

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Battle Ground School District

Docket No. 06-2023-OSPI-01911

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2023-SE-0101

A due process hearing was held before Administrative Law Judge (“ALJ”) Courtney Beebe by video conference on November 29, November 30, and December 1, 2023, and January 10, 2024. The Parents¹ of the Student represented themselves. The Battle Ground School District (“District”) was represented by Erin Sullivan-Byorick and Nate Schmutz, attorneys at law. Also, present for the District was Kellie Clay, Executive Director of Student Support.

STATEMENT OF THE CASE

1. The District filed a due process hearing request on June 12, 2023, in response to the Parents’ June 5, 2023, request for an Independent Educational Evaluation (“IEE”). The Parents did not file a responsive pleading. The parties appeared for prehearing conferences on July 11, 2023, August 8, 2023, October 30, 2023, and November 8, 2023. Prehearing orders issued on August 8, 2023, and October 31, 2023. The due process hearing was held by video conference on November 29, November 30, and December 1, 2023, and January 10, 2024.

2. The parties initially agreed to file a written closing brief by February 23, 2024. (*Order Setting Due Date for Post-Hearing Briefs*, January 10, 2024.) On February 5, 2024, the Parents asked for an extension of time to file their closing briefs. (*Parents’ Email Correspondence with OAH ADA Coordinator*, February 5 and 6, 2024.) On February 6, 2024, via email, the District agreed to an extension of time of thirty (30) days. (*Id.*) On February 6, 2024, a “Second Order Setting Due Date for Post-Hearing Briefs” was issued, requiring the parties to file closing briefs by 5:00 p.m. on March 25, 2024.

¹ To ensure confidentiality, names of parents and students are not used.

3. On March 25, 2024, the date the closing briefs were due from the parties, via email the Parents requested a second extension of time to April 8, 2024. The District objected to the request via email dated March 25, 2024. The Parent's request for a second extension of time for filing a closing brief was denied by email dated March 25, 2024.

4. The District filed its "Post-Hearing Brief" on March 25, 2024, prior to 5:00 p.m.

5. The Parents filed a "Post-Hearing Brief" on March 25, 2024, prior to 5:00 p.m. The decision in this matter is due thirty (30) days thereafter, on April 24, 2024.

EVIDENC RELIED UPON

Exhibits Admitted

District's Exhibits: D1, D2, D3, D4, D5, D6, D7, D8, D9, D10, D11, D12, D13, D14, D15, D16, D17, D18, D19, D20, D21, D22, D23, D24, D25, D26, D27, D28, D29, D30, D31, D32, D33, D34, D35, D36, D37, and D38.

Parents' Exhibits: P2, P3, P6, P15, P17, P18, P19, P26, P27, P28, P31, P32, P35, P36, P39, P40, and P41.

Exhibits Not Admitted

Parents' Exhibits: P1, P4, P5, P7,² P8, P9, P10, P11, P12, P13, P14, P16, P20, P21, P22, P23, P24, P25, P29, P30, P33, P34, P37, P38, and P42.

Witnesses Heard (in order of appearance): Mother, Sarah George, Erin Rothwell, Tracy Viall, Lori Miller, Chad Harvison, Yvonne Flattum, Ellen Wiessner, Sean Southworth, Kellie Clay, Father, Whitney Starett, and the Student's Adult Sibling.

ISSUES

The District's complaint raises the following issue:

Whether the District's May 17, 2023, Reevaluation of the Student was appropriate, and if not, whether the Parents are entitled to an IEE at public expense.

² Parents' Exhibit 7, a report from 2021 by Dr. Jaime Nicacio that is referred to by Dr. Nancy Loss in Exhibit P10, p.10, was not admitted into the record. (Tr., p.48 (ALJ Beebe).) However, on Tr., p.505, the Parents inquired of Ms. Tracey Viall, school psychologist, regarding Parents' Exhibit 7 and transcript reflects that the ALJ stated that the Parents' Exhibit 7 was admitted. Parents' Exhibit 7 is not admitted into the record and it was not considered in rendering any decision in this matter.

FINDINGS OF FACT

The Student

1. In May 2023, the Student was a [REDACTED] seventh grader at Chief Umtuch middle school in the District. (D1, p.3.) The Student and the Mother experienced a motor vehicle accident on December 18, 2017, and the Student was diagnosed with a traumatic brain injury (“TBI”) by Dr. Jaime Nicacio on August 27, 2020. (D1, p.24; D8, pp.1-2; P18, pp.1-3; Tr., pp.110 (Mother); 262 (Viall).) The Student completed a therapy program and Dr. Nicacio released the Student from his care in early 2021, noting that the Student’s symptoms had resolved. (D10, p.10; Tr., pp.264-267 (Viall).)

Prior Evaluations, IEEs, and 504 Plans

2. At the request of the Parents, the Student has been evaluated for special education services five times prior to May 2023. The District conducted three of the evaluations, and the District publicly funded two IEEs.

3. The Parents first referred the Student for an initial evaluation in October 2019, and after evaluating the Student, the District determined that the Student was not eligible for special education services. (D1, pp.3-4; Tr., pp.257-259 (Viall).) However, the District implemented a Rehabilitation Act 504 plan (“504 Plan”) for the Student on March 20, 2020. (D1, p.3.) The Student’s 504 Plan was last updated on March 10, 2023, and included the following accommodations: separate setting for district and state testing, retaking failed exams for partial credit, use of a slant board for reading and writing, twenty (20) minute eye breaks, preferential seating close to instruction, planner review by teacher, teacher check-ins for understanding of directions and lesson, teacher provided sequential visual and written steps, extended time to complete assignments or tests, multi-sensory supplemental options (visual aids, Bookshare, and text to speech). (D11, pp.1-8.)

4. The Parents then requested, and the District agreed to fund, an Independent Educational Evaluation (“IEE”) in the area of reading and vision. (D1, p.3; D6, pp.1-12; Tr., pp.263-264 (Viall).) The Student was evaluated at PDX Reading Specialists on March 7, 2020, and the evaluator Jen Doyle, M.S. Ed. BCET, concluded that the Student did not meet the criteria for dyslexia. (*Id.*) Ms. Doyle recommended “remediation in multisyllabic decoding, reading comprehension, written expression, and keyboarding,” as well as a list of educational accommodations for the Student. (*Id.*) On May 15, 2020, the Student’s 504 Plan was amended to include Ms. Doyle’s recommendations. (D1, p.3; D6, pp.1-12; D11, pp.1-8.) Ms. Doyle also recommended

evaluating the Student for ADD/ADHD and referred the Student to a developmental pediatrician for a functional vision exam. (*Id.*)

5. On May 28, 2020, the District reevaluated the Student for ADHD and vision, and concluded that the Student did not qualify for special education services because the Student possessed skills and abilities that are comparable to her peers and performed academically at or near grade-level. (D1, pp.3, 24 (Tr., pp.258-259 (Viall).)

6. In October 2020, the Student was referred to optometrist Dr. Linda Medeski, O.D., who specializes in neuro-optometric rehabilitation and vision therapy. (D1, p.4; D9, pp.1-8; P6, pp.1-7; Tr., pp.106-113 (Mother); 258-259, 277-278 (Viall).) Dr. Medeski evaluated the Student on October 6, 2020, October 13, 2020, and October 20, 2020, and identified that the Student had a correctable vision impairment but encountered periods of visual fatigue that required a therapy program. (*Id.*) Dr. Medeski recommended “glasses for school and near-type tasks, an in-office vision therapy program, accommodations for the school team to consider, and annual eye exams.” (*Id.*) The Student has received glasses for correcting her vision and updated prescriptions between October 2020 and May 2023. (Tr., pp.111-113 (Mother).)

7. The Student was evaluated for ADHD by Dr. Katherine Vaughn, M.D. at the Vancouver Clinic on June 12, 2020, and she diagnosed the Student with ADD stating that “she would benefit from an IEP.” (D1, p.4; D7, p.1; Tr., pp.263-264 (Viall).) The Parents provided the District with the diagnosis and requested that the District reevaluate the Student in December 2020. (D1, pp.4, 24.) The District’s second evaluation of the Student completed on March 24, 2021, reflected that the Student was able to focus, self-regulate, timely perform her academic work, read at an average level, and fully access her education with the 504 Plan’s accommodations. (D1, pp.4, 24; Tr., pp.263-264 (Viall).)

8. The Parents had the Student assessed in October 2020 in the area of speech and language pathology (“SLP”), by Kelsy Marks, SLP, at Legacy Medical Group. (D1, p.4; Tr., pp.259-260 (Viall).) Ms. Marks concluded that the Student had a slight impairment, and therapy services were recommended. (*Id.*) In 2020-2021, the Student completed a home-based speech and language program from Legacy Medical Group. (Tr., pp.104-105 (Mother).)

9. Also in November 2020, the Parents had the Student privately evaluated for motor and sensory processing skills, by Lindsey Bridges, Occupational Therapist (“OT”), at Legacy Medical Group. (D1, p.4; Tr., pp.259-260 (Viall).) Ms. Bridges recommended

OT services to “address concerns in social emotional delay, sensory processing, executive functioning and attention and visual motor delay.”³ (*Id.*)

10. The Parents requested another IEE in March of 2021, and the District granted the request, contracting with Dr. Nancy Loss, pediatric neuropsychologist. (D1, p.4; D10, pp.1-13; P28, pp.1-6; Tr., pp.264-265 (Viall).) Dr. Loss evaluated the Student in a number of areas during July 2021, and concluded that , “as in other evaluations, [the Student’s] neuropsychological and academic performance are within the average range, indicating that while she has a [TBI] diagnosis, she does not have an eligible disability that interferes with her access to a free and appropriate public education.” (*Id.*) Dr. Loss also noted that the Student’s ADD diagnosis by Dr. Vaughn was inconsistent with Dr. Loss’s assessment that the Student does not have ADD. (*Id.*) Also, Dr. Loss confirmed that the Student’s performance on the previous District was consistent with the Student’s performance on Dr. Loss’s assessments. (*Id.*)

11. Dr. Loss also reported that “[the Student] was recently released [in 2021] from the care of Dr. Nicacio because she responded well to treatment and her [TBI] symptoms have largely resolved.” (D10, p.10; Tr., pp.264-267 (Viall).) Dr. Loss also reported that the Student was “funny, engaging, polite,” and that this observation was relevant because “social challenges can be one of the most pronounced and deleterious long-term effects of TBI.” (D10, p.10; Tr., pp.267-269 (Viall).) Dr. Loss confirmed that the Student’s 504 Plan accommodations were appropriate, but offered some additional recommendations. (*Id.*)

12. The District conducted an annual vision screening of all students (without corrective lenses) and the Student participated in the vision screening on November 8, 2022. (D14, p.1; D15, p.1; Tr., pp.168-170 (George).) On February 6, 2023, the District provided the Parents with the vision screening results showing the Student has a vision impairment, and the Parents confirmed that the Student receives vision therapy from Dr. Medeski and uses glasses for vision correction. (*Id.*)

13. Between fourth grade and seventh grade, the Student received reading tutoring from Rebecca Olson⁴ and Jenny Valleck at Gold Star Tutoring at a rate of either two or four times per week. (D1, p.4; D16, pp.1-2; P2, p.1; Tr., pp.78-80 (Mother).) Ms. Olson reported on February 16, 2023, to Ellen Wiessner, the Executive Director of Special Services for the District, that the Student was not meeting “grade level expectations” for English Language Arts (“ELA”). (*Id.*) However, Ms. Olson and Ms. Valleck did not

³ There is no evidence in the record that the Student completed any OT services with Legacy Medical Group.

⁴ Ms. Olson did not testify in this matter.

explain how the Student was evaluated or assessed, or what grade level rating method the tutors used to reach their conclusion. (*Id.*)

May 17, 2023, Reevaluation

14. On February 2, 2023, the Parents requested that the District perform a “complete and comprehensive” reevaluation (“Reevaluation”) of the Student, primarily because the Parents were concerned about the Student’s reading comprehension. (D1, pp.1-4; Tr., pp.82-83 (Mother); 259-261 (Viall).)

15. On March 23, 2023, the Parents met with Tracey Viall, school psychologist, and Ms. Wiessner to determine the areas of concern and establish the scope of the Reevaluation. (Tr., pp.554-556 (Wiessner).) After the meeting, the Parents submitted a “Consent for Initial Evaluation” identifying the following areas of concern: cognitive, communication, adaptive, general education, observation, fine motor, medical – physical, academic, study skills, and vision and mobility. (D2, p.1; Tr., pp.259-261 (Viall).) The Parents also wrote on the consent form that the District should “use as part of review process,” the following: “Linda Medeski’s Report for TBI, Jamie Nicacio TBI diagnosis, Dr. Nancy Loss Report, O.T. [Ms. Bridges] at Legacy, Speech Therapy [Ms. Marks] at Legacy.” (*Id.*)

16. The Parents did not request that the Student be evaluated in social / emotional behavior or math. (*Id.*)

17. The District’s staff, particularly school psychologist Tracey Viall, “worried about how much time [the Student] was being pulled out of class to evaluate, how [the Student] felt about being evaluated over and over again.” (Tr., pp.258-269 (Viall).) Specifically, Ms. Viall noticed that the Student would get a:

pained look on her face when [Ms. Viall] asks [the Student] to take something home or when [Ms. Viall] goes to pull [the Student] out of class . . . [The Student] is extremely polite and never, ever says anything. But [the Student] clearly conveys nonverbally that she would really like [Ms. Viall] to just leave her alone . . . [She] is just tired of [the District staff] looking for something to be wrong with her when she is doing well.

(Tr., pp.268-269 (Viall).)⁵

⁵ The Parents requested that the District refrain from pulling the Student out of her academic classes to perform the assessments, but the District was only able to accommodate this request based on the staff availability and the Student’s class schedule . (D19, pp.1-2; D20, p.1; Tr., pp.270-271 (Viall).) Because the in-person assessments

18. The Reevaluation team (“Reevaluation Team”) included the following members: Ms. Viall,⁶ school psychologist; Mary Lunneborg,⁷ special education teacher; Allison Brown, general education teacher; Chad Harvison,⁸ general education teacher; Yvonne Flattum⁹, general education teacher; Sara George,¹⁰ teacher for the visually impaired (“TVI”); Lindsay Ross, school nurse; Lori Miller,¹¹ SLP; Erin Rothwell,¹² OT; and Ms. Wiessner, director of special education.

19. At the time of the Reevaluation, the Student received grades of C- (Math), B- (Language), A (WA State History), B- (Science), and A (Physical Education). (D1, p.4; P32, pp.1-7; Tr., pp.383-390 (Harvison).) The Student also played volleyball and softball, and sang in the school’s choir. (Tr., pp.79-81 (Mother); 213-214 (Rothwell); 381 (Harvison).) The Student continued to attend two, 1-hour tutoring sessions per week at Gold Star Tutoring between 6:00 p.m. and 7:00 p.m. (*Id.*)

20. Ms. Viall has experience in assessing students with a TBI and how it may impact their ability to access their education. (Tr., pp.251-253, 497-498 (Viall).) As part of the Reevaluation, Ms. Viall reviewed the previous evaluations and reports from Ms. Doyle, Dr. Medeski, Dr. Nicacio, Dr. Loss, Ms. Bridges, OT, and Ms. Marks, SLP. (Tr., pp.258-265, 273-274 (Viall).) Notably, Ms. Viall recognized that Dr. Loss had reported that Dr.

with the Student took approximately 8-10 hours in total time, the Student missed core instruction and other activities during the Reevaluation. (*Id.*)

⁶ Ms. Viall received a bachelor’s degree and a master’s degree in psychology from the University of Montana and has worked as a school psychologist since 1986. (D26, p.1; Tr., pp.250-252 (Viall).) Ms. Viall is a Nationally Certified School Psychologist and has worked for the District since 1994. (*Id.*)

⁷ Ms. Lunneborg received a bachelor’s degree in government with a minor in sociology from the College of St. Benedict, and a master’s degree in special education from Portland State University.(D30, pp.1-2; Tr., pp.742-744 (Lunneborg).) Ms. Lunneborg has worked as a special education teacher since 1997, and is certificated in the State of Washington. (*Id.*)

⁸ Mr. Harvison is a certificated teacher in the State of Washington and received a bachelor’s degree in communications from Purdue, and a master’s degree in education from Portland State University. (D34, pp.1-2; Tr., pp.379-381 (Harvison).) Mr. Harvison has taught at the District since 2000. (*Id.*)

⁹ Ms. Flattum received an associate degree from Lane Community College and a bachelor’s degree in finance from the University of Oregon, before earning a master’s degree in teaching from City University. (D35, pp.1-2; Tr., pp.442-444 (Flattum).) Ms. Flattum is a certificated teacher in the State of Washington and has taught at the District since 2004. (*Id.*)

¹⁰ Ms. George (Humble) received a bachelor’s degree in special education from Central Washington University, and a master’s degree in special education from Portland State University. (D27, pp.1-2; Tr., pp.162-164 (George).) Ms. George has worked as a TVI at the District since 1989. (*Id.*)

¹¹ Ms. Miller received a bachelor’s degree in speech pathology and audiology from San Jose State University, and a master’s degree in communication disorders and sciences from California State University, Northridge. (D28, p.1; Tr., pp.348-349 (Miller).) Ms. Miller holds an ASHA certificate of clinical competency and has worked as an SLP for over eleven years. (*Id.*)

¹² Ms. Rothwell earned a bachelor’s degree in occupational studies and a master’s degree in occupational therapy from the University of Kansas. (D29, pp.1-2; Tr., pp.200-203 (Rothwell).) Ms. Rothwell has over fifteen (15) years of experience and has worked for the District since 2012. (*Id.*)

Nicacio had released the Student from treatment for TBI in 2021 because “she completed therapy, she did well, and her brain had healed.” (Tr., pp.265-266 (Viall).)

21. In the area of cognition, Ms. Viall reviewed records from the Student’s first cognitive assessment when the Student was in elementary school, and Dr. Loss’s cognitive assessment. (Tr., pp.278-279 (Viall).) Both assessments showed that the Student scored in the average range with some weakness in “long-term retrieval.” (*Id.*) Ms. Viall then assessed the Student in the area of cognition using the Wechsler Intelligence Scale for Children – 5th Edition (“WISC-V”). (D1, p.8; Tr., pp.278-286 (Viall).) The Student demonstrated a full-scale IQ score of 104, and she received average scores in verbal comprehension, visual spatial, fluid reasoning, working memory,¹³ and a high average score in processing speed. (*Id.*)

22. In the areas of reading and writing, Ms. Lunneborg assessed the Student using the Woodcock-Johnson IV Tests of Achievement (“WJ-IV”). (D1., pp.11-12; Tr., pp. 288-292 (Viall); 750-764 (Lunneborg).) Average scores on WJ-IV range between 90 and 110. (*Id.*) The Student’s standard scores in basic reading and broad reading fell in the average range (103 and 109 respectively) on all subtests, which included: letter-word identification, word attack, reading fluency and passage comprehension. (*Id.*)

23. However, the Student’s standard score in the area of reading comprehension fell in the low average range at 89, because even though she received an average score of 99 on the reading recall subtest, the Student’s score on the passage comprehension subtest was 84. (D1, pp.11-13; Tr., pp.290-294 (Viall); 752-764 (Lunneborg).) Ms. Lunneborg had administered the Passage Comprehension subtest Form A, and the low average score appeared to be inconsistent with the Student’s other scores. (*Id.*) Therefore, Ms. Lunneborg reassessed the Student in reading comprehension using the passage comprehension WJ-IV Form B subtest. (*Id.*) The Student received a score of 97 which fell in the average range, bringing the Student’s reading comprehension standard cluster score up to 96, well within the average range. (*Id.*) Ms. Lunneborg also assessed the Student in the area of written language using the WJ-IV, and the Student received a score of 105 which placed her in the average range. (D1, pp.12-13; Tr., pp.288-289, (Viall); 755-764 (Lunneborg).)

24. Ms. Viall reviewed the Student’s April 2023, iReady diagnostic testing for reading which reflected that the Student was reading at a sixth-grade level, an increase

¹³ The Student received a score of “Average” in the area of working memory as shown by the chart on D1, p.10, however Ms. Viall reported Ms. Lunneborg’s results using a form that she copied and pasted into the Reevaluation Summary. Ms. Viall incorrectly indicated that the Student received a score of “very low” in the test summary report on D1, p.9. (D1, pp.9-10; Tr., pp.282-284 (Viall); 755-759 (Lunneborg).) Ms. Viall described the reporting error as a mistake in her testimony. (*Id.*)

from the fifth-grade level the Student achieved during the September 2022 and January 2023, iReady testing periods. (D1, p.12; D12, p.1; D13, p.1; P31, pp.1-17; Tr., pp.294-297 (Viall); 403-404 (Harvison); 451-453 (Flattum); 580-591 (Wiessner); 745-749 (Lunneborg).) The iReady diagnostic tests are a quarterly administered, schoolwide evaluative test, and amount to a “snapshot” of how a student is performing on a particular day. (*Id.*) While the information is informative, none of the Student’s general education teachers or Ms. Viall considered the Student’s iReady scores as concerning in relation to her overall academic performance. (*Id.*)

25. To evaluate the Student in the area of general education Ms. Lunneborg asked the Student’s core curriculum teachers to each complete a report about the Student’s performance. (D1, pp.11-12; Tr., pp.763-768 (Lunneborg).) Ms. Flattum (math), Mr. Harvison (science), and Ms. Brown (ELA), all reported that the Student performed at or near grade level in their classes. (*Id.*)

26. Mr. Harvison, the Student’s science teacher and volleyball coach, reported that the Student is attentive, respectful, kind, “has a great work ethic,” and “is a good student.” (Tr., p.381 (Harvison).) Mr. Harvison reported no concerns with the Student’s behavior or ability to participate in volleyball. (Tr., pp.422-423 (Harvison).) He also reported that, as per her 504 Plan, she would take the opportunity to redo assignments and exams if she received a grade below a B, and that the Student was inconsistent about wearing her glasses during class. (Tr., pp.388-395, 414-415 (Harvison).)

27. Ms. Flattum, the Student’s math teacher, reported that the Student is an average performer and very “personable. She was someone who did her work almost daily on time.” (Tr., pp.443-444 (Flattum).) Ms. Flattum did not have any concerns about the Student’s performance in math and believed that, while the Student would take the opportunity to redo work or retake exams, she did not need to be assessed in the area of math for special education. (Tr., pp.447-450 (Flattum).)

28. Ms. Brown, the Student’s ELA teacher, reported that the Student had shown growth in her performance, as demonstrated by the Student’s iReady scores for the 2022-2023 academic year. (D1, p.11; Tr., p.763-764 (Lunneborg).) Ms. Brown noted that the Student volunteers to read aloud in class, does not struggle with fluency, and that she is able to write in a coherent way and use age-appropriate vocabulary and voice. (*Id.*)

29. Overall, the three teachers reported that:

[the Student] is polite, well-liked by her peers. She is respectful to adults and students, works hard, participates in class, and appears enthusiastic about being at school. Although Mr. Harvison commented

that [the Student] frequently requires instructions to be repeated and Ms. Brown reported that [the Student] can be distracted by peripheral noise or movement, neither teacher felt that this interfered with her learning or the learning of others around her. All three teachers further gave [the Student's] social interactions with peers and adults an excellent rating. They also said that she does an excellent job of following school and classroom rules.

(D1, p.11; Tr., pp.764-766 (Lunneborg).)

30. Lori Miller, SLP, assessed the Student in the area of communication, using the Comprehensive Assessment of Spoken Language – 2 (“CASL-2”) to evaluate the Student’s “receptive expressive language skills.” (D1, pp.14-15; Tr., pp.353-354 (Miller).) Ms. Miller’s assessment is restricted to determining “whether or not a student has a communication disorder . . . [and] whether or not they really need services from a speech language pathologist . . . and whether or not there is an educational impact.” (Tr., pp.349, 353-354 (Miller).) The CASL-2 “evaluates oral language processing systems of auditory comprehension, oral expression, and word retrieval; knowledge and use of words and grammatical structures of language; and use of language for special tasks that require higher-level cognitive functions.” (D1, pp.14-15; Tr., pp.354-356 (Miller).) The Student received scores in the average range in all areas, and Ms. Miller’s significant findings were as follows:

The evaluation findings would suggest that [the Student] demonstrates age-appropriate communication skills. Her current skills in articulation, language, fluency and voice appear to be developing within normal limits. [The Student] has the communication skills necessary to participate in language-based classroom activities. Results from this current evaluation do not meet the criteria for consideration of a speech or language impairment when compared to same aged peers.

(D1, pp.14-15; Tr., pp.357-365 (Miller).) Ms. Miller compared these results with previous assessments performed in January 2020, which also showed that the Student performed within the average range. (D1, p.15; Tr., pp.364-365 (Miller).)

31. Ms. Miller observed the Student in mathematics and ELA classes as part of the Reevaluation. (D1, pp.15-16; Tr., pp.367- (Miller).) Ms. Miller observed the Student participate in class, engage during lectures and discussions, and work independently on projects, as well as ask questions. (*Id.*) Ms. Miller confirmed with Ms. Brown and Ms. Flattum that the Student’s behavior of following along, interacting socially, and asking questions during the observations was typical for the Student. (*Id.*)

32. Ms. Miller concluded, based on the CASL-2 assessment, a review of prior assessments, and observation that the Student's language skills were functioning "well within the average range. And that leads [Ms. Miller] to believe that withing the classroom she is understanding spoken language and able to use spoken language adequately to access her general education class content." (D1, p.15; Tr., p.370 (Miller).)

33. Ms. Viall observed the Student during general education reading and history classes, and noted that the Student followed directions, transitioned from classroom to lunch appropriately, took notes, volunteered to read aloud, and she appeared focused and actively participated in class. (D1, pp.18-19; Tr., pp.299-301, 314-316 (Viall).)

34. The Student's adaptive and executive functioning skills were evaluated using the Behavior Rating Inventory of Executive Functioning – 2nd Edition ("BRIEF-2"). (D1, pp.18-21; Tr., pp.301-316 (Viall).) Ms. Viall administered the assessment by providing Ms. Brown, Ms. Olson, the Parents, and the Student with a reporting form that measures behavioral regulation, emotional regulation, and cognitive regulation. (*Id.*)

35. Regarding the Parents' reporting form, Ms. Viall emailed the form to the Parents on two occasions, and sent two paper copies home. (*Id.*) However, the Parents did not complete and return the BRIEF-2 reporting form. (*Id.*)

36. Ms. Olson completed a BRIEF-2 rating form and all scores fell within the average range. (*Id.*) Ms. Brown completed a BRIEF-2 rating form and all scores fell within the average range. (*Id.*) The Student completed the BRIEF-2 rating form and her scores fell in the average range. (*Id.*) Even though the BRIEF-2 assessment reflected that the Student's executive functioning fell in the average range, both Ms. Brown and Ms. Olson identified some concerns about the Student's working memory, and Ms. Viall agreed that the "accommodations she already had on her 504 Plan were probably appropriate." (*Id.*)

37. Erin Rothwell, OT, assessed the Student in fine motor skills, and she used the Beery Test of Visual Motor Integration ("Beery VMI"). (D1, p.22; Tr., pp.206-208 (Rothwell); 316-317 (Viall).) The average range for standard scores on the test is 85-115 and the Student received a score of 93. (*Id.*) Ms. Rothwell's significant findings showed that the Student's "fine motor skills, visual motor skills, and handwriting are functional for school participation." (*Id.*)

38. Ms. Rothwell also included in the Reevaluation report information from the 2021 Sensory Profile 2 assessment of the Student's sensory processing skills.¹⁴ (D1, p.25; Tr., pp.204-206, 215-216 (Rothwell).) This assessment relied on Ms. Olson, the Parents, and a general education teacher completing a sensory profile form, which revealed that the Student's "sensory processing and self-regulation were functional for the educational setting." (*Id.*)

39. During the OT assessment process, Ms. Rothwell and the Student discussed the Student's participation in softball which requires hand-eye coordination. (Tr., pp.214-215 (Rothwell).) Ms. Rothwell concluded that, while the Student has a TBI, she is "still capable of normal visual motor integration" and can "participate in [her] education." (*Id.*)

40. Ms. Rothwell also performed a timed writing sample exercise with the Student, and she produced a sample reflecting "all 30 words in less than a minute . . . her printing was legible and it was on the line. She wrote with correct sizing and spacing and line orientation." (D1, pp.22-25; Tr., pp.209-213 (Rothwell).) Ms. Rothwell asked the Student to perform a typing assessment, and the Student produced a typing sample showing she was average for her age group. (*Id.*)

41. In the area of medical-physical, Lindsay Ross, school nurse, reviewed the Student's health records, medical records, and she noted that the Mother had completed a "school health information form," reporting the following conditions: "headaches, dyslexia, seasonal allergies, mild anxiety, vision problems, history of ear tubes, and a previous motor vehicle accident. A more recent report was not available at the time of this review." (*Id.*) Ms. Ross reviewed medical records that were supplied during the previous evaluations of the Student: TBI diagnosis by Dr. Jaime Nicacio, MD, on August 27, 2020; possible concussion from softball injury in June 2018; ADD diagnosis by Dr. Vaughn on June 12, 2020; comprehensive visual evaluation on October 20, 2020, by Linda Medeski, OD; Spot Vision Screening without corrective lenses on November 8, 2022, at Chief Umtuch Middle School. (*Id.*)

42. There is no evidence that the District requested additional medical records from the Student's providers as part of the Reevaluation. (Tr., pp.509-511 (Viall).) However, the "Medical Consent Form" that requires the signature of one of the Parents is unsigned. (D1, p.28.)

¹⁴ "Sensory processing" is "how we take in information from our environment . . . sight, sound, hearing, taste, smell, touch, and vestibular movements and just movement in general; how we process that and interpret that in our brain." (Tr., pp.204-205 (Rothwell).)

43. Regarding the areas of vision and mobility, Sarah George, TVI,¹⁵ contacted Ms. Viall and the Parents seeking the most recent records regarding the Student's vision, but she did not receive any records except Dr. Medeski's October 2020 report. (Tr., pp.175-176 9George.) Ms. George reviewed Dr. Medeski's October 2020 report and recommendations which:

. . . mentions only a very slight correction to help with visual fatigue. Dr. Medeski is an optometrist who works in a medical setting, with very specialized training in the area of visual therapy. It is not something that a Teacher of the Visually Impaired would work on or is trained to do. I have talked with Dr. Medeski on the phone and asked how she feels about this and she completely agrees that this is a therapy that happens in her office and is not something that we are trained to do in the educational environment.

(D1, p.25; D9, p.7; D17, pp.1-2; Tr., pp.175-180 (George).) Based on the information in the October 2020 report and Ms. George's understanding that the Student had a visual impairment that required vision therapy and corrective lenses, Ms. George concluded that further assessment in the area of vision by a TVI was not warranted.¹⁶ (Tr., pp.180-181 (George).) Ms. Viall concurred, concluding that vision therapy is not "something that the school would be responsible or even able to provide . . . because the medical field is much more broad" than the accommodations that a District was able to provide. (Tr., pp. 274-276 (Viall).) Ms. George recommended that the Student continue with any 504 Plan accommodations and that the Student was not eligible for special education services in vision. (D1, p.25; Tr., p.180 (George).)

44. On May 17, 2023, the Reevaluation Team, including the Parents, met and reviewed the Reevaluation report. (D1, pp.26, 29; Tr., pp.85-86 (Mother); 257-258, 318-319 (Viall); 559-562 (Wiessner).) During the May 17, 2023, Reevaluation Team meeting, the Mother was provided with a note taker (Assistant Principal Austin Brothers) and a copy of the notes. (D3, pp.1-9; P27, pp.1-10; Tr., pp.87-88 (Mother); 558-560 (Wiessner).)

¹⁵ Ms. George, as a TVI, works "with students who have a vision loss . . . to accommodate their needs so they can progress in the general [education] curriculum." (Tr., pp.162-167 (George).) Ms. George is not trained to provide vision therapy services. (Tr., pp.165-166 (George).)

¹⁶ The Parents elicited testimony regarding whether Ms. George contacted Dr. Medeski regarding the Student specifically, or if Ms. George contacted Dr. Medeski to discuss the general topic of vision therapy from a clinician in relation to TVI duties in the general education environment. (Tr., pp.181-184 (George).) No finding of fact is made regarding this issue because there is no dispute that the Student has a vision impairment or that the Student receives vision therapy and corrective lenses for the impairment. (*Id.*)

45. During the meeting, Mr. Harvison reported that he believed the Student was “over tested and over tired,” meaning that he observed that the Student was tired during class due to tutoring and over-tested by the District and private evaluators. (D3, p.1; Tr., pp.89-90 (Mother); 396-399 (Harvison).)

46. The Parents took the position that the Student was only getting good grades because she received reading and math tutoring at Gold Star tutoring, that the Student’s sibling assists her with homework, and that the Reevaluation assessment results were inaccurate. (Tr., pp.91-92 (Mother); 558-561 (Wiessner); 692-698 (Sibling).)

47. The Reevaluation Team concluded that the Student did not qualify for special education in any disability category because “while [the Student] has a documented [TBI], educational assessment (sic) does not suggest that her learning is being adversely impacted and there is no need for specially designed instruction.” (D1, p.26; Tr., pp.626-628 (Clay).) The Reevaluation Team agreed that the District should continue to implement the Student’s 504 Plan accommodations. (*Id.*)

48. A prior written notice (“PWN”) issued on May 17, 2023, reflecting the Reevaluation Team’s eligibility determination. (D1, p.26.)

49. The Parents requested an IEE at public expense on June 5, 2023. (Tr., pp.626-627 (Clay).) On June 12, 2023, the District filed its due process hearing request and denied the Parents’ request for an IEE. (*Id.*)

50. On October 30, 2023, after a resolution session was held, the Parents provided the District with the following list of assessments they believed should be administered to evaluate the Student:

-Wide Range Assessment of Memory and Learning, Third Edition (“WRAML-3”);

-Test of Everyday Attention for Children, Second Edition (“TEA-ch2”);

-Conners Behavioral Rating Scales (“CBRS”);

-Kaufman Test of Educational Achievement, Third Edition (“KTEA-3”) or Wechsler Individual Achievement Test, Fourth Edition (“WIAT-IV”);

-Developmental Neuropsychological Assessment, Second Addition (“NEPSY-II”);

-Delis-Kaplan Executive Function System (“D-KEFS”)

-Beery VMI;

-BRIEF-2.

(D22, pp.1-2; D23, pp.1-28; P19, pp.1-3; Tr., pp.113-118 (Mother); 328 (Viall); 571-578 (Wiessner).) The District denied the Parents' request for the additional assessments by issuing a PWN on October 30, 2023. (D21, p.1; D22, pp.1-2; Tr., pp. 326-333 (Viall); 575-579 (Wiessner); 629-633 (Clay).)

51. The District declined to administer the WIAT-IV because it is an achievement assessment that is similar to the WJ-IV which the District administered as part of the Reevaluation.(D13, pp.1-28; Tr., pp.326-333 (Viall).) The District declined to administer the KTEA-3 because it is a screening tool for dyslexia and the Student had already been evaluated by Ms. Doyle at PDX and she declined to diagnose the Student with dyslexia. (*Id.*) Also, the District identified that the CBRS was inappropriate because it assessed for problem behaviors in the classroom and there was no evidence the Student exhibited behavior problems or challenges. (*Id.*) The District declined to administer the D-KEFs because it assesses for executive functioning and Ms. Viall had assessed the Student in this area using the BRIEF-2. (*Id.*)

52. The District declined to administer the NEPSY-II because it is used to assess attention, executive functioning, language, memory, and learning,” but the Student was assessed in these areas using the WISC-IV, WJ-IV, and BRIEF-2. The District had administered the Beery VMI and the BRIEF-2 during the Reevaluation, so the District declined to readminister the same assessments. (*Id.*) The District declined to administer the TEA-ch2 because it is designed for children younger than the Student. (*Id.*) Finally, the District declined to administer the WRAML, a neuropsychologist administered assessment that looks in-depth at memory and learning deficits, because the Student did not display learning deficits and memory was already addressed by Dr. Loss's evaluation, the WISC-IV, WJ-IV, and the BRIEF-2. (*Id.*)

53. For the 2023-2024 academic year, the Student was placed in a high-capacity science and ELA class with Mr. Southworth, and is receiving grades of A and A-respectively. (D24, pp.1-6; Tr., pp.597-599 (Southworth).) “High-capacity classes are classes where “some students are clustered together who have shown to have some advanced skills in either reading, writing, or mathematics or some other subject areas.” (Tr., p.598 (Southworth).) The Student participates in volleyball and choir. (Tr., pp.422-423 (Harvison) ; 616-619 (Southworth).)

CONCLUSIONS OF LAW

Jurisdiction

1. OAH has jurisdiction over the parties and subject matter of this action for the Office of Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter

28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

Burden of Proof

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief, in this case the District. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

Applicable Law

3. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities and condition such funding upon a state's compliance with extensive goals and procedures. In *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

Rowley, supra, 458 U.S. at 206-07 (footnotes omitted). For a school district to provide FAPE, it is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity.” *Id.* at 200-01.

4. If the parent of a student eligible for special education disagrees with a school district's evaluation, the parent has the right to obtain an IEE, which is an evaluation conducted by a qualified examiner not employed by the school district. WAC 392-172A-05005(1). 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 fifteen (15) days to defend the appropriateness of its evaluation, or else ensure that a publicly funded IEE is provided without unnecessary delay. If the district initiates a hearing, and the final decision is that the district's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. WAC 392-172A-05005; see *also* 34 CFR §300.502.

5. Like IEPs, the appropriateness of a reevaluation must be determined in light of what was known, or should have been known, at the time the evaluation was conducted. Also, whether an evaluation is appropriate should not be judged in hindsight. This is the so-called snapshot rule. See *Adams v. Oregon*, 195 F.3d 1141, 31 IDELR 130 (9th Cir. 2001).

The District Evaluated the Student in All Areas of Suspected Disability as per the Parents' Consent

6. All school districts must “conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating, and identifying students who are in need of special education and related services, regardless of the severity of their disability.” WAC 392-172A-02040(1). A parent “may initiate a referral request for an initial evaluation to determine if the student is eligible for special education services.” WAC 392-172-03005(1). If a child is eligible for special education services, then a school district must ensure that a reevaluation is conducted every three years, or when a “parent or teacher requests a reevaluation.” WAC 392-172A-03015(1).

7. It is of note that the Student has never been determined eligible for special education services. Also, the Reevaluation at issue here was the fourth evaluation of the Student by the District within four years, and the District publicly funded two IEEs during the same period. The District’s child find obligation as per WAC 92-172A-02040(1) is not at issue, but it is notable that neither WAC 392-172A-03005 nor WAC 392-172A-03015 obligated the District to conduct the Reevaluation. Even so, the District conducted the Reevaluation and has the burden to show that it was appropriate.

8. The IDEA requires that a student be evaluated in all areas of suspected disability, but does not give a parent the right to dictate specific areas in which a school district must assess a student as part of a special education evaluation.” *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77843, *53 (W.D. Wash. 2019) *aff’d sub nom. Crofts v. Issaquah Sch. Dist. No 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022) (citing *Avila v. Spokane Sch. Dist. 81*, 686 F. App’x 384, 385 (9th Cir. 2017) (rejecting the parents’ contention that the district was obligated to administer assessments for dyslexia and dysgraphia when evaluating the student)). A district need not evaluate areas in which it does not suspect a disability. See, e.g., *Razzaghi v. Dist. of Columbia*, 44 IDELR 271 (D.D.C 2005); *Moses Lake Sch. Dist.*, 109 LRP 26490 (2008).

9. Before conducting an evaluation, a school district “must make reasonable efforts to obtain the informed consent from the parent.” WAC 392-172A-03000.

10. The Parents implied during the hearing that the District should have evaluated the Student in social / emotional behavior and math, and because the District did not, the Reevaluation is not sufficiently comprehensive. The District argues that it confirmed the scope of the Reevaluation with the Parents and obtained consent to perform the Reevaluation in only the areas of suspected disability.

11. The evidence and testimony overwhelmingly demonstrates that at no time did the Parents identify the Student's social / emotional behavior or math as areas of suspected disability, even when the District met with the Parents in March 2023 to confirm the scope of the Reevaluation. Moreover, none of the Student's teachers, tutors, previous evaluators, or the Reevaluation Team members identified the Student's social / emotional behavior or math as areas of concern. In fact, the record reflects, consistent with Dr. Loss's 2021 report, that the Student is a kind, polite, well-adjusted individual who acts appropriately for her age, engages with her teachers and peers, and enjoys participating and achieving in extracurricular activities. Also, Ms. Lunneborg reviewed information from Ms. Flattum (math teacher), the Student's iReady scores, and the Student's grades, which reflected no concerns regarding the Student's abilities in math.

12. Most importantly, however, the Parents did not consent to assessing the Student in the area of math or social / emotional behavior. Because the Parents did not provide consent, the District was not permitted to assess in these areas.

13. A review of the consent form, as well as the testimony of Ms. Weissner and Ms. Viall, shows that the District evaluated the Student in each area identified and consented to by the Parents. Given the record presented, it is concluded that the District was not obligated to assess the Student in the areas of math or social / emotional behavior. The District has met its burden and demonstrated that the Student was evaluated in each area of concern identified and consented to by the Parents.

The Reevaluation was Appropriate.

14. When a school district conducts a reevaluation, 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. The group must not use "any single measure or assessment as the sole criterion" for determining eligibility or educational programming. *Id.* The group must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical, and developmental factors. *Id.*

15. Assessments must be administered by “trained and knowledgeable personnel” and “in accordance with any instructions provided by the producer of the assessments.” *Id.* 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.” *Id.*

16. As set forth in its closing brief, and adopted here, the District’s witnesses and documentary evidence establish that the instruments used were technically sound and administered as per the instructions given by qualified individuals who possess the education and experience to perform the assessments. Thus, the District has carried its burden and has shown that it used a variety of assessment tools and strategies to evaluate the Student in each area of concern.

17. While the Parents do not have the burden of proof in this case, it is notable that the Parents have not identified why they believe the District failed in its obligation to use a variety of assessments or technically sound tools, or in what way the Reevaluation Team members were either not qualified or failed to properly administer the assessments or interpret the results. Instead, the Parents have testified only that they disagree with the results of the Reevaluation assessments and what the results mean. However, the Parents’ testimony lacks foundation as to their expertise and experience in administering assessments or interpreting evaluation and assessment results, and the Parents have not presented any witnesses with such knowledge or experience that supports their position that the Reevaluation was inappropriate. Given the lack of any identifiable reason that the District has not met the standards of WAC 392-172A-03020, and because the District has provided sufficient testimony and evidence that it did meet its obligations, it is concluded that the District’s Reevaluation is appropriate.

18. The Parents do argue that the District should have obtained updated medical records from Dr. Nicacio and Dr. Medeski, as well as other providers. A school district, if necessary, must obtain a “medical statement or assessment indicating whether there are any other factors that may be affecting the student’s educational performance.” WAC 392-172A-03020(3)(d). The District presented the testimony of Ms. Viall and Ms. Lunneborg that they reviewed all available previous evaluations and medical records, including records from Dr. Nicacio, Dr. Loss, Dr. Medeski, Ms. Doyle at PDX, and Ms. Marks and Ms. Bridges from the Legacy Group. This testimony is corroborated by the District’s documentary evidence, particularly copies of the reports from the medical providers and the inclusion of portions of the reports in the Reevaluation Report.

19. On the other hand, the Parents are correct that the District did not seek additional medical information from medical providers. However, the Parents did not sign and return the Medical Consent Form, and therefore the District could not obtain additional medical records for the Student. More importantly, it is unclear what information the Parents believed that the District should have obtained and from which providers because the Parents did not submit any additional medical records or testify as to any additional medical appointments, diagnoses, or tests that the Student received since Dr. Loss completed her evaluation in 2021. The only medical information offered by the Parents is that the Student continues vision therapy with Dr. Medeski and that she receives updated prescription glasses and sometimes struggles with vision fatigue. Given these facts, the Parents' argument that the Reevaluation is not appropriate due to a lack recent medical information about the Student falls short. It is concluded instead that the District's review of the available medical information was sufficiently comprehensive and the Reevaluation is appropriate as a result.

20. The Parents also seem to argue that the District did not review all existing data on the Student and determine the need for additional data. WAC 392-172A-03025 concerns the review of existing data for evaluations. It provides that an evaluation team must review existing evaluation data on the student and identify what additional data is needed to determine whether the student meets eligibility criteria. *Id.*; see also 34 CFR §300.305. This data includes prior evaluations, classroom-based, local, or state assessments, and classroom-based observations by evaluation team members and teachers. *Id.* at (1)(a) through (c). "On the basis of that review, and input from the student's parents," the reevaluation team "must identify what additional data, if any, are needed" to complete the evaluation and make an eligibility determination. *Id.* at (2)(b)(i) and (ii). The school district "must administer such assessments and other evaluation measures as may be needed to produce the data" needed. *Id.* at (4).

21. The District's witnesses Ms. Viall, Ms. George, Ms. Lunneborg, Ms. Rothwell, and Ms. Miller all testified that they reviewed existing evaluation data, iReady scores, grades, medical records, and general education teacher reports. Also, the District's witnesses testified about the variety of assessments administered to collect data about the Student, as well as the information obtained from each of the Student's core curriculum general education teachers. Also, Ms. Lunneborg, Ms. Rothwell, and Ms. Viall observed the Student in the general education environment. The District's documentary evidence corroborates the witness' testimony that they obtained all data needed to complete the Reevaluation, and that they administered all assessments and other evaluation measures needed to produce the data.

22. Beyond generally believing that more evaluations are required and more data should be collected, the Parents have not specified what data is missing and should

have been collected and considered by the Reevaluation Team. During the pendency of this case, the Parents did provide a list of additional assessments. However, as found above, the additional assessments the Parents request were either administered during the Reevaluation, repetitive / duplicative of the assessments administered, or inappropriate for the Student due to age and subject.

23. Based on the circumstances presented and the evidence in the record, it is concluded that the District met its obligation to obtain additional data and review all data and evaluations when it conducted the Reevaluation. The Reevaluation, then, is appropriate.

24. The Parents also argued that because the Student receives tutoring services from Gold Star Tutoring and homework assistance from her sibling, the Student's scores on the assessments and her grades do not accurately reflect her actual abilities. It may very well be that tutoring services and homework assistance positively impact the Student's grades and iReady scores. However, the evidence and testimony available does not demonstrate a connection between tutoring or homework assistance and the Student's performance on the evaluative assessments. On the other hand, the District has shown that it administered a variety of assessment tools and strategies, as well as technically sound instruments to gather relevant functional, developmental, and academic information about the Student. The Parents argument that tutoring and homework assistance in some way influenced the Student's performance on the assessments is not supported by the record. The District, then, has carried its burden and demonstrated that the Reevaluation was appropriate.

25. Finally, the Parents repeatedly argued that because the Student has a TBI and needs accommodations, the Student should be eligible for an IEP. First, as described below, the issue in this case is limited to the appropriateness of the Reevaluation; the Reevaluation Team's eligibility determination is not at issue. Even so, the purpose of the Reevaluation was to determine whether the Student has a disability and the nature and extent of any special education and related services that may be needed. As found and concluded above, the Reevaluation Team considered the Student's TBI diagnosis and Ms. Viall and Ms. Lunneborg were sufficiently qualified to assess a student with a TBI diagnosis. Given the record, then, it is concluded that the Reevaluation was sufficiently comprehensive and appropriate because it accounted for the Student's TBI diagnosis and provided the Reevaluation Team with the necessary data to determine whether the Student suffers an adverse educational impact as a result of the TBI diagnosis.

The District's Eligibility Determination is Not Properly Before this Tribunal

26. The Parents firmly believe that if the District had performed a sufficiently comprehensive assessment and understood the depth and breadth of the Student's TBI, as well as the resulting eye fatigue, then the District would conclude that the Student has a disability and is eligible for special education services. The District responds that the assessment results show that the Student does not suffer any "adverse educational impact" such that she is eligible for special education services.

27. 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). This group must include a general education classroom teacher and "at least one individual qualified to conduct individual diagnostic examinations of students." *Id.* A student must not be determined eligible if the student does not "otherwise meet eligibility criteria including presence of a disability, adverse educational impact, and need for specially designed instruction." WAC 392-172A-03040(2)(b).

28. As set forth above, WAC 392-172A-05005(2)(a) specifically states that "a parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district." (*Emphasis added.*) This narrow provision does not state that a parent has a right to an IEE if the parent disagrees with the Reevaluation Teams' eligibility determination.

29. In contrast, WAC 392-172A-05080 provides that "a parent or a school district may file a due process hearing request on any of the matters relating to the identification, evaluation, educational placement, or the provision of FAPE to the student." Thus, to challenge an eligibility determination, the parent must file a due process hearing request as per WAC 392-172A-05080. See, *South Kitsap Sch. Dist.*, Special Education Cause No. 2008-SE-0095, 110 LRP 66270 (WA SEA 2009) (reasoning that, under *Schaffer*, the school district has the burden of proof regarding issue of appropriateness of an evaluation but the parent has the burden regarding whether the District denied FAPE by exiting the Student from special education); and *Anaheim City Sch. Dist.*, 110 LRP 15988 (CA SEA 2010) (denying an IEE at public expense and stating that the "statutory validity of testing, however, does not require agreement on inference or conclusions resulting from the assessment.").

30. Here, the District filed the due process hearing request identifying the issue as whether the District's Reevaluation is appropriate. That is the sole issue before this tribunal. The issue of whether the District made an incorrect or correct eligibility

determination is not properly before this tribunal. Therefore, the Parents' challenge to the eligibility determination is not addressed.

ORDER

Based on the above findings of fact and conclusions of law, it is THEREFORE HEREBY ORDERED:

The District's May 17, 2023, Reevaluation is appropriate. The Parents are not entitled to an IEE at public expense.

SERVED on the date of mailing.



Courtney Beebe
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.

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:

Parents

[REDACTED]

via First Class Mail and
via E-mail

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Dated April 4, 2024, at Olympia, Washington.

Representative
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cc: Administrative Resource Services, OSPI