

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Seattle School District

Docket No. 05-2024-OSPI-02208

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

Agency: Office of Superintendent of  
Public Instruction

Program: Special Education

Cause No. 2024-SE-0060

A due process hearing was held before Administrative Law Judge (ALJ) Courtney Beebe on June 20, 2024. The Parent of the Student whose education is at issue<sup>1</sup> appeared and was represented by Jason Kinn, attorney at law. The Seattle School District (“District”) was represented by Susan Winkleman, attorney at law. Also present for the District was Rachel Disario, Senior Assistant General Counsel, and Amanda McNaughton, Special Education Supervisor.

**STATEMENT OF THE CASE**

**Procedural History**

The Parent requested an Independent Educational Evaluation (“IEE”) in the area of motor skills on April 17, 2024. The District denied the request and filed a Due Process Hearing Request with OAH on May 7, 2024. The Parent, acting pro se, and the District appeared for a prehearing conference on May 23, 2024. The First Prehearing Order issued on May 24, 2024, giving notice of the due process hearing on June 20, 2024. The Parent’s legal representative filed a Notice of Appearance on June 12, 2024. The parties and their legal representatives, appeared for the due process hearing on June 20, 2024.

**Due Date for Written Decision**

At the due process hearing, the parties agreed to extend the decision due date in this matter to August 9, 2024.

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

## EVIDENCE RELIED UPON

### **Exhibits Admitted:**

District's Exhibits: D1, D2, D3, D4, D5, D6, D7, D8, and D9.

Parent's Exhibits: P1, P2, P3, P5, and P6.

### **Exhibits Excluded:** P4

**Witnesses Heard (in order of appearance):** Heather Gianfriddo, Andrea McCarthy, Nash Perkins, and the Parent.

## ISSUES

The issue for resolution is:

*Whether the District's December 2023, evaluation of the Student is appropriate, and if not, whether the Parent is entitled to an independent educational evaluation ("IEE") at public expense.*

(First Prehearing Order, May 24, 2024.)

Additionally, as identified sua sponte by the tribunal during the due process hearing, the pleadings present the following issue regarding the tribunal's subject matter jurisdiction:

*Whether the District timely filed its Due Process Hearing Request within fifteen (15) days of the Parent's April 17, 2024, request for an IEE, as required by WAC 392-172A-05005 and WAC 392-172A-05085.*

## FINDINGS OF FACT

### The Student

1. During the 2023-2024 academic year, the [REDACTED] Student attended third grade at Thurgood Marshall Elementary School in the District. (D4, p.6.) The Student was initially found eligible for special education services in 2019 due to "developmental delay." (D4, pp.4-6.) The Student later received a diagnosis of autism on April 14, 2021, as the result of an evaluation performed by Neighborcare Health. (P2, pp.1-23.)
2. The Student's diagnosis of autism was first recognized by the District in the Student's December 16, 2021, Individualized Education Program ("IEP"). (P3, pp.1-

34.) In the December 16, 2021, Maria Gmuca, the District's occupational therapist ("OT") identified that the Student's "challenges" included "missing certain types of sensory input in her environment (social, body awareness) while being overly aware and responsive to other types of sensory input (auditory, tactile, visual)." (P3, pp.14-15.) The December 16, 2021, included 400 minutes per year of OT special education services as "Supports for School Personnel." ("SFSP"). (*Id.*) The December 16, 2021, included a list of "suggestions for OT intervention." (*Id.*)

3. The Student's IEP team finalized an annual IEP a year later on December 16, 2022. (P5, p.1-25.) In the area of motor skills, Heather Gianfriddo, the District's OT, included the following:

**SKILLED OBSERVATIONS:**

**Sensory Processing Skills:** *Children with sensory processing difficulties frequently struggle with responding to environmental input in a coordinated fashion. Sensory processing deficits can often correlate with general delays in motor coordination, difficulties with emotional control, and sensory-avoidant or sensory-seeking behavioral tendencies. Typically, these maladaptive responses to sensory input can cause struggles in school environments due to high distractibility, difficulties with personal boundaries, or problems regulating responses to sensory stimuli. All children that have identified sensory processing challenges do not necessarily require occupational therapy intervention. Occupational therapy services are dependent on educational impact, the learning environment, and the expertise of the educational team. [The Student] has been doing well this year participating throughout the school day and completing academic tasks in her Focus classroom. She does demonstrate **sensitivity to sound** in different environments. In the beginning of the school year, she was choosing to wear her headphones throughout the school day but more recently has not been wearing them at all. They are still available to her and offered by her school staff when she appears to be withdrawing from an activity due to the sound such as during activities with music, She has been covering her ears or putting up her hood as a way to muffle sounds that disturb her. For some songs that are part of the daily routine in her class she has the option to stay at her desk and not join classmates on the carpet if she chooses. Other songs she enjoys and will join in with her classmates to dance to the songs.*

*EDUCATIONAL IMPACT STATEMENT: [The Student] is experiencing an adverse educational impact as she is demonstrating barriers to school participation and occupational engagement due to differences in: sensory processing/regulation These challenges have an educational impact by impeding her participation in her least restrictive environment.*

**PLAN FOR OT INTERVENTION:**

*Definition of Service: The educational team requires the skilled services of an occupational therapist as SFSP. OT under Supports For School Personnel (SFSP) includes indirect services to support the student within their LRE and build the capacity of the IEP team to serve the student. SFSP may include collaboration with IEP team, skilled observation and consultation, program development, recommendations for accommodations and modifications, and/or conducting teacher/staff trainings.*

(P5, pp.12-13 (Emphasis added).) This IEP provided for 300 minutes of OT special education services as “Supports for School Personnel” (“SFSP”). (P5, p.18.) The December 16, 2022, IEP motor skills section does not include information regarding visual stimuli, touch, or body awareness, or other sensory processing needs identified in the previous December 16, 2021, IEP.

**December 8, 2023, Reevaluation**

4. On December 8, 2023, the District completed a reevaluation of the Student (“December 8, 2023, Reevaluation”). (D4, pp.1-27.) The Student was reevaluated in the areas of cognitive, communication, reading, writing math, motor, adaptive, and social skills. (D4, pp.1-27.)

5. The December 8, 2023, Reevaluation team consisted of the following members: Andrea McCarthy,<sup>2</sup> Speech and Language Pathologist (“SLP”); Cat

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<sup>2</sup>Andrea McCarthy earned a bachelor’s degree in linguistics from Pomona College and a post baccalaureate degree in communication sciences. (Tr., pp.77-78 (McCarthy).) Ms. McCarthy received a master’s degree in communication sciences and disorders, and holds a Certificate of Clinical Competence from ASHA and a license from the State of Washington Department of Health. (*Id.*) Ms. McCarthy holds an education staff associate certificate from the Office of Superintendent of Public Instruction, and has worked as an SLP for the District since 2016. (*Id.*)

Davidheiser, District Administrator; Nash Perkins,<sup>3</sup> School Psychologist; Zoe Levin, Special Education Teacher; Heather Gianfriddo,<sup>4</sup> Occupational Therapist (“OT”); and the Parent (“Reevaluation Team”). (D4, p.8; Tr., pp.27-28 (Gianfriddo); 79 (McCarthy); 96 (Perkins); 107-140 (Parent).)

6. Ms. Gianfriddo was assigned as the Student’s OT during the 2022-2023 academic year, and the 2023-2024 academic year, and implemented the Student’s December 16, 2022, IEP supports for school personnel OT services. (Tr., p.27 (Gianfriddo).) Ms. Gianfriddo conducted the December 8, 2023, Reevaluation of the Student in the area of motor skills (OT), specifically the area of sensory processing, which is:

*how an individual takes in sensory input and processes it and responds to it . . . some people might have a very low threshold for sensory input, and they might be more sensitive to certain things. And others might have a higher threshold for sensory input, and they might be more sensory seeking and need more of an input to kind of get the same result.*

(D4, pp.22-24; Tr., pp.28-29 (Gianfriddo).)

7. To assess the Student, Ms. Gianfriddo conducted a “file review.” (D4, pp.22-23; Tr., p.28 (Gianfriddo).) Ms. Gianfriddo “looked at other past reports,” such as the 2021 Neighborcare Health autism evaluation, an “assessment revision,”<sup>5</sup> and the 2019 initial evaluation. (Tr., pp.28-31 (Gianfriddo).)

8. Ms. Gianfriddo does not recall reading the Student’s previous December 16, 2021, and December 16, 2022, IEPs as part of her file review, and generally Ms. Gianfriddo does not make a practice of reviewing a student’s previous IEPs as part of

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<sup>3</sup> Nash Perkins earned a bachelor’s degree from Evergreen State College and a master’s in social work from Boston University. (Tr., pp.94-95 (Perkins).) Ms. Perkins earned an education specialist degree in school psychology from Seattle University and is a nationally certified school psychologist through the National Association of School Psychology. (*Id.*) Ms. Perkins has worked as a school psychologist for the District for five years. (*Id.*)

<sup>4</sup> Heather Gianfriddo earned a Bachelor of Arts degree in human services and rehabilitation from Assumption College, and a master’s degree in occupational therapy from the University of Puget Sound. (Tr., pp.25-26 (Gianfriddo).) Ms. Gianfriddo is licensed by the State of Washington as an occupational therapist, and she is a National Board Certified Occupational Therapist. (*Id.*) Ms. Gianfriddo has an ESA certificate that allows her to work with students in the educational environment. (*Id.*) Ms. Gianfriddo has worked at the Seattle Public School District for three years. (*Id.*)

<sup>5</sup> The “assessment revision” is not identified in any of the District or Parent’s exhibits.

a reevaluation. (Tr., pp.42-44 (Gianfriddo).) The Student's previous two IEPs are not listed in the December 8, 2023, Reevaluation Report as documents that Ms. Gianfriddo reviewed. (D4, pp.22-24.)

9. Ms. Gianfriddo "observed [the Student] in their Focus classroom during their morning work and morning meeting time. And then . . . observed the student during transition times between classroom and . . . art . . . and also at lunch." (Tr, pp.28-31 (Gianfriddo).) Ms. Gianfriddo observed the Student over a two day period, but she does not remember the dates of the observation and she did not include the observational information or dates of observation in the December 8, 2023, Reevaluation Report (D4, pp.22-24; Tr., pp.29-31, 48-51, 53-55 (Gianfriddo).)

10. Ms. Gianfriddo also "used input from members of the team," as well as her experience with the Student to identify the Student's strengths as "hard worker," "enjoys engaging with peers and adults," and "creative and loves art." (D4, pp.22-23; Tr., pp.28-31 (Gianfriddo).) The Student's weaknesses were identified as "sensitive to sound," and "regulation needs." (*Id.*) Ms. Gianfriddo did not describe in the December 8, 2023, Reevaluation Report from whom she received the team input specifically (Parent, teacher, school psychologist, etc.) in the December 8, 2023, Reevaluation Report. (*Id.*)

11. Ms. Gianfriddo used the "Sensory Processing Measure – 2, School Form" ("SPM-2 Form") to examine "how [the Student's] sensory processing system affects functional independence in the school environment. The information from the school companion together with skilled observations can depict a picture of the child's sensory processing and its effect on his / her daily life." (D4, pp.22-23; Tr., pp.28, 31-34 (Gianfriddo).)

12. Ms. Levin,<sup>6</sup> the Student's special education teacher, completed the SPM-2 School Form, and it showed that the Student had "severe difficulties" in "balance and motion" and "hearing." (*Id.*) The SPM-2 Form also showed that the Student had "moderate difficulties" in "vision," "touch," and "social participation." (*Id.*) The areas of "taste and smell," "body awareness," and "planning and ideas" were rated as "typical." (*Id.*)

13. The Parent also completed the SPM-2 Form, and rated the Student as having "severe difficulties" in the areas of "vision," "hearing," and "planning and ideas." (D4, p.23; Tr., pp.31-34 (Gianfriddo); (Parent).) Further, the Parent rated the Student as having moderate difficulties in the areas of "social participation" and "taste and smell," but rated the areas of "touch," "body awareness," and "balance and motion" as "typical." (*Id.*)

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<sup>6</sup> Ms. Levin did not testify at the due process hearing.

14. However, the SPM-2 “is not used to determine the student’s need for occupational therapy services,” on its own, but must be coupled with observations and other information to make such a recommendation. (D4, p.23; Tr., pp.38-40 (Gianfriddo).) Ms. Gianfriddo attributed the differing scores between Ms. Levin and the Parent to the Students’ differing experiences in the school and home environments. (Tr., pp.31-34 (Gianfriddo).) Ms. Gianfriddo did not communicate this attribution in the December 8, 2023, Reevaluation Report, and did not discuss how she used the SPM-2 data in conjunction with observational data or other information. (D4, pp.22-23.)

15. Ms. Gianfriddo did not seek out or include any other input from the Parent regarding the Student’s motor skills. (Tr., pp.61-67 (Gianfriddo).)

16. The Parent, however, had observed that when the Student is at school she is able to sit and pay attention for long periods without moving, but when the Student is at home, she “doesn’t regulate herself.” (Tr., pp.111-113 (Parent).) The Parent believed that the Student was “masking” her behaviors at school, but “when she does come home, she falls apart . . . she is exhausted. . . she comes home, and [the Student] is a big ball of energy.” (*Id.*) The Parent had also observed that the Student continued to display a sensitivity to visual stimuli outside, spaces, touching, and certain foods, and that there was no reference to these concerns in the December 8, 2023, Reevaluation Report. (Tr., pp.113-114 (Parent).) However, in the Student’s December 16, 2021, IEP and December 16, 2022, IEP also refer to the Student’s sensitivity to visual stimuli, spaces, and touching. (D4, p. 22; P3, p.14; Tr., pp.49-51 (Gianfriddo).)

17. In the December 8, 2023, Reevaluation Report Ms. Gianfriddo included the following:

**SENSORY PROCESSING SKILLS:** *Children with sensory processing differences may not always respond to environmental input in a coordinated fashion. Sensory processing differences can often correlate with general delays in motor coordination, differences with emotional control, and sensory-avoidant or sensory-seeking behavioral tendencies. Sometime these differences in response to sensory input can cause struggles in school environments such as difficulty with attention regulation, perceptions of personal boundaries, or dysregulation in response to sensory stimuli. All children that have identified sensory processing differences do not necessarily require occupational therapy intervention. Occupational therapy services are dependent on educational impact, the learning environment, and the expertise of the educational team. [The Student] is sensitive to sound and has access to noise cancelling headphones in her school environment. She will independently get headphones when she feels the classroom is too loud, and will sometimes get headphones for other students as well. There are certain songs that she is sensitive to and does not join in with singing in*

*her classroom, but other songs she enjoys. She walks slowly in the hall during transitions and can fatigue quickly.*

(D4, pp.22-23; Tr., pp.28, 31-34 (Gianfriddo).)

18. Ms. Gianfriddo concluded that the Student's sensory processing skills resulted in an "adverse educational impact," and that the Student should continue to receive OT services as a "Support for School Personnel" ("SFSP"). (D4, p.23; Tr., pp. (Gianfriddo).)

19. Ms. McCarthy, SLP, evaluated the Student in the area of communication by reviewing the Student's background information, previous evaluations, and 2021 and 2022 IEPs. (D4, pp.15-20; Tr., pp.79-80, 84-87 (McCarthy).) Ms. McCarthy specifically noted the Student's autism diagnosis from the 2021 IEP. (*Id.*) Ms. McCarthy evaluated the Student by seeking "updated standardized measures" using assessments, and administered the assessments "over multiple short sessions to ensure attention and success." (*Id.*) Ms. McCarthy also reviewed treatment data that she had collected during weekly therapy sessions with the Student to contextualize the standardized assessments and create a baseline of performance. (*Id.*)

20. Ms. McCarthy evaluated the Student using the "Clinical Evaluation of Language Fundamentals, 5<sup>th</sup> Editions ("CLEF-5") and the "Test of Narrative Language, 2<sup>nd</sup> Edition" ("TNL-2"). (D4, pp.15-20; Tr., pp.80-84 (McCarthy).) Ms. McCarthy "informally" observed the Student's "articulation, fluency, and voice" throughout the testing and treatment sessions, and described the Student's strengths, weaknesses, assessment results, and difficulties in great detail over four pages in the December 8, 2023, Reevaluation Report. (*Id.*)

21. Ms. McCarthy used the December 8, 2023, Reevaluation meeting to obtain additional input from the Parent, but did not gather input or data from the Parent as part of the assessment process. (Tr., pp.86-88 (McCarthy).)

22. Ms. Perkins, school psychologist, completed the "General Background" portion of the December 8, 2023, Reevaluation. (D4, pp.10-11; Tr., p.96 (Perkins).) Ms. Perkins reviewed the Student's records, including the Student's past IEPs, current IEPs, and previous evaluations. (*Id.*) Ms. Perkins also talked to the Parent on the phone on November 16, 2023, and in person on November 20, 2023, to gather Parental input. (D4, pp.10-11; Tr., pp.96-98 (Perkins).) Ms. Perkins also provided Ms. Levin, the Student's special education teacher, a questionnaire to collect teacher input. (*Id.*)

23. Ms. Perkins completed the reevaluation of the Student in the area of adaptive skills by having the Parent and the Student's grandmother fill out questionnaires about adaptive functioning. (D4, pp.12-13; Tr., p.97 (Perkins).) Additionally, Ms. Perkins



asked Ms. Levin to fill out the Vineland-3, a questionnaire about adaptive functioning that compared and contrasted the Student with her peers of the same age. (*Id.*)

24. Ms. Perkins reevaluated the Student in the area of cognition, using the Kaufman Assessment Battery for Children, Second Edition (“KABC-II NU”). (D4, pp.13-14; Tr., pp.97-99 (Perkins).) Ms. Perkins administered the assessment during one-to-one sessions with the Student. (*Id.*) Ms. Perkins also administered the Kaufman Test of Educational Achievement, Third Edition (“KTEA-3”) to assess the Student in the areas of math, reading, written language. (D4, pp.21-22, 25-27; Tr., pp.98-102 (Perkins).) Using the Social Skills Improvement System Social-Emotional Learning Edition (“SSIS-SEL”), Ms. Perkins assessed the Student’s social skills. (D4, pp.25-26; Tr., pp.100-101.)

25. Ms. Perkins observed the Student during the administration of the assessments, and “quite often in her . . . special education classroom,” but did not include the classroom observation information in the December 8, 2023, Reevaluation Report. (Tr., pp.102-103 (Perkins).) Ms. Perkins included the Parent’s input from November 16, 2023, and November 20, 2023, in the December 8, 2023, Reevaluation Report, and discussed the Parent’s concerns at the December 8, 2023, meeting. (D4, pp.10-11; Tr., pp.103-105 (Perkins).)

26. At the Reevaluation Team meeting on December 8, 2023, the Reevaluation Team determined that Student continued to qualify for special education services in all areas evaluated, but changed her eligibility category from “developmental delay” to “autism.” (D4, pp.1-27.) The Reevaluation Team also recommended that the Student continue to receive “occupational therapy services as Supports for School Personnel (“SFSP”) service to support sensory needs.” (*Id.*)

27. Ms. Gianfriddo did not attend the December 8, 2023, Reevaluation meeting. (D2, p.3; D4, p.9; Tr., pp.36-37 (Gianfriddo).) During the meeting, the Parent shared information about the Student’s sensory processing in the areas of visual stimuli, touching, food, self-regulation, and large / small spaces. (Tr., pp.111-132 (Parent).) After the December 8, 2023, Reevaluation meeting the Parent and Ms. Gianfriddo discussed the Student’s sensory needs, but the December 8, 2023, Reevaluation Report does not reflect the information they exchanged. (D2, pp.1-5; Tr., pp.136-139 (Parent).)

28. The District issued a prior written notice (“PWN”) on December 8, 2023, proposing to continue special education services for the Student. (D4, p.28.)

29. On December 15, 2023, the Student’s IEP team finalized an IEP that included 200 minutes yearly of OT “supports for school personnel, across all settings.” (P6, p.26.)

## Timeliness of District's Due Process Hearing Request

30. On April 17, 2024, the Parent requested an IEE in the area of motor skills (OT). (D6, p.1; Tr., pp.140-141 (Parent).) Via email on April 18, 2024, the District confirmed that it had received the Parent's IEE request on April 17, 2024. (*Id.*) The email stated: "Your request for an IEE for OT has been received as of 4/17/2024. I will get back to you about a district response." (*Id.*)

31. On April 29, 2024, the District emailed the Parent the following:

*The District has considered your request for an independent educational evaluation ("IEE") in the area of Motor (OT). The District is refusing to grant the IEE as we believe the current evaluation is appropriate.*

*I have attached a copy of the prior written notice above discussing the denial of the IEE. While the District believes the current evaluation is appropriate, we are offering a District off-cycle reevaluation in the area of Motor (OT) to resolve this without going to Due Process (sic).*

*If the IEE request is not withdrawn by 05/01, the District will file Due Process. Please let me know if you would like to withdraw your request/would like the District to initiate an off-cycle reevaluation in the area of Motor (OT).*

(D8, p.1; Tr., pp.140-141 (Parent).) <sup>7</sup>

32. The April 29, 2024, PWN attached to the District's email stated:

*"[The Parent] . . . requested an Independent Educational Evaluation (IEE) in the area of Motor (OT) on 4/17/24.*

*. . . .*

*The District has considered this request and is refusing to grant the IEE. The current evaluation in Motor (OT) is appropriate and identifies [the Student's] sensory needs.*

*While the District believes its evaluation is appropriate, in an effort to resolve this without the need for due process we are offering an off-cycle reevaluation in the area of Motor (OT).*

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<sup>7</sup> In the hearing transcript, the tribunal erroneously identified District's Exhibit D8, p.1, using the previous page number District's Exhibit D7, p.11.

(D8, p.2; Tr., pp.140-141 (Parent).)

33. On May 7, 2024, the District filed with the Office of Administrative Hearings (“OAH”) a Due Process Hearing Request, and it stated:

*On April 17, 2024, the Parent requested an OT independent educational evaluation (“IEE”) at District expense based on a reported disagreement with the motor portion of the District’s December 2023, reevaluation.*

*The District is refusing to initiate Parent’s request for an OT IEE of Student at District expense because the District’s December 2023, reevaluation of Student was appropriate . . .*

*Pursuant to WAC 392-172A-05005(2)(c), the District requests a due process hearing to demonstrate that the District’s December 2023 reevaluation of (sic) Student was “appropriate” under the standards set forth in the IDEA, and that the Parent is not entitled to an OT IEE of Student at District expense.*

(Due Process Hearing Request, pp.1-2.)

34. On May 8, 2024, a Scheduling Notice issued, giving notice that a prehearing conference would be held on May 23, 2024. The Scheduling Notice was sent to the District’s legal representative, the District’s representative, and the Parent.

35. The Parent appeared for the prehearing conference and represented herself. (*First Prehearing Order, May 24, 2024; Prehearing Conference, Audio Recording, May 23, 2024.*) The District appeared for the prehearing conference and was represented by legal counsel. (*Id.*)

36. The parties agreed that the issue presented for hearing was: “*whether the District’s December 2023 reevaluation of the Student was appropriate, and if not, whether the Parent is entitled to an independent educational evaluation (“IEE”) at public expense.*” (*Id.*) No other issues were identified for the due process hearing by the parties or the tribunal. (*Id.*) The next day, the tribunal issued the First Prehearing Order, establishing the issue for the due process hearing. (*Id.*, p.3.)

37. On June 12, 2024, the Parent’s legal representative filed a notice of appearance with OAH. (*Notice of Appearance, June 12, 2024.*) The Parent’s legal representative also filed the following pleadings on June 12, 2024: “Parent’s Witness List”; “Parent’s Exhibit List”; “Parent’s Motion to Change Decision Due Date”; Parent’s Exhibits P1, P2, P3, P4, P5, and P6; and “Parent’s Hearing Memorandum.” In the

Parent's Hearing Memorandum, the Parent's legal counsel did not argue that the District's Due Process Hearing Request was filed untimely.

38. On June 12, 2024, the District filed the District's "Witness/Exhibit List" and District's Exhibits D1, D2, D3, D4, D5, D6, D7, D8, and D9.

39. The due process hearing commenced on June 20, 2024, and the issue statement in the May 24, 2024, First Prehearing Order was read into the record and identified as the only issue for hearing. (Tr., p.12.) After admitting and excluding the parties' exhibits, and receiving testimony from all the witnesses, the tribunal asked the Parent on the record to confirm the date that she made the IEE request. (Tr., pp.140-141 (Parent).) The Parent confirmed under oath that she requested an IEE on April 17, 2024. (*Id.*) The tribunal then asked the legal representative for the District if she wished to inquire of the Parent, and the District's legal counsel declined. (*Id.*) The tribunal offered the Parent's legal counsel the opportunity to ask the Parent additional questions, and the Parent's legal counsel declined. (*Id.*) Neither party requested the opportunity to call rebuttal witnesses or submit additional exhibits. (*Id.*)

40. The parties had agreed at the beginning of the hearing to submit written post-hearing briefs by 5:00 p.m. on July 19, 2024, and that the decision in this matter would be due on August 9, 2024. (Tr., pp.141-142.) The following exchange took place after the all testimony and exhibits were offered and the filing date for post-hearing briefs confirmed:

*. . . . So one thing I would be interested in is maybe some argument regarding the timing of the District's due process hearing request, just to make sure I have a complete record on that, in comparison to the IEE request. And then, of course, whatever other closing you'd like to provide as well. So, with that, I think that's everything that I would like to address while we're on the record. But I want to check back in with you [Parent's Legal Representative]. Is there anything else that you wanted to do or say for the record that we need to address here today?*

*[Parent's Legal Representative]: No, thank you, Your Honor.*

*Judge Beebe: And [District's Legal Representative]?*

*[District's Legal Representative]: No, Your Honor.*

(Tr., pp.142-143.) The due process hearing ended at 1:30 p.m. (*Id.*)

41. On June 20, 2024, after the due process hearing concluded, the tribunal issued to the parties via email an "Order Setting Due Date for Post-Hearing Briefs," that stated

in part: “It is requested that, in their post-hearing briefs, the parties address the timeliness of the District’s due process hearing request as per WAC 392-172A-05005(2).” (*Id.*, p.1.)

42. At 4:08 p.m. on June 20, 2024, a few hours after the due process hearing ended, the Parent filed a combined “Motion for Summary Judgment, Motion to Pause Transcription, and Motion for Prehearing Conference.” The Parent requested that the tribunal enter an order that there was no genuine issue of material fact that the District filed the Due Process Hearing Request more than fifteen (15) days after April 17, 2024, and as per WAC 392-172A-05005(2), the Parent was entitled to judgment as a matter of law. (*Parent’s Motion for Summary Judgment*, June 20, 2024.)

43. On June 24, 2024, the tribunal issued an “Order on Parent’s Combined Post-Hearing Motions,” denying the Parent’s request to pause transcription and for a prehearing conference. (*Id.*, pp.1-2.) Additionally, the Order on Parent’s Combined Post-Hearing Motions noted that the record had closed to evidence and that the Parent’s Motion for Summary Judgment would be considered as part of the Parent’s written post-hearing briefing.<sup>8</sup> The District was given the opportunity to respond to the Parent’s legal argument in its written post-hearing briefing. (*Id.*)

44. The June 24, 2024, Order on Parent’s Combined Post-Hearing Motions also provided:

*Neither party may submit a declaration in support or any additional evidence as the record was closed as to the submission of evidence on June 20, 2024, at the conclusion of the due process hearing, and as per the First Prehearing Order and WAC 392-172A-05100(2)(a), all evidence must be submitted at least five days prior to the due process hearing.*

(*Id.*, p.2.)

45. On June 28, 2024, the District filed an “Objection to Order Setting Due Date for Post-Hearing Briefs,” and two declarations in support. The District objected to the June 20, 2024, Order Setting Due Date for Post-Hearing Briefs, arguing that the tribunal requested the parties to brief an issue that was “not identified in the [May 24, 2024, First Prehearing Order], and which the District did not receive notice would be an issue at the due process hearing.” (*Id.*, p.3.)

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<sup>8</sup> The Parent did not submit a declaration or other evidence to support a Motion for Summary Judgment.

46. On July 1, 2024, the tribunal issued an “Order on District’s Objection to Order Setting Due Date for Post-Hearing Briefs,” concluding that the declarations submitted by the District would not be considered because they were submitted after the record closed to the admission of new evidence, and the declarations were not submitted five days prior to the due process hearing. (*Id.*, pp.2-3.) However, the tribunal would consider the District’s June 28, 2024, Objection to Order Setting Due Date for Post-Hearing Briefs as post-hearing written argument, and allowed the Parent to file a response by July 19, 2024. (*Id.*)

47. The District filed its Post-Hearing Brief on July 19, 2024. The record closed to briefing on July 19, 2024, at 5:00 p.m.

48. The Parent filed a Post-Hearing Brief on July 29, 2024, ten (10) days after the deadline established in the June 20, 2024, Order Setting Due Date for Post-Hearing Briefs. The Parent also filed a “Parent’s Response to District’s June 28, 2024, Objection to Order,” on July 31, 2024.<sup>9</sup>

## **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 (“OSPI”) 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. As per RCW 28A.155.260(1), the District has the burden of proof, including the burden of persuasion and production, in this case. The burden of proof is a preponderance of the evidence. RCW 28A.155.260(3). See also, *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).

### **The District’s Due Process Hearing Request is Untimely**

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<sup>9</sup> The Parent’s Post-Hearing Brief filed on July 29, 2024, and Parent’s Response to District’s July 31, 2024, Objection to Order, will not be considered because they were filed after the record closed on July 19, 2024. However, the Parent’s Motion for Summary Judgment was timely filed and will be considered by the tribunal as post-hearing written briefing.

3. While OAH has jurisdiction over this matter through the delegation of authority from OSPI and the statutes cited above in paragraph 1, there is an issue of whether this tribunal has jurisdiction over the subject matter. A school district is required by WAC 392-172A-05005(2) to take one of two available actions when a parent requests an IEE at public expense:

*(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the school district must either:*

*(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or*

*(ii) Ensure that an independent educational evaluation is provided at public expense without unnecessary delay, unless the school district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.*

*(Id. (Emphasis Added).)*<sup>10</sup>

4. The term “initiate” is not defined in WAC 392-172A-05005. *Merriam-Webster Dictionary* defines the term, in part, as “set going; to cause or facilitate the beginning of.” <https://www.merriam-webster.com/dictionary/initiate>. (See, *In Re Clover Park School District*, OSPI Cause No. 2022-SE-0064, OAH Docket No. 05-2022-OSPI-01588 (July 18, 2022).) To initiate a due process hearing, a written request must be “filed” as per WAC 392-172A-05085. The term “filed” is also not defined in the WAC but is commonly defined as “to initiate (something, such as a legal action) through proper formal procedure” and “to submit documents necessary to initiate a legal proceeding.” *Merriam-Webster* at <https://www.merriam-webster.com/dictionary/file>. (*Id.*) Thus, “initiate” and “file” share a common meaning when used in connection with a legal proceeding in that to “file” means to “initiate” a legal proceeding. (*Id.*) This is consistent with RCW 4.28.020 and Washington Superior Court Civil Rule 3(c) that

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<sup>10</sup> Notably, the federal regulation pertaining to IEEs does not contain a fifteen-day mandate. Rather, 34 CFR § 300.502(b)(2) provides:

*If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either -*

*(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or*

*(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.*

provides that a court has jurisdiction over all subsequent proceedings when a complaint is filed.

5. It is reasonable, then, to turn to WAC 392-172A-05085, which specifically defines how and when a due process hearing request is “filed” with OAH such that a due process proceeding is “initiated” as per WAC 392-172A-05005. Entitled “Due process hearing request filing and response,” WAC 392-172A-05085 provides, in part:

*(1)(a) To file a due process hearing request, the parent or the school district (party), or the attorney representing a party, must:*

*.....*

*(ii) File a copy of the request via mail, fax, or electronically directly with the OSPI's designee, the office of administrative hearings, at the following:*

*Mail:*

*Office of Administrative Hearings  
600 University Street, Suite 1500  
Seattle, WA 98101-3126*

*Fax: [206-587-5135](tel:206-587-5135)*

*Electronically: Successfully uploading documents through the filing portal operated by the office of administrative hearings.*

*(b) Due process hearing timelines will begin upon receipt of the request by both the other party and the office of administrative hearings, whichever date is later.*

*(Id. (Emphasis added).)*<sup>11</sup>

6. A due process hearing request, then, can be filed with OAH by three means: mail, fax, electronic filing through the OAH filing portal. Additionally, for some years OAH has allowed parties use the OAH “secure email system” to file documents, including due process hearing requests. This method of filing is detailed in all “scheduling notices” issued by OAH. For example, the May 8, 2024, Scheduling Notice in this case states:

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<sup>11</sup> Administrative Procedure Act provision RCW 34.05.220(1)(a) allows OSPI to promulgate a rule such as WAC 392-172A-05085.



FILING DOCUMENTS WITH THE ALJ

13. Documents may be filed with the ALJ by personal delivery, U.S. mail, commercial parcel delivery, fax, or by uploading them to OAH's online participant portal. WAC 10-08-110. Due to the impacts of COVID-19, parties may currently file documents by secure email. Documents must be attached to the secure email, not in the body of the email.

14. Documents must be received by 5:00 p.m. on the date they are due to be considered timely. Documents received after 5:00 p.m. will be considered to be received on the following business day.

**Filing by Secure Email**

To send documents by secure email, reply to a secure email received from OAH and attach your documents. If you have not received a secure email from OAH, write to us at [oah.ospi@oah.wa.gov](mailto:oah.ospi@oah.wa.gov) to request that we send you a secure email to which you can respond. Do not send your documents until you have received the secure email.

(Scheduling Notice, May 8, 2024, pp.3-4.) Thus, WAC 392-172A-05005 and 05085 clearly establish that a school district must file a due process hearing request by mail, fax, the OAH participant portal, or the OAH secure email system within fifteen (15) days of a parent's request for an IEE.

7. The issue to be determined then, is whether this tribunal has subject matter jurisdiction as per WAC 392-172A-05005 and WAC 392-172A-05085. It is undisputed that the Parent requested an IEE at public expense on April 17, 2024, and that the District received the request. In order to answer the question posed by the facts presented, it must be determined based on the record presented whether the District "filed" the Due Process Hearing Request with OAH within fifteen (15) days of April 17, 2024, *i.e.* by 5:00 p.m. on May 2, 2024.

8. "The jurisdiction of the court to consider a case must appear on the face of the record." *Riley v Sturdevant*, 12 Wn. App. 808, 810 (1975). The two file stamps at the top of the Due Process Hearing Request state: "RECEIVED May 07, 2024 OAH-SEATTLE," and "CAUSE NO 2024-SE-0060 OAH RECEIVED 5/7/24." (*Id.*, p.1.) The Due Process Hearing Request's first page shows that the District addressed the document "To: [The Parent]" and below the Parent's address is the OAH mailing address, fax number and OAH secure email address:

**AND A COPY TO:**

Office of Administrative Hearings  
600 University Street, Suite 1500  
Seattle, WA 98101-3126  
Fax: 206-587-5135  
oah.ospi@oah.wa.gov

(*Id.*) The Due Process Hearing Request does not include any other information about the filing method, when it was filed, or who filed the document.

9. The available evidence in the record shows that the District did not file the Due Process Hearing Request with OAH on or before 5:00 p.m. on May 2, 2024. Instead, it is concluded that based on the file stamps on the face of the document, the Due Process Hearing Request was filed with OAH on May 7, 2024, which is twenty (20) days after the Parent requested an IEE on April 17, 2024. Therefore, the District did not “initiate the due process hearing within fifteen (15) days” of April 17, 2024, as required by WAC 392-172A-05005(2)(b).

10. The District argues that it did file the Due Process Hearing Request on May 2, 2024, prior to 5:00 p.m., and in support submitted filed two declarations with attached exhibits in support after the due process hearing. However, as set forth in the July 1, 2024, Order on District’s Objection to Order Setting Due Date for Post-Hearing Briefs, these declarations and the attached exhibits were not submitted five days prior to the due process hearing as required by the First Prehearing Order and WAC 392-172A-05100(2)(a) and therefore will not be admitted into the record. Also, the declarations were submitted in contravention of the June 24, 2024, Order on Parent’s Combined Post-Hearing Motions which prohibited both parties from submitting additional evidence because the record closed to evidence at the end of the due process hearing on June 20, 2024. Therefore, consistent with these prior orders, the two declarations, and the attached exhibits, will not be considered.<sup>12</sup>

11. The District also argues that the tribunal failed to give notice that the timeliness of the filing of the Due Process Hearing Request would be an issue for hearing. The

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<sup>12</sup> Even so, the District did not produce or attach to the declarations a copy of a secure email filing sent to OAH on or before 5:00 p.m. on May 2, 2024, that references the due process hearing request in this case. However, the District did produce and attach to the Declaration of Susan Winkleman a copy of an email to the Parent on May 1, 2024, at 4:48 p.m. that states: “I have attached the due process hearing request that my office will be filing with the Office of Administrative Hearings on behalf of [the District].” (Declaration of Susan Winkleman, Exhibit A.) The District also produced the email history of Grace McDonough showing that they used the OAH secure email system on ten occasions on May 2, 2024, and Grace McDonough attested in the declaration that they filed the Due Process Hearing Request via the OAH secure email system on May 2, 2024 prior to 5:00 p.m. (Declaration of Grace McDonough, Exhibit F.)

Administrative Procedures Act RCW 34.05.434 requires that a notice of hearing include, amongst other items: “(g) a reference to the particular sections of the statutes and rules involved; (h) A short and plain statement of the matters asserted.” Also, WAC 10-08-040(1) states: “In an adjudicative proceeding all parties shall be served with a notice of hearing . . . The notice shall include the information specified in RCW 34.05.434.” Further, WAC 10-08-130(3) requires that prehearing conference orders reflect the “agreements made by the parties concerning all of the matters considered. If no objection to such notice is filed within ten (10) days after the date such notice is mailed, it shall control the subsequent course of the proceedings unless modified for good cause by a subsequent order.”

12. The District is correct that at the May 23, 2024, prehearing conference, the parties and the tribunal did not identify the issue of whether the District’s due process hearing request was timely filed with OAH. The District is correct that the First Prehearing Order dated May 24, 2024, did not give the parties notice of that issue. The District is also correct that the tribunal did not identify the issue on the record at the beginning of the due process hearing on June 20, 2024. It is concluded that the District, and the Parent, did not have notice of this issue until it was raised by the tribunal at the end of the due process hearing when the tribunal requested that the parties brief the issue.<sup>13</sup> (Tr., pp.140-141.)

13. However, it is well settled that the tribunal may sua sponte raise the issue of, subject matter jurisdiction at any time. “A tribunal’s lack of subject matter jurisdiction may be raised by a party or the [tribunal] at any time in a legal proceeding.” *Inland Foundry v. Air Pollution Auth.*, 98 Wn. App. 121 (1999) (citing Rule of Appellate Procedure 2.5 (a)(1)<sup>14</sup> and *Okanogan Wilderness League, Inc. v. Town of Twisp*, 133 Wn.2d 769, 788, 947 P.2d 732 (1997)). “Without subject matter jurisdiction a court or administrative tribunal may do nothing other than enter an order of dismissal.” *Crosby v. Spokane County*,<sup>15</sup> 137 Wn.2d 296, 301, 971 P.2d 32 (1999); see also *Nickum v.*

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<sup>13</sup> The District implies that it was improper for the tribunal to request that the parties brief the issue. However, WAC 10-08-200 allows a presiding officer to “permit or require oral argument or briefs and determine the time limits for submission thereof,” and “take any other action necessary and authorized by any applicable statute or rule.”

<sup>14</sup> Washington Superior Court Civil Rule 12(b) allows the defense of lack of jurisdiction over the subject matter to be raised by motion, but also reflects that failure to raise a lack of subject matter jurisdiction does not result in waiver of the defense.

<sup>15</sup> The District relies on *Crosby* and other case law to argue that it “substantially complied” with WAC 392-172A-05005 and WAC 392-172A-05085 when it attempted to file the Due Process Hearing Request via OAH secure email on May 2, 2024. However, that argument relies on the two declarations and attached exhibits filed on June 28, 2024. As described above, these declarations will not be

*City of Bainbridge Island*, 153 Wn. App. 366, 371 (2009) (by filing a late administrative appeal, the plaintiffs had failed to avail themselves of the jurisdiction of the superior court); *Saarela v. DSHS*, 183 Wn. App. 1044, 2014 WL 4988151, No. 70749-3-I (Wash. Ct App. Oct. 6, 2014) (Unpublished) (“a party making an untimely request for hearing ‘may not maintain such action or avail itself of the [tribunal’s jurisdiction.]’”)

14. Not only does this tribunal have the authority to raise the issue of subject matter jurisdiction, but case law also reflects that the tribunal actually has a duty to raise address whether the District has availed itself of this tribunal’s jurisdiction before entry of a final order determining the rights of the parties. *Riley*, 12 Wn. App. at 810-11 (“Even in the absence of a contest, where there is a question as to jurisdiction, this court has the duty to itself raise the issue” (citing *Dux v. Hostetter*, 37 Wn.2d 550, 555, 225 P.2d 210 (1950) and *Ullom v. Renton*, 5 Wn.2d 319, 321, 105 P.2d 69 (1940).)

15. While these circumstances are certainly a surprising turn of events for all involved, the issue of subject matter jurisdiction cannot be ignored in favor of other due process requirements such as notice of the issues presented for hearing. Further, the face of the Due Process Hearing Request, coupled with the Parent’s testimony regarding the date she made the IEE request, and the arguments submitted by the parties in their post-hearing filings, is a sufficient record upon which to decide whether the District has availed itself of this tribunal’s subject matter jurisdiction.

16. The fifteen (15) day limit for a school district file a due process hearing request after a parent requests an IEE in Washington State is a “bright-line rule,” and a district falls outside the time limit “at its peril.” *Issaquah School District*, 106 LRP 2270 (WA SEA 2004). “A school district may not wait more than fifteen days, and then assert its defenses as to the appropriateness of its evaluation.” *Id.* Because the District failed to file its Due Process Hearing Request within fifteen (15) days of April 17, 2024, the District has failed to avail itself of this tribunal’s jurisdiction and may not defend the appropriateness of its evaluation.

17. The District’s Due Process Hearing Request must be dismissed. As a result, under WAC 392-172A-05005(2)(c)(ii), the District is obligated to provide the Parent with an IEE in the area of motor (OT) at public expense.

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considered as evidence. Therefore, the District’s substantial compliance argument will not be further addressed. Even so, substantial compliance requires a showing that the action of filing was actually undertaken and that the filing was deficient in some fashion. The District has not offered evidence beyond the attestation of Grace McDonough that the action of filing the Due Process Hearing Request was actually undertaken, and this statement is not sufficiently corroborated by the list of secure email access activities for the data of May 2, 2024.

## The District's December 8, 2023, Reevaluation in the Area of Motor Skills (OT) was Not Appropriate.

18. In the alternative, even if the District timely filed its Due Process Hearing Request and this tribunal had subject matter jurisdiction, the District did not meet its burden and did not prove by a preponderance of the evidence that the December 8, 2023, Reevaluation in the area of motor skills (OT) was appropriate.

### Applicable Law

19. When a school district conducts a special education evaluation, a “group of qualified professionals selected by the school district” must use a “variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent . . .” 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.*

20. 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 services needs, whether or not commonly linked to the disability category in which the student has been classified.” *Id.*

21. WAC 392-172A-03025 concerns the review of existing data. It provides that reevaluation team members must review existing evaluations, information provided by the parents, evaluation data, classroom based observations, and teacher observations, as well as additional data is needed to determine whether the student meets eligibility criteria. *Id.*; see also 34 CFR §300.305.

22. WAC 392-172A-03035 concerns evaluation reports. It requires that they include: a statement of whether the student has a disability that meets eligibility criteria; a discussion of the assessments and review of data that supports the eligibility conclusion; a discussion of how the disability affects the student’s progress in the general education curriculum; and the recommended special education and related services the student needs. See also 34 CFR §300.304-.306.

23. Students that are suspected of having a specific learning disability must be observed in the student’s learning environment, including the general education

classroom setting, to document the student's academic performance and behavior in the areas of difficulty. WAC 392-172A-03075 (1). The evaluation team members must:

*(a) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or*

*(b) Have at least one member of the evaluation group conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and parental consent is obtained.*

WAC 392-172A-03075(2).

24. Like IEPs, the appropriateness of an evaluation 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 (9<sup>th</sup> Cir. 2001). (18-119)

## **Analysis**

25. The District asserts that the December 8, 2023, Reevaluation in the area of motor skills (OT) is appropriate because Ms. Gianfriddo obtained parental input, reviewed existing data, administered assessments, and conducted observations of the Student.

26. The Parent presented evidence that the December 8, 2023, Reevaluation in the area of motor skills (OT), is not appropriate because the District has not shown that 1) Ms. Gianfriddo conducted observations of the Student or used data from observations conducted prior to the December 8, 2023, Reevaluation; 2) Ms. Gianfriddo failed to review the Student's 2021 and 2022 IEPs, 3) Ms. Gianfriddo used an inappropriate assessment tool, and 4) Ms. Gianfriddo did not obtain sufficient input from the Parent prior to December 8, 2023, regarding Student's sensory processing skills as they pertain to visual stimuli, touching, and body awareness, as well as the potential that the Student is "masking" behaviors.

27. The only evidence provided regarding the motor skills (OT) reevaluation is the December 8, 2024, Reevaluation Report and Ms. Gianfriddo's testimony about her evaluation activities.

28. First, in the December 8, 2023, Reevaluation Report Ms. Gianfriddo states that a file review was performed, but does not describe what documents, reports,

reevaluations, etc., were reviewed. Also, the December 8, 2023, Reevaluation Report does not refer to a review of any data Ms. Gianfriddo may or may not have collected during the 2021-2022 and 2022-2023 academic years when she implemented the Student's IEPs in the area of motor skills (OT). Ms. Gianfriddo testified that she "looked at other past reports," and identified three previous evaluations that she did review. However, Ms. Gianfriddo admitted in her testimony that she did not review the Student's previous IEPs, which are the documents that actually reflect the Student's diagnosis of autism and sensory processing needs in the areas of visual stimuli, touch, body awareness, hearing, and social participation. Ms. Gianfriddo also did not testify that she collected or maintained data on recommended interventions from her experience implementing the Student's previous IEPs, and did not testify that she reviewed or used any such data or experience with interventions to inform the Reevaluation.

29. Next, the December 8, 2023, Reevaluation Report does not contain any statement about the observations Ms. Gianfriddo performed prior to the December 8, 2023, Reevaluation period, or observations during the Reevaluation period. The "Sensory Processing Skills" paragraph contains statements about the Student's behaviors, but the observer is not identified as Ms. Gianfriddo. Ms. Gianfriddo did testify that she conducted observations of the Student in various school locations, including the classroom, but she did not testify as to what her observations actually were; just that she performed observations.

30. Third, the December 8, 2023, Reevaluation Report and Ms. Gianfriddo's testimony in combination demonstrates that Ms. Gianfriddo appropriately administered a technically sound assessment, the SPM-2. However, Ms. Gianfriddo's testimony confirmed that the SPM-2 results cannot alone be used to make a recommendation about motor skills (OT) special education services. Instead, the SPM-2 results must be coupled with other file review data and observations of the Student. As described above, both the file review and the observations lack specificity and completeness. Moreover, Ms. Gianfriddo did not testify how her observations and file review in conjunction with the SPM-2 results informed her analysis or led her to make any conclusions about the Student's sensory processing needs. This information is also not included in the December 8, 2023, Reevaluation Report.

31. Additionally, Ms. Gianfriddo did not include in the December 8, 2023, Reevaluation Report any statements about attributing the differing SPM-2 results to the school and home environments, or how she resolved these differences to make conclusions about the Student's sensory processing needs. Ms. Gianfriddo did testify about this attribution, but again, did not provide any testimony about how she resolved these differences to make conclusions about the Student's sensory processing needs.

32. Regarding the SPM-2 data, it is clear that Ms. Levin's results differ from the Parent in some areas, but the results are similar in the areas of visual stimuli, hearing, social participation, and touch. Notably Ms. Levin did not testify so there is nothing in the record regarding the SPM-2 form answers she provided or her experience with the Student in the classroom. However, the Parent testified about her concerns in the areas of visual stimuli, touch, self-regulation, and social participation, and related those concerns to the Student potentially engaging in "masking" behavior at school. Again, while the results of the SPM-2 are included in the December 8, 2023, Reevaluation Report, Ms. Gianfriddo did not testify about how she accounted for the similarities and differences when analyzing or making conclusions about the Student's sensory processing needs.

33. Importantly, the December 8, 2023, Reevaluation Report does not reflect any parental input in the area of motor, except for the Parent's answers on the SPM-2 form. Both Ms. Gianfriddo and the Parent testified that the Parent's input was received after the December 8, 2023, Reevaluation meeting. Thus, the Reevaluation Team did not have the benefit of Ms. Gianfriddo's expertise and analysis when the Parent provided input about the Students sensory processing issues in the areas of visual stimuli, touching, self-regulation and masking, and social participation at the December 8, 2023, Reevaluation meeting. Notably, the Parent's input from the December 8, 2023, Reevaluation meeting or the subsequent discussion with Ms. Gianfriddo was not included in the December 8, 2023, Reevaluation Report for the benefit of the IEP team that subsequently met to determine the Student's special education services.

34. In contrast to the motor skills (OT) portion of the December 8, 2023, Reevaluation Report and Ms. Gianfriddo's testimony, Ms. McCarthy and Ms. Perkins were both able to testify about when and how they conducted observations of the Student, describe how they collected and analyzed data and parental input, and the extensive data and file review they conducted (which included the Student's previous IEPs.) Moreover, Ms. McCarthy and Ms. Perkins both described their activities, assessments, and analysis in significant detail in the December 8, 2023, Reevaluation report, and testified that they received Parental input at the December 8, 2023, Reevaluation meeting. A comparison of Ms. McCarthy's and Ms. Perkins' testimony and the information they included in the December 8, 2023, Reevaluation Report with the above discussed evidence and testimony from Ms. Gianfriddo reflects that the motor skills (OT) reevaluation was superficial at best.

35. Due to the cumulative deficiencies and superficial nature of the motor skills (OT) portion of the December 8, 2023, Reevaluation described above, it cannot be said that the Student's special education and related services needs were identified as required. Given the evidence presented, then, it is concluded that it is more likely than not that



the skills (OT) portion of the December 8, 2023, Reevaluation was not sufficiently comprehensive and therefore not appropriate. As a result, the District did not meet its burden and did not demonstrate by a preponderance of the evidence standard that the December 8, 2023, Reevaluation in the area of motor skills (OT) was appropriate.

## Relief

36. As set forth above, 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 the district initiates a hearing, and the final decision is that the district's evaluation is not appropriate, the parent still has the right to an IEE at public expense. WAC 392-172A-05005; *see also* 34 CFR §300.502.

37. Here, it is concluded that the District's December 8, 2023, Reevaluation in the area of motor skills (OT) is not appropriate. Therefore, the Parent is entitled to an IEE in the area of motor skills (OT) at public expense as per WAC 392-172A-05005.

## ORDER

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

1. The District's Due Process Hearing Request was not timely filed as required by WAC 392-172A-05005 and WAC 392-172A-05085. This matter is DISMISSED for lack of subject matter jurisdiction.
2. In the alternative, the District has not met its burden and has not demonstrated by a preponderance of the evidence that its December 8, 2023, Reevaluation of the Student in the area of motor skills (OT) is appropriate.
3. The District shall provide the Parent with an Independent Educational Evaluation in the area of motor skills (OT) at public expense as per WAC 392-172A-05005.

SERVED on the date of mailing.



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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](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 First Class Mail and  
via E-mail

[REDACTED]

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Dated August 8, 2024, at Olympia, Washington.

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Representative  
Office of Administrative Hearings  
P.O. Box 42489  
Olympia, WA 98504-2489

cc: Administrative Resource Services, OSPI