

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Seattle School District

Docket No. 12-2023-OSPI-02121

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

Agency: Office of Superintendent of  
Public Instruction

Program: Special Education

Cause No. 2023-SE-0208

A due process hearing was held before Administrative Law Judge (ALJ) Dana Diederich on April 19, 2024, via videoconference. The Parent of the Student whose education is at issue<sup>1</sup> appeared and was represented by Mary Griffin, attorney at law. The Seattle School District (District) was represented by Susan Winkelman, attorney at law. Also present for the District were Rachel Disario, Senior Assistant General Counsel, and Teresa Swanson, special education supervisor.

**STATEMENT OF THE CASE**

**Procedural History**

The District filed a due process hearing request with the Office of Administrative Hearings (OAH) on December 21, 2023. A scheduling notice was issued on December 22, 2023, assigning the complaint to ALJ Jacqueline Becker and setting a prehearing conference for January 19, 2024. The prehearing conference was held as scheduled, and a prehearing order was issued on January 24, 2024, setting the due process hearing for April 19 and 22, 2024. On April 8, 2024, the complaint was reassigned to ALJ Diederich. The due process hearing was held as scheduled.

**Due Date for Written Decision**

The deadline for a written decision in this case was extended at the District's request to thirty days after the record of the hearing closes. The hearing ended on

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<sup>1</sup> To ensure confidentiality, names of parents and students are not used.

April 19, 2024, and the record closed on May 17, 2024, when the parties timely filed post-hearing briefs. The due date for a written decision is June 16, 2024.

### **EVIDENCE RELIED UPON**

#### **Exhibits Admitted:**

District's Exhibits: D1 – D15  
Parent's Exhibits: P1 – P3, P5, and P8

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

Elizabeth Clousing – District Speech Language Pathologist  
Parent  
Angie Wang – District School Psychologist  
Kimberly Blount – District Occupational Therapist  
Teresa Swanson – District Special Education Supervisor

### **ISSUES**

The issue for the due process hearing is: Whether the District's reevaluation of the Student conducted on or about November 13, 2023, was appropriate and, if not, whether the Parent is 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. The Student was initially evaluated for special education in 2018 when he was [REDACTED]. D1p1.<sup>2</sup> The Student had been receiving early intervention services since he was approximately six months old. *Id.* The Student was initially found eligible

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<sup>2</sup> Citation to the exhibits of record is by exhibit number and page number, e.g. D1p1 is a citation to District's exhibit 1 at page 1.

for special education under the category of Developmental Delay and specially designed instruction (SDI) was indicated for social/behavior skills, adaptive/life skills, and communication. He was also found eligible for occupational therapy (OT) as a related service. *Id.*

2. The Student was reevaluated in 2019 at the request of the Parent due to a recent diagnosis of Autism. D1p1. The reevaluation indicated the Student continued to need SDI in the same areas. *Id.*

3. On April 6, 2022, the Student was reevaluated by the District to determine whether he continued to qualify for special education. D1. The Student was in kindergarten at this time. D1p1. The Student was found eligible for special education under the disability category of Autism. The reevaluation indicated the Student required SDI in the areas of reading, writing, math, social/behavior, communication, and adaptive skills. D1p2. OT was also identified as a necessary related service. *Id.*

4. On February 10, 2023, the District completed a functional behavioral assessment (FBA) of the Student. D2. The FBA identified the Student had lagging skills in handling transitions and in initiating academic tasks and continuing to work on tasks until completion. D2p1 – 4. The FBA recommended a behavior intervention plan (BIP) for the Student and laid out recommendations for the individualized education program (IEP) team. D2p5.

5. On April 26, 2023, an IEP was developed for the Student. D3. The IEP included SDI in the areas of math, reading, written language, adaptive/life skills, social/behavior, and communication, and related services in OT. D3p25.

6. The District's 2023 – 2024 school year started on September 6, 2023. D15. The Student was in the second grade at North Beach Elementary School in the District. D7p6.

### **November 2023 Reevaluation**

7. On September 26, 2023, the Parent provided signed consent to the District for the Student to be reevaluated. D4p1. The consent form indicated the Student would be evaluated in the following areas: general background, math, motor, written language, communication, medical-physical, reading, social/behavior, and other areas as determined by the evaluation team. D4p1. The consent form noted the reevaluation was requested by the Student's IEP team "to gather updated information to inform special edu. supports." *Id.*

8. On October 10, 2023, the District issued a prior written notice (PWN) proposing to change the Student's educational placement to a "more intensive special education setting with special education support provided throughout the day." D6p3. It stated that current data showed the Student "requires more academic support in a special education setting." *Id.*

9. On November 13, 2023, the Student's evaluation team met and completed the Student's reevaluation. D7p6. The meeting included Victoria Ang, special education teacher; Benjamin Fitch, case manager; Trish Russell; Angie Wang, school psychologist; Kimberly Blount, occupational therapist; Kristine McLane, administrator; Elizabeth Clousing, speech language pathologist; Kristen Wilder, general education teacher; and the Parent. *Id.* at 1. The Parent participated in the meeting and provided input to the team. T35.<sup>3</sup>

10. The reevaluation summary included the name and title of all professional members of the evaluation team and indicated they agreed to the reevaluation results on November 13, 2023, via Teams. D7p10

11. The reevaluation found the Student continued to be eligible for special education under the autism disability category. D7p6. The results of the reevaluation found that the Student's disability adversely impacted him in the areas of academics, social/behavior, adaptive/life skills, communication, and motor. *Id.* at 6-7. The reevaluation recommended the Student receive SDI in communication, reading, written language, math, social/behavior, and adaptive /life skills, and related services in OT. D7p8.

12. The reevaluation included teacher reports from Ms. Ang, the Student's special education teacher; Ms. Aronson, the Student's special education instructional assistant; Ms. Cumming, the Student's special education case manager; and Ms. Wilder, the Student's general education teacher. D7p13-15. Each provided information regarding the Student's abilities in reading, writing, math, social/behavior, communication, and motor skills. *Id.* They also reported the interventions used with the Student during the school day. *Id.*

13. The general background section of the reevaluation also included the Student's measurements of academic progress (MAP) assessments in reading and math from the fall of 2021-2022 school year to the fall of the 2023-2024 school year. D7p13.

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<sup>3</sup> Citation to the transcript is by the letter "T" followed by the transcript page number.

14. The reevaluation included a report completed by the Parent. D7p16. The Parent provided her input regarding the Student's areas of strength and included her concerns in the areas of reading, writing, math, social/behavior, communication, and motor skills. D7p16-17.

#### Adaptive Life Skills

15. As part of the reevaluation, the Student was assessed in the area of adaptive/life skills by Ms. Wang.<sup>4</sup> D7p17. Ms. Wang administered the Adaptive Behavior Assessment Systems, Third Edition (ABAS-3). The ABAS-3 is used to help identify what students can and cannot do with and without assistance from others. *Id.* The Parent and the Student's general education teacher, Ms. Ang, completed the ABAS-3 scales for the Student. *Id.* The ABAS-3 measures a child's functional skills across three domains: conceptual, social, and practical. D7p17. In the area of conceptual skills, the Parent rated the Student's abilities in the extremely low range and Ms. Ang rated the Student's abilities in the low range. D7p18. In the area of social skills, the Parent rated the Student's abilities in the low average range and Ms. Ang rated the Student's abilities in the below average range. *Id.* In the area of practical skills, the Parent rated the Student's abilities as low when compared to his peers. Ms. Ang rated the Student's practical skills as below average when compared to his peers. D7p18. The general adaptive skills composite score summarizes the Student's performance across the three domains. For general adaptive skills, the Parent rated the Student in the extremely low range, and Ms. Ang rated the Student in the low range. *Id.* Ms. Wang administered the ABAS-3 in accordance with the instructions of the test producer. T81.

16. Based on the ABAS-3 scores, Ms. Wang noted that the Student has strength in his adaptive communication skills and is able to identify and seek out trusted adults. D7p19. She also noted the Student is able to navigate familiar places independently and is starting to identify community services, such as the fire department, and is learning how to respond in case of emergencies. *Id.* Ms. Wang also identified the following areas of concern based on the ABAS-3 findings: demonstrating personal safety; caring for his community; following safety rules in the school, home and community settings, particularly when he is escalated; and navigating the school day independently by following daily routines and or a visual schedule. *Id.* It was recommended the Student receive SDI in the area of adaptive/life skills. *Id.*

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<sup>4</sup> Ms. Wang has her undergraduate degree in psychology with a minor in French. T75. Ms. Wang has a graduate degree in school psychology and is has her state certification. T75-76. She has been working as a school psychologist in the District for 10 years. *Id.*

## Communication

17. The Student was reevaluated in the area of communication. D7p20. Speech language pathologist Elizabeth Clousing<sup>5</sup> completed this portion of the Student's reevaluation. T22. Ms. Clousing administered the Arizona Articulation and Phonology Scale, fourth Revision (Arizona-4) to the Student to assess his articulation abilities. *Id.* The Student was asked to label a variety of single word pictures and the results showed a severely delayed score for his age. *Id.* It was noted that the Student's speech clarity continued to be a challenge in the classroom environment. *Id.* Ms. Clousing administered the Arizona-4 in accordance with the instructions from the test provider and found the Student's results to be valid. T23-24.

18. The Student was not formally assessed for receptive or expressive language delay. D17p20. However, Ms. Clousing did a general screening of the Student. T24. This showed the Student was able to understand and express a variety of early communication skills, was able to follow simple directions, and demonstrated an understanding of complex directions. *Id.* It was noted that the Student's expressive language skills should be monitored and addressed if concerns arise. *Id.*

19. The Student was not assessed in the areas of voice or speech fluency because no concerns were reported or observed in these communication areas. D17p20. Ms. Clousing determined the Student should be assessed in the area of articulation based on her review of the Parent's concerns, her review of the Student's file, the work she has done with the Student, and input from other staff members. T23. Ms. Clousing does not remember anyone on the Student's evaluation team expressing other communication concerns regarding the Student. T23. Ms. Clousing has worked with the Student providing speech services since his kindergarten year. T21.

20. It was recommended the student receive SDI in the area of communication to address misarticulation. D7p20.

## Academic

21. The academic portion of the Student's reevaluation looked at math, reading, and written language. The math portion of the Student's reevaluation was performed by Ms. Wang. D7p20. Ms. Wang completed a file review, which involved reviewing the

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<sup>5</sup> Ms. Clousing has her bachelor's degree and master's degree in communication sciences and disorders. T20. She is certificated by the state and nationally as a speech language pathologist. *Id.* She has been a speech language pathologist for the District for nine years. *Id.*

Student's performance on the Math Concepts and Applications subtest of the Kaufman Test of Educational Achievement, Third Edition (KTEA-3), which was administered on March 28, 2022, as part of the Student's previous reevaluation. D7p21. That assessment showed the Student could count items, understand math vocabulary, identify shapes, identify numerals up to 20, decode patterns, and identify mathematical symbols "plus" and "subtract/take away." *Id.*

22. The math portion of the reevaluation also involved a review of the Student's current IEP goals, and IEP progress notes from April 26, 2023. D7p21. The IEP progress notes indicated the Student was not able to complete grade level math and required additional support to be successful within the general education class. He was often removed due to the level of frustration he experienced. *Id.* It noted the Student was "able to make good progress and feel successful when he has the level of support he requires." *Id.*

23. The math portion of the reevaluation involved narrative data from teacher reports. D7p22. Ms. Ang, Ms. Aronson, Ms. Cumming, and Ms. Wilder all provided input. *Id.* The reports noted the following areas of concern: word problems, computation, multi-step algorithms, and basic math facts. *Id.*

24. The reading portion of the reevaluation was done by Ms. Wang. D7p28. Ms. Wang performed a file review, which involved review of the Student's scores on the Letter and Word Recognition and Reading Comprehension subtests of the KTEA-3 from the Student's previous reevaluation. *Id.* Ms. Wang also reviewed the Student's current IEP goals and IEP progress notes from April 26, 2023. D7p29. The progress notes stated the Student had lagging skills in segmenting and isolating word sounds, recognizing and producing rhyming words, and decoding beginning sight words. *Id.*

25. The reading reevaluation included teacher narrative reports from Ms. Ang, Ms. Aronson, Ms. Cumming, and Ms. Wilder. *Id.* The areas of concern noted by the Student's teachers were decoding, comprehension, and fluency. *Id.*

26. The Student was assessed in the area of written language as part of the reevaluation. D7p39-41. This portion of the reevaluation was done by Ms. Wang and consisted of a file review, an IEP review, and teacher narrative reports. *Id.* The file review involved review of the KTEA-3 and Wechsler Individual Achievement Test, Fourth Edition (WIAT-4) done on March 28, 2022, as part of the Student's previous reevaluation. D7p39. The Student scored in the very low range on the spelling subtest of the KTEA-3. *Id.* The Student scored in the low range on the Alphabet Writing Fluency composite of the WIAT-4 assessment. D7p39-40.

27. The teacher reports were provided by Ms. Ang, Ms. Aronson, Ms. Cumming, and Ms. Wilder. D7p40. They noted the Student's areas of concern were handwriting, spelling, capitalization, punctuation, organization of thoughts, writing production, and generating ideas. *Id.*

28. Ms. Wang and Ms. Aronson also completed the Developmental Profile, Third Edition, (DP-3) as part of the academic portion of the reevaluation. D7p22. The DP-3 is a checklist that looks at five facets of child development compared to their peers: physical development, adaptive behavior, social-emotional development, cognitive development, and communication. *Id.* Overall, the Student scored in the 4<sup>th</sup> percentile in the cognitive development section. *Id.*

29. Ms. Wang did not administer any additional standardized assessments in any academic areas because the Student's scores on the previous assessment done in 2022 were consistent with the current information provided from assessments and teacher reports. T82, 84, 86. It is Ms. Wang's professional opinion that the academic portion of the reevaluation was sufficient to provide accurate information regarding the Student's needs and abilities. T82-84, 87.

30. The reevaluation recommended the Student receive SDI in math, reading, and written language. D7p22, 30, 41.

#### Medical-Physical

31. The medical-physical section of the reevaluation was performed by Rebecca Bruck, RN. D7p22. It noted there were no physical health concerns reported for the Student. D7p23.

#### Motor

32. The motor portion of the reevaluation was completed by Kimberly Blount,<sup>6</sup> occupational therapist. D7p23. Ms. Blount currently provides OT services to the Student as a related service. T129. The motor evaluation involved file review, skilled observations, functional skills assessment, parent report, and teacher/educational team report. *Id.* Ms. Blount reviewed the Student's writing sample from September 2023. D7p24. She also reviewed an April 24, 2023 OT report from Dori Howland. D7p25. Ms. Blount reviewed the Students results on the Sensory Processing Measure

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<sup>6</sup> Ms. Blount has a bachelor's degree in biology and a master's degree in occupational therapy. T128. She is a certificated occupational therapist and has worked as an occupational therapist since 2010. *Id.*



(SPM), which was administered on April 6, 2022, as part of the Student's previous reevaluation. D7p26.

33. Ms. Blount recommended the Student receive occupational therapy as a related service due to his difficulties in sensory processing, executive functioning, and fine motor strength and coordination. D7p27. She recommended the Student have several accommodations and modifications. *Id.*

#### Social/Behavior

34. Ms. Wang completed the social/behavior section of the Student's reevaluation. D7p30. Ms. Wang collected narrative feedback from Ms. Ang, Ms. Aronson, Ms. Cumming, and Ms. Wilder. D7p30-31. They noted concerns in the following areas: social skills, emotion regulation, behavior regulation, social problem solving, inattention, physical harm to self and others, and transitions. *Id.*

35. Ms. Wang administered the Behavior Assessment System for Children, Third Edition (BASC-3) as part of the social/behavior section of the reevaluation. D7p31. Rating scales were filled out by Ms. Ang, Ms. Wilder, and the Parent. *Id.* The ratings had scores in the "at risk" or "clinically significant" risk level on all composite areas. D7p32-36. Ms. Wang administered the BASC-3 in accordance with the instructions from the test producer. T85.

36. As part of the social/behavior section of the reevaluation, Ms. Wang also did a classroom observation of the Student on November 9, 2023. D7p37. Ms. Wang did not remember the length of the observation, but usually she observes students for 45 minutes to an hour. T86.

37. The Student was found to have difficulties in the following social/behavioral areas:

- Behavior regulation and communicating his emotions or needs to teachers and peers verbally (with words) or nonverbally (e.g. with visuals or drawings)
- Emotion regulation and using strategies to self-regulate when he is feeling big feelings
- Social problem solving either independently or with adult scaffolding
- Developing and maintaining relationships with peers, including negotiating social situations/social problem solving (e.g. asking another child to play;

responding appropriately when another child requests play; reading social cues)

- Building flexibility in social engagements (e.g. allowing others to guide an activity; adjusting his play to allow for another child to join; following a group plan; waiting his turn; etc.)
- Following classroom, school, and community rules and routines
- Following adult directives and supports, particularly during times of transition and when an activity seems too difficult, as well as self-regulating when he does not get his way
- Building attention to instruction and participation in classroom activities

D7p39.

38. Based on the results of the assessment, it was recommended the Student receive SDI in social/behavior. D7p38.

#### Other

39. As part of the reevaluation, Ms. Wang also included the Student's scores on previous cognitive measures. D7041. This included the Student's scores on the Developmental Assessment of Young Children, Second Edition (DAYC-2), which was performed as part of the Student's previous reevaluation. D7p42. This assessment was completed by Ms. Coutts, the Student's kindergarten teacher, and indicated that the Student's cognitive/preacademic functioning was within the below average range. *Id.*

40. Ms. Wang also included the Student's results from the standardized nonverbal intelligence assessment, the Comprehensive Test of Nonverbal Intelligence, (CTONI-2). D7p42. This assessment was completed on March 8, 2022, and April 1, 2022. *Id.* The Student scored in the average and below average range. *Id.*

41. The reevaluation included the results from the Wechsler Intelligence Scale for Children, Fifth Edition (WISC-5), which was completed during the Student's previous reevaluation. D7p43. The testing was not complete because the Student did not want to engage in some of the testing and became too distracted. *Id.* Of the subtests that could be completed, the Student scored in the below average range for Fluid Reasoning, Visual Puzzles, Matrix Reasoning, and Figure Weights, and scored in the average range for digit span. D7p43-44.

42. On November 13, 2023, the District issued a PWN proposing to continue the Student’s special education eligibility under the disability category of autism spectrum disorder. D7p45. It proposed the Student receive SDI in the areas of reading, writing, mathematics, social/behavior, adaptive/life skills, and communication, as well as OT as a related service. *Id.*

**December 2023 IEP**

43. On December 12, 2023, the Student’s IEP team met and developed a new IEP for the Student. D9. It had the following service matrix:

**Services 12/13/2023 - 12/11/2024**

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
<b>Related</b>							
Yes	Occupational Therapy	OT	OT	90 Minutes / Monthly	Special Education	12/13/2023	12/11/2024
<b>Special Education</b>							
No	COMMUNICATION	SLP	SLP	180 Minutes / Monthly	Special Education	12/13/2023	12/11/2024
No	MATH	Special Education Staff	Special Education Teacher	210 Minutes / Weekly	Special Education	12/13/2023	12/11/2024
No	READING	Special Education Staff	Special Education Teacher	250 Minutes / Weekly	Special Education	12/13/2023	12/11/2024
No	WRITTEN LANGUAGE	Special Education Staff	Special Education Teacher	110 Minutes / Weekly	Special Education	12/13/2023	12/11/2024
No	ADAPTIVE/LIFE SKILLS	Special Education Staff	Special Education Teacher	100 Minutes / Weekly	Special Education	12/13/2023	12/11/2024
No	SOCIAL/BEHAVIOR	Special Education Staff	Special Education Teacher	600 Minutes / Weekly	Special Education	12/13/2023	12/11/2024
<b>Total minutes per week of building instructional time available for this student (excluding lunch):</b>				<u>1775 minutes per week</u>			
<b>Total minutes per week student is served in a special education setting:</b>				<u>1315 minutes per week</u>			
<b>Percent of time in general education setting:</b>				<u>25.92% in General Education Setting</u>			

D9p23. On December 12, 2023, the District issued a PWN proposing to implement the IEP starting on December 13, 2023. D9p26-27. The PWN noted the Parent expressed disagreement with the IEP goals. The District asked the Parent to submit her concerns by email to the team. *Id.*

44. The District completed a FBA of the Student on December 12, 2023. D12. The target behaviors addressed are “incompatible behaviors to group participation which can escalate to climbing, throwing, hitting, kicking.” D12p2. A BIP was developed dated December 12, 2023. D13.

45. On December 13, 2023, the Parent emailed the District and requested an IEE at District expense. P1p3.

## 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 burden of proof in an administrative hearing under the IDEA is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).<sup>7</sup> The District is seeking relief and bears the burden of proof in this case. The U.S. Supreme Court and Washington courts have generally held that the burden of proof in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 102 (1981); *Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 797 (1999); *Hardee v. Dep't of Social & Health Services*, 172 Wn.2d 1, 4 (2011). Therefore, the District's burden of proof in this matter is preponderance of the evidence.

### **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.

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<sup>7</sup> Washington State Senate Bill 5883, which went into effect on June 6, 2024, places the burden of proof in due process hearings on school districts for cases involving the "identification, evaluation, reevaluation, classification, educational placement, disciplinary action, or provision of a free appropriate public education for a student with a disability." Whether previous case law or the new state law apply, the burden of proof in the present case is on the District.

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, 399 (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.* at 400. The “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Id.* at 399. Accordingly, an IEP team is charged with developing a comprehensive plan that is “tailored to the unique needs of a particular child.” *Id.* at 391. Additionally, the Student’s “educational program must be appropriately ambitious in light of his circumstances . . . .” *Id.* at 402.

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. When conducting an evaluation, the District is required to follow the requirements set forth in WAC 392-172A-03020, which provides:

Evaluation procedures.

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

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

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

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

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

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility [sic] for special education services and for determining an appropriate educational program for the student; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Each school district must ensure that:

(a) Assessments and other evaluation materials used to assess a student:

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education. Use of professional judgment shall be documented in the evaluation report;

(iv) Are administered by trained and knowledgeable personnel; and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(d) If necessary, as part of a complete assessment, the school district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's educational performance.

(e) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(f) Assessments of students eligible for special education who transfer from one school district to another school district in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

(g) In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified.

(h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

See 34 CFR 300.304.

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

Review of existing data for evaluations and reevaluations.

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

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

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

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

(c) Observations by teachers and related services providers.

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



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

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

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

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

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

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

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

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

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

See 34 CFR 300.305.

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

Evaluation report.

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

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

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

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

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

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

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

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

### **Appropriateness of the Student's November 2023 Reevaluation**

13. In the present case, the District reevaluation assessed the Student in all areas related to the Student's suspected disability. The Parent signed the reevaluation consent form which indicated the Student would be evaluated in the areas of general background, math, motor, written language, communication, medical-physical, reading, and social/behavior. The November 2023 reevaluation assessed the Student in all of these areas. Nothing in the record shows that the Student's IEP team, including the Parent, indicated the need for assessments in any other area.

14. Further, the District used a variety of assessment tools and strategies as part of the November 2023 reevaluation. The reevaluation included a review of existing data and records, including the Student's IEP goals and progress reports, the Student's previous reevaluations, and previous cognitive testing done for the Student. It also included the Student's MAP scores in reading and math. The reevaluation included reports from the Student's teachers and teaching assistants as well as the Parent. The District completed new assessments of the Student including the DP-3, the ABAS-3, the Arizona-4, and the BASC-3. Ms. Wang also completed a classroom observation of the Student. The District used a variety of assessment tools and strategies as part of the reevaluation and all of the providers testified that they believed they had sufficient data to get accurate information about the Student's needs.

15. The November 2023 reevaluation was completed by qualified personnel. Ms. Wang, who completed multiple parts of the reevaluation, is a certificated school psychologist. Further, Ms. Clousing, who completed the communication portion of the reevaluation, is a nationally and state certified speech language pathologist. Ms. Blount, who completed the motor portion of the reevaluation, is a state and nationally certified occupational therapist. The individuals who participated in the reevaluation had the education, training, and experience necessary to conduct the reevaluation. Further, all new assessments were administered in conformity with the test producers' instructions.

16. Finally, the November 2023 reevaluation report satisfies the requirements of WAC 392-172A-03035. It states that the Student meets the eligibility criteria and includes a discussion of the assessments and review of data used to support that finding. It also includes the list of professional team members and the date they agreed to the reevaluation results. While it does not include signatures, it states the members agreed to the conclusions over Teams video conference. No evidence was provided to indicate that any of the professional members disagreed with the reevaluation. Moreover, any procedural defect based on the lack of signatures does not impact the overall appropriateness of the evaluation.

### **Parent's Arguments**

17. The Parent argues that the reevaluation was inappropriate because the Student's autism diagnosis required the District to perform a more comprehensive assessment in the area of communication.

18. For communication, the Arizona-4 was administered to assess the Student's articulation. Ms. Clousing noted that the Student was not formally assessed for receptive and expressive language delay, but that informal testing showed the Student

was able to understand and express a variety of early communication skills, follow simple directions, and understand complex directions. Based on the informal testing, Ms. Clousing noted that the Student's expressive language skills should be monitored and addressed if concerns arise.

19. The evidence does not show that other communication assessments were requested or necessary for the Student at issue. The fact that the Student qualifies for special education under the disability category of autism does not require the District to perform any specific tests as part of a reevaluation. Rather, Ms. Clousing determined what assessment was necessary for the Student and also conducted informal testing to determine if other assessments were necessary, and found they were not. The communication portion of the reevaluation was sufficiently comprehensive.

20. The Parent also argues that the reevaluation was inappropriate because the academic portion of the assessment did not look at whether the Student had a specific learning disability and did not perform any new standardized cognitive assessments.

21. The reevaluation assessed in the areas of math, reading, and written language. Ms. Wang administered the DP-3 and reviewed cognitive testing that had been performed in 2022 as part of the previous reevaluation. Ms. Wang also reviewed reports from the Student's teachers about the Student's academic abilities. Based on this information, Ms. Wang determined that the findings were consistent and additional standardized cognitive testing was not necessary for the Student.

22. The District used a variety of assessment tools and strategies to assess the Student in academics. The evidence does not support a conclusion that new standardized cognitive testing was necessary, or that the lack of it rendered the reevaluation inappropriate.

23. Further, there is no information in the record indicating anyone on the Student's evaluation team suspected the Student had a specific learning disability or requested testing to look at that possibility. There is no evidence that the Parent requested such testing or indicated to District staff that she believed the Student might have a specific learning disability. The record does not indicate that the Student should have been evaluated for a specific learning disability as part of the November 2023 reevaluation.

24. Finally, the Parent argues the reevaluation is inappropriate because the consent form states the reevaluation was being done "to gather information to inform special edu. Supports" but the reevaluation does not do so. The Parent seems to be arguing that the reevaluation is inappropriate because it does not identify any specific

additional supports the Student needs. However, the consent form indicated the reevaluation was intended to gather information which would then help to inform any additional supports the Student needs. The reevaluation includes significant information about the Student's needs, which were then used by the Student's IEP team to develop a new IEP. The evidence does not support a finding that the reevaluation is inappropriate because it fails to do what the consent form states.

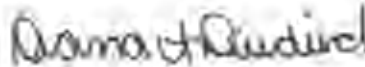
### **Conclusion**

25. Based on the record, it is concluded that the District has established by a preponderance of the evidence that the November 13, 2023 reevaluation of the Student is appropriate. Consequently, the Parent is not entitled to an IEE at public expense.

### **ORDER**

The Seattle School District's November 13, 2023 reevaluation of the Student is appropriate. The Parent is not entitled to an independent educational evaluation at public expense.

SERVED on the date of mailing.



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Dana Diederich  
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:

Parent

[REDACTED]

via E-mail

[REDACTED]

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Dated June 12, 2024, at Olympia, Washington.

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Representative  
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cc: Administrative Resource Services, OSPI