working with the Student and his parents on co-regulating. D13pp17-18.
- The adaptive section was updated to include a letter from the Student's pediatrician dated January 3, 2024. D13p22. The pediatrician recommended a schedule for toileting times at school and accommodations. D13p22; D14p16.
- The adaptive section was also updated to include the new toileting information provided by the Parents. D13pp20-22; T47. The updated report reflected that between September 6, 2023 and January 11, 2024, the Student had a total of 45 toileting accidents at school and 76 accidents at home. Accidents at school ranged from 0 to 2 per day and 0 to 7 per week. Accidents at home ranged from 0 to 5 per day and 3 to 10 per week. D13p22.
- The social-emotional section of the report was updated to include information from Ms. Meyer that the Student struggled with self-regulation in sessions and

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<sup>9</sup> Exhibit D14p17 includes toileting data for September 6 – November 30, 2023. Exhibit D14p18 includes toileting data for January 1 – 11, 2024. Ms. Higgins considered this information provided by the Parents along with toileting data they provided for the month of December 2023. T41. The record does not include the toileting data for December 2023.

that she observed emotional outbursts and was working with the Parents on co-regulation. D13p31.

T39-40.

77. Based on review of the additional data, Ms. Higgins, Ms. Showlund, and Ms. Shultz each believed that the new information was consistent with previous information in the reevaluation report indicating the Student did not require SDI. T113, 187-88, 242-43, 248, 250. They each agreed with the team's decision that the Student was not eligible for special education services. *Id.*

78. By email on January 18, 2024, Ms. Higgins sent the Parents the updated reevaluation report. In the email, Ms. Higgins stated that review of the additional information did not change the recommendation that the Student was not eligible for special education services. Rather, the additional information provided "further support" that a Section 504 plan was the appropriate way to support the Student's needs at that time. D13p1; T39-40.

79. Ms. Higgins agreed to schedule a team meeting to discuss the additional data if the Parents requested one, but the Parents did not request a meeting. T40; D13p1.

80. Also on January 18, 2024, the District issued a prior written notice informing the Parents that the reevaluation team had determined the Student was no longer eligible for special education services and was recommending a Section 504 plan to meet the Student's needs. The prior written notice stated that the additional information provided by the Parents did not change the team's decisions regarding SDI and eligibility. D13pp39-40.

81. The prior written notice stated that signatures were missing from the reevaluation document because the meeting was held remotely, "but all named participants were present and took part in the discussion." D13p39.

82. On January 19, 2024, the Parents sent an email to Ms. Higgins with additional toileting data. Because the reevaluation had already been finalized following receipt of data the team had agreed to collect, this data was not considered.<sup>10</sup> T132-22. Ms. Higgins did not believe any further information was necessary at that point because

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<sup>10</sup> The Parents did not submit the January 19, 2024 email or toileting data as a proposed exhibit for the hearing. During the hearing, the Parents were permitted to use the January 19, 2024 email to refresh Ms. Higgins' recollection. T132. The Parents did not seek to admit the document and it is not part of the record.



the data in the reevaluation consistently indicated the Student had the skills he needed to independently toilet with more prompts than a typical student required. T48.

### Expert Testimony

83. The Parents called Dr. Lionel Enns to testify as an expert witness at the hearing.<sup>11</sup> Dr. Enns has never met or evaluated the Student. T91. He reviewed the Student's initial evaluation and reevaluation, and received input from the Parents. T61.

84. Based on his review of this information, Dr. Enns opined that the District should have administered an assessment to measure the Student's sensory challenges, such as the Sensory Profile. T74-75.

85. Dr. Enns also opined that the District should have administered an additional assessment in the area of social-emotional, such as the Behavior Assessment System for Children – Third Edition (BASC-3) or the Developmental Behavior Checklist – Second Edition (DBC), to obtain a more fine-grained analysis of the Student's behavioral and social-emotional functioning. T72-73, 76. Dr. Enns also recommended interviews to get an accurate idea of the Student's social-emotional functioning. T75-76, 93.

86. However, Dr. Enns clarified that

there is plenty of information held within the [reevaluation] that would tell you a lot about this person's functioning. So I think there is enough there. Like, it's not like there is a lack of information. So you can use a standardized assessment to inform intervention, but you can also, you know, use what parents are telling you, what an [occupational therapist] is telling and you go, okay, these are things that we can target . . . .

T94.

87. After Dr. Enns characterized the reevaluation as containing "rich information," the Parents' counsel asked how the lack of sensory testing squared with his testimony. T94-95. Dr. Enns explained that sensory testing could provide data to "confirm these kinds of sensory differences." T95. When asked how the "rich information" characterization squared with his testimony regarding the need for more sensitive tools to assess emotional functioning, he also explained that the BASC-3 or the DBC could be used to augment information regarding emotional functioning. T96-97. When

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<sup>11</sup> Dr. Enns has a PhD in School Psychology. He is a licensed clinical child psychologist and board certified behavior analyst. P7. Dr. Enns conducts approximately 150 evaluations per year. T59.

asked how his testimony regarding the rich information in the reevaluation report squared with his testimony that the reevaluation was not appropriate, Dr. Enns stated:

The rich information really has to do with the narrative provided by parents and then provided by his teacher and by the occupational therapist. So you have this information that is useful, but I think you can always provide more information. That's why we do these assessment pieces, right? I mean, having tools that give you some kind of objective measure, too.

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It becomes this really nice, rich mosaic that then we can make decisions about how this child is functioning and how we can best support him.

T97.

88. Ms. Parent explained that the Parents disagreed with the District's reevaluation because the District:

didn't do all [it] could have done to evaluate the Student and gathering the relevant information that would have informed his . . . needs. And now knowing that they could have done specific sensory testing and more specific emotional testing, emotional dysregulation type testing, those are two major points of why I believe the evaluation conducted by the District was inappropriate.

T294.

#### **Parents' Objection to Certain Testimony**

89. Late in the day on May 29, 2024, when the District's counsel discussed the witness schedule for the remainder of the day, the Parents' counsel stated that he no longer planned to call Nurse Jamie Morray. T217.

90. The Parents contended that the District could not call Ms. Morray because she was not listed on the District's witness list. T217.

91. Paragraph 17 of the March 12, 2024 prehearing order in this case provided in relevant part:

Each party shall provide to the other party and the ALJ:

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c. A witness list that identifies each witness the party intends to have testify at the hearing (by name, title, business address and a brief summary of the testimony to be offered).

92. The District's witness list named Ms. Higgins, Ms. Showlund, and Ms. Shultz. It also stated:

The District further reserves the right to call any witness on Parents' witness list, as well as Parents.

93. Because Ms. Morray was already in the virtual waiting room, the ALJ permitted Ms. Morray to testify with the caveat that both parties could later submit briefing on the issue, and Ms. Morray's testimony could be stricken if necessary. T222-23.

94. The Parents also objected to direct testimony by Ms. Vujovich as a District witness on the ground that she was not named on the District's witness list. Because this final order contains no findings based on Ms. Vujovic's testimony, no further findings of fact are made regarding the Parents' objection to her testimony

## 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 under these provisions, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

2. The District requested this due process hearing and bears the burden of proof in this matter. RCW 28A.155.260; *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof in a due process hearing is a preponderance of the evidence. RCW 28A.155.260.

### **The IDEA and FAPE**

3. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to

provide a “potential-maximizing” education, but rather a “basic floor of opportunity.” *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

4. In *Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the individualized education program developed under these procedures is reasonably calculated to enable the child to receive educational benefits. “If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.” *Rowley*, 458 U.S. at 206-07.

5. Procedural safeguards are essential under the IDEA, particularly those that protect the parent’s right to be involved in the development of their child’s educational plan. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001). Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

(I) impeded the child’s right to a free appropriate public education;

(II) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child; or

(III) caused a deprivation of educational benefits.

20 USC §1415(f)(3)(E)(ii); WAC 392-172A-05105(2); 34 CFR §300.513(a)(2).

6. “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017). The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry. As the U.S. Supreme Court has made clear, “[a] focus on the particular child is at the core of the IDEA,” and an IEP must meet a child’s unique needs. *Id.* The “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Id.* Accordingly, an IEP team is charged with developing a comprehensive plan that is “tailored to the unique needs of a particular child.” *Id.* at 1000. Additionally, the Student’s “educational program must be appropriately ambitious in light of his circumstances . . . .” *Id.*

7. In reviewing an IEP, “the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” *Id.* at 999 (emphasis in original). The determination of reasonableness is made as of the time the IEP was developed. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is “a snapshot, not a retrospective.” *Id.*

### **Independent Educational Evaluations (IEEs)**

8. 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; 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(1)(c)(i); 34 CFR 300.502(b). If a parent requests an IEE, a district must either ensure that an IEE is provided at no cost to the parent without unnecessary delay or initiate a due process hearing within 15 calendar days to show that the district’s evaluation is appropriate. WAC 392-172A-05005(2)(c).

9. If the district initiates a due process hearing and the final decision is that the district’s evaluation is appropriate, the parent still has the right to obtain an IEE but not at public expense. WAC 392-172A-05005(3).

### **Evaluations**

10. Evaluations and reevaluations must comply with the requirements in WAC 392-172A-03020. These procedures require a school district to provide prior written notice to parents that describes evaluation procedures the district proposes to conduct. WAC 392-172A-03020(1). In conducting the 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 . . . .” WAC 392-172A-03020(2)(a). The group must not use any single measure or assessment as the sole criterion for determining eligibility or educational programming and must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical, and developmental factors. WAC 392-172A-03020(2)(b) and (c). School districts must ensure assessments and evaluation materials are selected and administered so as not to be discriminatory on a racial or cultural basis, and are provided and administered in the student’s native language. WAC 392-172A-03020(3)(a); see *also* 34 CFR §300.304.

11. Assessments must be administered by “trained and knowledgeable personnel” and “in accordance with any instructions provided by the producer of the assessments.” Students must be assessed “in all areas related to the suspected

disability” and the evaluation must be “sufficiently comprehensive to identify all of the student’s special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified.” WAC 392-172A-03020(3); see also 34 CFR §300.304(c).

12. Under WAC 392-172A-03025, as part of any evaluation or reevaluation, the team must review existing data on the student, including evaluations and information provided by the parents, current classroom-based, local, or state assessments, classroom-based observations, and observations by teachers and related services providers.

13. Additionally, the District must prepare and provide the parents with an evaluation report. WAC 392-172A-03035. The evaluation report must include, among other things, a statement of whether the student has a disability that meets applicable eligibility criteria, a recommendation as to what special education and related services the student needs, and the date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. WAC 392-172A-03035(a), (d) and (f).

14. After the “administration of assessments and other evaluation measures,” the parent of the student and qualified professionals “determine whether the student is eligible for special education and the educational needs of the student.” WAC 392-172A-03040(1)(a).

15. A school district has thirty-five school days to complete a reevaluation after it receives written consent to evaluate from the parent. WAC 392-172A-03015. A school district and a parent may agree to a different time period for completing the reevaluation and may agree to extend the timeline for completing the reevaluation. *Id.*

16. “[A] district need not reevaluate a student in every area in which a parent requests reevaluation.” *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 \*56 (W.D. Wash 2019), *aff’d sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022). “Rather, the district must review existing evaluation data on the student and, on the basis of that review and input from the parents, identify what additional data, if any, are needed to ensure the child receives a FAPE. WAC 392-172A-03025(2).” *Id.* (Internal quotation marks omitted.)

### **The District’s Reevaluation of the Student was Appropriate**

17. In this case, the District’s reevaluation was conducted by a group of qualified professionals. Ms. Higgins, who completed multiple parts of the reevaluation, has a master’s degree in educational psychology, an education specialist degree in school

psychology, and is a nationally certified school psychologist. She has been employed by the District as a school psychologist since 2015 and conducts between 50 and 70 evaluations of preschool students each year. Ms. Showlund, who completed the motor portion of the reevaluation, has a master's degree in occupational therapy and is a state certified occupational therapist. She has worked for the District since 2007 and has conducted 40 to 60 evaluations of preschool students each year. Ms. Shultz, who conducted the communication portion of the reevaluation, is a state certified speech language pathologist who also holds her Certificate of Clinical Competence from the American Speech and Hearing Association. She has been a speech language pathologist for twenty-three years and completes approximately 50 evaluations of preschool students each year. Ms. Morray, who conducted the medical-physical portion of the reevaluation, is a registered nurse. The District offered sufficient evidence to establish that the individuals who participated in the evaluation had the education, training, and experience necessary to conduct the evaluation.

18. Prior to reevaluating the Student, the District obtained the Parents' consent for the reevaluation. By email, Ms. Higgins confirmed the areas that would be reevaluated and detailed the assessment tools that would be used for each area. To the extent that the District did not send such notice in the form of a prior written notice, any procedural defect did not undermine the appropriateness of the District's reevaluation. Nor did it impede the Student's right to FAPE, significantly impede the Parents' participation, or deprive the Student of educational benefit. WAC 392-172A-05105(2).

19. The District also established that it used a variety of assessment tools and strategies to gather relevant information about the Student. In addition to standardized assessments and ratings scales, sources of information included Parent interview and input, including toileting data regarding accidents at school and at home for the 2023-2024 school year; observation of the Student; interview and input from the Student's general education teacher at Horizon; interview and a report from the Student's private occupational therapist; toileting data from Edwin Pratt; and input from the Student's pediatrician.

20. Assessments and ratings scales to obtain information about the Student included: ABAS-3; SRS-2; PDMS-2; GFTA-3; CELF-P 3; and the DPP of the CELF-P 3. The professionals who administered these assessments reviewed test manufacturer instructions and followed those instructions when administering the assessments. The assessments were administered in English, which was believed to be the Student's native language, and there is no evidence in the record that English is not the Student's native language. Further, there were no concerns that assessments administered as part of the reevaluation discriminated against students of the Student's racial and cultural background.

21. Nothing in the record undermines the reliability or validity of any of the assessments administered as part of the reevaluation.

22. The District's reevaluation also included a review of existing data. This included review of the Student's initial evaluation, the Student's IEP, and his progress toward his IEP goals.

23. Further, the District prepared a reevaluation report that satisfied the requirements of WAC 392-172A-03035. The report contained extensive information for each area that was evaluated. It stated that although the Student had a disability, he did not meet eligibility criteria for special education services. The report discussed the assessments and data used to support this conclusion. Because the meeting was held remotely, the report does not contain signatures. However, evidence in the record establishes that all professional team members agreed with the reevaluation. Moreover, any procedural defect based on the lack of signatures does not impact the overall appropriateness of the evaluation or result in a denial of FAPE. WAC 392-172A-05105(2).

24. Finally, the reevaluation was completed in a timely manner. The parties agreed to extend the deadline for completing the reevaluation until January 19, 2024. The reevaluation was timely finalized on January 18, 2024.

### **The Parents' Arguments**

25. The Parents contend that the District's reevaluation is inappropriate because the District failed to evaluate the Student in the area of sensory and was required to formally assess the Student in the area of emotional, apart from the area of social.

26. The evidence makes clear that the District's reevaluation assessed the Student in all areas of suspected disability. The Parents consented to a reevaluation of the Student in the areas of social-emotional, fine motor, daily living/adaptive, communication, and medical physical. Communication was added at the Parents' request; neither the Parents nor District teachers or staff asked to include any additional area. The District advised the Parents of the specific assessments the District planned to administer in each area; the Parents did not request additional areas or assessments. Further, the District reevaluated the Student in all of the areas covered by the Parents' consent and no professional member of the reevaluation team disagreed with the reevaluation or believed additional information was required.

27. Moreover, the overwhelming evidence in the record demonstrates that the reevaluation was sufficiently comprehensive to identify the Student's special education needs. Although the Parents now assert the need for a formal assessment



of the Student's sensory functioning, the evidence in the record does not support their argument. The Parents point to testimony by Dr. Enns recommending a sensory assessment, such as the Sensory Profile. However, Dr. Enns has never met the Student and acknowledged at hearing that the reevaluation contained "rich information" regarding the Student. Consistent with this description, the reevaluation report included extensive information regarding the Student's sensory functioning obtained from the initial evaluation, the Parents, the private occupational therapist, the Student's general education teacher at Horizon, and the Student's pediatrician. Notably, Dr. Enns did not testify that the reevaluation was lacking in information. Rather, he opined that a sensory assessment would "confirm" the sensory differences that had already been identified.

28. In conclusion, the evidence in the record demonstrates that the reevaluation was sufficiently comprehensive to identify the Student's special education and related services needs, and that a formal sensory assessment was not required.

29. The Parents next contend that the social-emotional portion of the reevaluation required a formal assessment of the Student's emotional functioning and that the SRS-2 did not meet this requirement.

30. As Ms. Higgins explained at hearing, social and emotional functioning are highly intertwined. Much of the information gathered as part of the social-emotional portion of the reevaluation pertained to both social and emotional functioning. Ms. Higgins, who has extensive experience evaluating preschool students, credibly explained that while the SRS-2 may be focused on social functioning, it is likely that emotional dysregulation would impact those results.

31. Moreover, the evidence demonstrates that the reevaluation contained extensive data regarding the Student's emotional functioning. Dr. Enns specifically recommended interviews to get an accurate idea of the Student's social and emotional skills. Here, interviews with the Parents, the Horizon teacher, and the private occupational therapist provided extensive information about the Student's emotional functioning. This information was supplemented with information provided by the initial evaluation, the Student's IEP goal progress, observation of the Student, and the private occupational therapy report.

32. The Parents contend that Dr. Enns' testimony establishes that the District needed to administer a test such as the BASC or the DBC to provide a more fine-grained analysis of social emotional functioning. However, Dr. Enns testified that the reevaluation report already contained "plenty of information" and explained that these measures could be used to augment the evidence that had been gathered.

33. The information gathered as part of the reevaluation consistently established that while the Student experienced difficulties with self-regulation and emotional regulation in the home and community, he was engaging in age appropriate self-regulation and emotional regulation skills in the school environment. The Student's Horizon teacher did need to provide the Student with any more support in the area of social-emotional than she provided to any other students.

34. In conclusion, the evidence demonstrates that the District fulfilled its obligation to conduct a comprehensive reevaluation of the Student in all areas of suspected disability, and was not required to do a formal sensory assessment or an additional formal assessment in the area of social-emotional.

35. The Parents next claim Ms. Morray's testimony should not be admitted because she was not named on the District's witness list. They argue that the March 12, 2024 prehearing order required the parties to name each witness they intended to call at hearing. Further, the Parents contend that the "catch all" provision in the District's witness list is not permitted.

36. Neither the IDEA nor WAC 392-172A requires the parties to a due process hearing to file a witness list. WAC 392-172A-05100(c) provides parties to a due process hearing the right to prohibit the introduction of evidence at the hearing that has not been disclosed to the party at least five business days before the hearing, but contains no such requirement regarding disclosure of witnesses. See 34 CFR §300.511. Similarly, the model rules of procedure in Chapter 10-08 WAC contain no such requirement.

37. Under WAC 10-08-200, the presiding officer in an adjudicative proceeding has the broad authority to:

- (1) Determine the order of presentation of evidence;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas pursuant to RCW 34.05.446;
- (4) Rule on procedural matters, objections, and motions;
- (5) Rule on motions for summary judgment;
- (6) Rule on offers of proof and receive relevant evidence;

(7) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(8) Interrogate witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(9) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties;

(10) Take official notice of facts pursuant to RCW 34.05.452(5);

(11) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(12) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(13) Issue an order of default pursuant to RCW 34.05.440;

(14) Hold prehearing conferences;

(15) Appoint a mediator or serve as mediator, provided that after serving as mediator, the presiding officer shall not conduct the hearing or issue a decision on the matter unless the parties specifically waive any objections to doing so;

(16) Take any other action necessary and authorized by any applicable statute or rule; and

(17) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver.

38. Consistent with this broad authority, the prehearing order in this case required the parties to submit a witness list prior to the hearing. Both parties timely filed witness lists in this case.

39. The primary reason for requiring the parties to file and exchange witness lists is to ensure that they have notice and an opportunity to prepare for the due process hearing. The witness list also assists the parties and the ALJ with efficient scheduling of witnesses.

40. The question is whether Ms. Morray’s testimony must be stricken because her name was not included on the District’s witness list. The answer is “No.” There is no question that the Parents had notice and an opportunity to prepare for questioning Ms. Morray. The Parents planned to call Ms. Morray themselves and did not notify the District of the change of plan until moments before Ms. Morray appeared in the virtual waiting room.

41. Moreover, the District’s witness list clearly notified the Parents that the District might call any of the witnesses the Parents had named. All of these witnesses were known to the Parents—the District was not asserting the right to call anyone who was not named by the Parents.

42. Under these circumstances, it is an appropriate exercise of discretion to admit the testimony of Ms. Morray. WAC 10-08-200. Therefore, Ms. Morray’s testimony is admitted into the record.

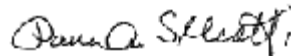
### **Conclusion**

43. Based on the record, it is concluded that the District has established by a preponderance of the evidence that the December 20, 2023 reevaluation of the Student is appropriate. Consequently, the Parents are not entitled to an IEE at public expense.

### **ORDER**

The Shoreline School District’s December 20, 2023 reevaluation is appropriate. The Parents are not entitled to an independent educational evaluation at public expense.

SERVED on the date of mailing.



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Pamela Meotti  
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, Legal Services, PO Box 47200, Olympia, WA 98504-7200. To request the administrative record, contact OSPI at [appeals@k12.wa.us](mailto:appeals@k12.wa.us).

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that true copies of this document were served upon the following as indicated:

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Dated July 31, 2024, at Olympia, Washington.

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Representative  
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cc: Administrative Resource Services, OSPI