

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Bainbridge Island School District

Docket No. 06-2024-OSPI-02258

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

Agency: Office of Superintendent of  
Public Instruction

Program: Special Education

Cause No. 2024-SE-0089

A due process hearing was held before Administrative Law Judge (“ALJ”) Courtney Beebe on August 23 and September 20, 2024. The Parents of the Student whose education is at issue<sup>1</sup> appeared and represented themselves. The Bainbridge Island School District (“District”) was represented by Carlos Chavez, attorney at law. Also present for the District was Annalisa Sanchez, Director of Student Services.

**STATEMENT OF THE CASE**

**Procedural History**

The Parents filed a due process hearing request on June 13, 2024. A scheduling notice was issued on June 17, 2024, setting a prehearing conference for July 1, 2024. The parties appeared for the prehearing conference and agreed to continue the decision due date in this matter to fourteen (14) days after the close of the record. The First Prehearing Order was issued on July 1, 2024, and gave notice of the due process hearing on August 23, 2024. The parties timely filed witness lists, exhibit lists, and exhibits on August 16, 2024, and appeared for the first day of the due process hearing on August 23, 2024. Due to the unavailability of a witness, the due process hearing was continued to September 20, 2024. The parties appeared for the second day of the due process hearing on September 20, 2024. The parties agreed to submit written closing arguments by October 11, 2024, after the full transcript was produced. The parties filed their written closing arguments on October 11, 2024.

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

**Due Date for Written Decision:** The decision in this matter is due fourteen (14) days after the close of the record, or October 25, 2024.

**EVIDENCE RELIED UPON**

**The Following Exhibits were Admitted:**

District's Exhibits: D1, D3, D7.

Parents' Exhibits: P1, P7, P9, P10, P11, P12, P14, P15, P16, P19, P20, P22, P23, P24, P25, P26, P27, P28, P29, P30, P31, P32, P33, P34, P35, P36, P37, P38, P39, P41, P44, P46, P47, P48, P49, P50, P51, P52, P53, P54, P55.<sup>2</sup>

**The Following Exhibits were Excluded:**

Parent's Exhibits: P2, P3, P4, P5, P6, P13, P17, P18, P21, P40, P42, P43, and P45.

**The Following Exhibits were Not Offered or Withdrawn:**

District's Exhibits: D2, D4, D5, and D6.

Parent's Exhibits: P8<sup>3</sup>

**Witnesses Heard (in order of appearance):** Mother, Father, Lee Pruett, Malauri Uhl, and David Maron.

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<sup>2</sup> The Parents offered Exhibits P42, P43, P44, and P45 for admission at the beginning of the hearing, the District objected based on relevancy, and the tribunal took the matter under advisement. (Tr., pp.28-29.) The Parents did not offer any foundation for the documents during witness testimony. At the end of the hearing the Parents again offered Exhibits P42, P43, P44, and P45 for admission, the District continued to object based on relevancy grounds. (Tr., pp.308-310.) The tribunal again took the matter under advisement and stated that admission would be addressed in the Final Order. (*Id.*) A review of these exhibits shows that P44 is relevant to the 2024 Reevaluation of the Student because Ms. Pruett reviewed and relied on the document as part of the April 22, 2024, Reevaluation at issue. Further, Ms. Pruett testified to the portions of these exhibits that she included in the April 22, 2024, Reevaluation Report. As a result, P44 is admitted. However, P42, P43, and P45 are irrelevant to the matter, lack foundation, and are therefore excluded.

<sup>3</sup> The Parent's filed P8 after August 16, 2024, at 5:00 p.m. and withdrew the exhibit on the first day of hearing. (Tr., pp.21-22.)

## ISSUE

### **The Issue Presented for Hearing is:**

*Whether the Bainbridge Island School District's April 22, 2024, Reevaluation of the Student was appropriate and if not, whether the Parents are entitled to an Independent Educational Evaluation ("IEE") at public expense.*

## FINDINGS OF FACT

### The Student

1. The Student attended school at the District during the 2017-2018 academic year, and the District performed an initial special education evaluation on January 3, 2018 ("Initial Evaluation") when the Student was an [REDACTED] third grader. (D3, pp.6-8; P44; Tr., pp.39-44, 60-61 (Mother); 96-97(Pruett).) The Student was determined eligible for special education services. (*Id.*)
2. The next year, the Student attended the Hamlin Robinson School, a private school specializing in educating students with dyslexia and language based learning differences. (D3, p.6; Tr., pp.39-41 (Mother).)
3. The Student later enrolled at Hyla Middle School ("HMS"), a private school on Bainbridge Island that provides small class sizes of 12-13 students, but does not provide special education services or staff. (D3, p.13; Tr., pp.40-41 (Mother); 189, 210 (Uhl); 254-255, 301 (Maron).) During the 2023-2024 academic year, the Student was a [REDACTED], seventh grader at HMS. (Tr., pp.44-45 (Mother); 210 (Uhl); 301 (Maron).) HMS does not issue grades, but instead provides observations and written narratives regarding how students meet goals. (Tr., p.65 (Mother); 210 (Uhl); 254-255 (Maron).)

### Consent and Scope of April 22, 2024, Reevaluation

4. The Parents anticipated enrolling the Student at the District for the eighth grade during the 2024-2025 academic year. (Tr., pp.41-44 (Mother); 82 (Pruett).) After speaking on the phone with the Mother, Lee Pruett, District school psychologist, created a Prior Written Notice ("PWN") on February 27, 2024, proposing to conduct a "triennial reevaluation" of the Student. (D3, pp.2-3, 24-27; Tr., pp.81-82, 129 (Pruett).) While speaking with Ms. Pruett, the Mother expressed interest in evaluating the Student in cognition because the Student was evaluated in this area in the Initial Evaluation, but Ms. Pruett explained that given the Student's age, the cognitive assessment performed for the Initial Evaluation, and the Student's ADHD and Dyslexia diagnoses, Ms. Pruett did not recommend evaluating the Student in cognition. (Tr., pp.84-85, 130 (Pruett).)

5. Ms. Pruett provided the Parents' with a "Consent Form," seeking consent to reevaluate the Student in the areas of social/emotional and behavior, reading, math, written language, and "observations, interviews and organization and study skills." (D3, pp.4-5, 26-27; Tr., pp.83-85 (Pruett).) The Consent Form reflected the following:

*The assessments will be in the areas noted in the above "Evaluation Areas" section and **may** include: Student observation in the group setting, classroom work samples, district or statewide group assessments, individualized testing, and teacher interviews(s). It will include a review of reports that you have authorized us to request as well as those that already exist in current educational records. Other factors considered may include any known health factors and school attendance. All assessments will be given by appropriately qualified personnel. Assessments will be non-discriminatory, and alternative means of assessment may be used in situations where standardized assessments are inappropriate. **The Evaluation Team will determine the need, if any, for replicating previous assessment procedures and the need for additional procedures.***

(D3, p.4; Tr., pp.82-84 (Pruett) (Emphasis Added).)

6. The Parents voluntarily consented to the reevaluation ("Reevaluation") of the Student on February 29, 2024, by digitally signing the Consent Form. (D3, pp.24-29; Tr., pp.41-44, 226 (Mother).)

### **Student's Disabilities and 2018 SLD Eligibility Determination**

7. The Reevaluation team consisted of the following: the Parents; Lee Pruett<sup>4</sup>, School Psychologist; Jennifer Straughn, Special Education Teacher; and Annalisa Sanchez, Director of Student Services ("Reevaluation Team"). (D-3, p.22; Tr., pp.41-44 (Mother); 70-71 (Father); 80-85 (Pruett).)

8. As part of the Reevaluation, Ms. Pruett reviewed the Initial Evaluation. (D3, pp.6-8; P44; Tr., pp.96-97 (Pruett).) In the Initial Evaluation the Student's family history

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<sup>4</sup> Ms. Pruett has worked as a school psychologist for the District for three years, and has worked for other school districts in Washington and California. (Tr., pp.76-79 (Pruett).) Ms. Pruett worked as a teacher for eleven years, and earned a masters in school psychology from California State University Monterey Bay in 2019. (*Id.*) Ms. Pruett is a nationally certified school psychologist and holds a certification from the State of Washington. (*Id.*) Ms. Pruett taught middle school students and has evaluated a significant number of middle school students as part of her school psychologist duties. (*Id.*)

of dyslexia was documented, as well as Student's participation in speech therapy. (*Id.*) Also, it had been reported that the Student was evaluated by a licensed child clinical psychologist in 2015 and diagnosed with "Unspecified Attention-Deficit Hyperactivity Disorder and Unspecified Anxiety Disorder." (*Id.*)

9. As part of the Initial Evaluation the Student's cognition was evaluated using the Wechsler Intelligence Scale for Children, Fifth Edition ("WISC-V"). (D3, p.10; Tr., pp.96-98 (Pruett).) The Student received a full scale IQ score of 102. (*Id.*)

10. The Initial Evaluation reading assessment data showed that the Student participated in two reading assessments: the Weschler Individual Achievement Test – III ("WIAT-III") and the Kaufman Test of Educational Achievement – 3 ("KTEA-3"). (D3, pp.10-11; P44; Tr., pp.98-101 (Pruett).) The Student's scores on these assessments were in the low average or below average on subtests and composite scores, and the Student was so overwhelmed by the assessments that he became distracted, engaged in refusal, and was not able to finish portions of the subtests. (*Id.*) Overall, the Student's composite scores in early reading skills and phonological processing were in the average range, but his other composite and subtest scores were low average, below average, or he was not able to complete the assessments or completed them with significant assistance. (P44, pp.5-6.)

11. In order to determine whether the Student had an SLD in the area of reading the District used the State of Washington Severe Discrepancy Table (WAC 392-172A-03045 through 03080) ("Discrepancy Table"). According to the Discrepancy Table, a student with an IQ score of 102 on the WISC-V would have a severe discrepancy if the criterion score in reading, math, or written language was 84 or below on the WIAT-III or KTEA-III academic assessments.<sup>5</sup>

12. The Initial Evaluation reflected that the Student had a Specific Learning Disability ("SLD") due to a disparity between his cognitive full scale IQ score of 102, his reading scores on the WIATT-II and the KTEA, and the Student's inability to complete the assessments. (D3, pp.6-8; P44; Tr., pp.94-97 (Pruett).) The Student was

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<sup>5</sup> As per RCW 34.05.352(5), the tribunal hereby takes official notice of the Washington State Severe Discrepancy Model as a "code or standards that have been adopted by an agency of the State of Washington." The Washington State Severe Discrepancy Model was noticed during Ms. Pruett's testimony and in the parties' documents referring to a "specific learning disability" as an eligibility category. Ms. Pruett testified that she did not "know the number off the top of my head - - it is published but I'm going to guess with a standard score of 102, it is somewhere around an 82." (Tr., pp.97-98 (Pruett).)

determined eligible for special education services with specially designed instruction (“SDI”) in reading. (D3, pp.6-8; P44; Tr., pp.39-44, 60-61 (Mother); 96-97 (Pruett).)

### **Reading, Writing and Math Assessments in 2024 Reevaluation**

13. As part of the Reevaluation, the Father provided feedback and information about the Student’s developmental, medical, and family history on March 27, 2024. (D3, p.9; Tr., pp.70-71 (Father); 94-95, 103-104 (Pruett).) The Father shared that the Student is diagnosed with ADHD – Inattentive Type and takes medication to manage symptoms, and that the Student “has a diagnosis of dyslexia.” (*Id.*)

14. Based on the initial Evaluation and the medical, developmental, and family history from the Father, Ms. Pruett “took it at face value” that the Student had the disabilities of ADHD-Inattentive Type and Dyslexia, and therefore Ms. Pruett “was not trying to reestablish disability as part of the Reevaluation.” (Tr., p.133 (Pruett).) Ms. Pruett was interested in whether the Student may be eligible for special education services in the category of “Other Health Impairment” due to the Dyslexia and ADHD diagnoses, and whether the Student’s composite criterion assessment scores in reading, writing, and math were below average. (Tr., pp.96-99 (Pruett).) Ms. Pruett also selected the Reevaluation assessments to determine whether the Student’s ADHD-Inattentive Type and Dyslexia disabilities “impact his education” in the areas of academics and social / emotional behavior, and “require SDI.” (Tr., p.133 (Pruett).)

15. Ms. Pruett assessed the Student in the areas of reading, math, and written language and observed the Student during administration of the assessments and evaluations. (D3, pp.9-10; Tr., pp.95-97, 102-103, 123-125 (Pruett).) Ms. Pruett observed that:

*During the individual evaluation . . . [the Student] came willingly with [Ms. Pruett]. He listened as the tests were explained to him and shared appropriately with the examiner when prompted. [The Student] appeared healthy, well-fed, and clean. Overall, his level of attention and concentration were age-expected. Across measures, his behavior indicated that he understood directions, was interested in doing well, and that he was putting forth effort. As [the Student] was leaving the building, he spoke cordially with peers and shared that he thought they were moving onto the high school next year, but that they were his friends.*

(*Id.*)

16. To reevaluate the Student in reading, Ms. Pruett administered the most current version of the WIAT-IV, on March 28, 2024. (D3, pp.11-12; Tr., pp.98-102 (Pruett).) The Student received an average Reading Composite criterion score of 92 (including word reading and reading comprehension subtests), and an average Decoding Composite criterion score of 85 (including pseudoword decoding and word reading subtests), and an average Reading Fluency Composite score of 86 (including the oral reading fluency and orthographic fluency subtests). (*Id.*) The Student notably received one below average score of 81 in the “decoding fluency subtest” which “measures phonic decoding proficiency,” or “the ability to decode unfamiliar words quickly and accurately allowing readers to focus more on comprehension.” (*Id.*)

17. Ms. Pruett did not use the “dyslexia index” portion of the WIAT-IV, because this portion of the assessment is used to determine the “likelihood that [the Student] exhibits the symptoms of dyslexia.” (Tr., pp.173-174 (Pruett).) Since the Student had already received a Dyslexia diagnosis, using the Dyslexia index portion of the WIAT-IV was not necessary and would not have further informed the Reevaluation. (*Id.*)

18. Pearson, the producer of the WIAT-IV and the KTEA-3, recommends administering both reading assessments to evaluate a Student with Dyslexia, but it is unclear whether this is a requirement for the initial evaluation only, or also required for a reevaluation. (P38, Tr., pp.59, 229 (Mother).) Ms. Pruett did not administer the KTEA-3 because the Student’s disability in Dyslexia was already established. (D3, pp.11-12; Tr., pp.59, 229 (Mother); 160-161 (Pruett).)

19. Ms. Pruett also assessed the Student in written language using the WIAT-IV. (D3, pp.14-15; Tr., pp.100-102 (Pruett).) The Student received an average Written Expression Composite score of 98. (*Id.*) The Student scored in the average range in sentence composition and essay composition subtests, but below average in the spelling subtest with a score of 81. (*Id.*)

20. To assess the Student in the area of math, Ms. Pruett administered the WIAT-IV to the Student on March 28, 2024. (D3, p.14.) The Student received scores in the average range in mathematics, including the numerical operations and math problem solving subtests. (*Id.*)

### **Classroom Performance and Executive Functioning**

21. Ms. Pruett did not ask educators at HMS for examples of the Student’s classwork because the class work samples are “hit or miss” due to “a number of variables impact what a student can produce in class day-to-day” and they are “not

really an accurate reflection of whether they have a skill in an area.” (Tr., p.169-170 (Pruett).)

22. On April 12, 2024, Ms. Pruett provided the Student’s general education teachers at HMS, Malauri Uhl<sup>6</sup> (English Language Arts) and David Maron<sup>7</sup> (History and Social Studies), with a fillable “Google Form” to provide feedback information on the Student’s classroom performance. (D3, p.7-8; Tr., pp.54-55 (Mother); 89-91, 93-95 (Pruett); 190, 196 (Uhl); 250 (Maron).) Both general education teachers completed the feedback information form and identified that the Student’s mood varies throughout the day, he can struggle with time management and rigidity in thinking, and he can become demanding in peer group situations. (D3, pp7-8; Tr., pp.193-195 (Uhl); 260-261 (Maron).) Both teachers identified that the Student needs additional time to complete work, benefits from teacher check-ins, needs his assignments “chunked” into smaller parts, can struggle to pay attention with non-preferred topics or activities, needs templates to assist with writing, and that he produces average academic work. (D3, pp.7-8; Tr., pp.191-193 (Uhl); 261-281 (Maron).) Ms. Uhl communicated that the Student’s spelling is “exceptionally poor” and he is “reluctant to read aloud, . . . he is not very confident in reading around other people.” (Tr., pp.191, 193, 200-206 (Uhl).)

23. As part of the assessment of the Student in social / emotional and behavior (executive functioning), Ms. Pruett’s review of the Initial Evaluation showed that the District administered the Behavior Assessment System of Children - 3 (“BASC – 3”). (D3, pp.15-16; P44; Tr., pp.70, 105 (Mother).) The BASC-3 data showed that the Parents rated the Student as average in all areas, but the Student’s teacher rated the Student in the “At-Risk range on the composite of School Problems (SS = 95, PR = 90), which is made up of the subtests of Attention and Learning Problems.” (*Id.*)

24. Ms. Pruett also interviewed the Student using a Sentence Completion Test collect data regarding the Student’s social / emotional and behavior:

*[The Student] was asked to complete the Sentence Completion Test, which asked him to finish sentence stems any way he would like. This is an exercise completed orally. The student is told a sentence starter, and*

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<sup>6</sup> Ms. Uhl has taught English Language Arts for eight years at the high school and middle school levels, and has a master’s degree in instructional practice. (Tr., pp.189-190 (Uhl).)

<sup>7</sup> Mr. Maron has worked as a teacher since 2005 and has taught at HMS for eight years (Tr., pp.251, 256-257 (Maron).) Mr. Maron received his teacher certification through Oakland Teaching Fellows and Alliant International University. (*Id.*) Mr. Maron has experience teaching special education classes and participating in special education evaluations. (*Id.*)



*the student's oral response is recorded by the examiner. He engaged in the task without any difficulty.*

(D3, p.16; Tr., pp.102-103 (Pruett).) The Sentence Completion Test is a “getting to know you activity . . . to make them feel comfortable working with [Ms. Pruett] . . . It is known as a projective test . . . isn't norm-references . . . There is no right or wrong answer.” (*Id.*)

25. On the “parent completed health history form,” the Parents reported that [the Student] did not have difficulties with peers or adults or making friends, and that “his behavior at home is not a problem.” (D3, pp.16-18; Tr., pp.70-71 (Father); 104-105 (Pruett).) The Parents reported that the Student responds well to discipline, acts kindly to teachers and friends, but can “save all his frustrations for when he gets home and his parents get the brunt of his outbursts . . . usually at the end of the day when his meds have worn off.” (*Id.*) The Parents reported that the Student “is also a very active child and is much happier after spending some time doing something active. They keep him busy after school with skateboarding and mountain biking.” (*Id.*)

26. Ms. Pruett selected the Behavior Rating Inventory of Executive Function, 2<sup>nd</sup> Edition (“BRIEF – 2”) to assess the Student’s executive functioning skills. (D3, pp.16-19; Tr., pp.104-107 (Pruett).) The BRIEF-2 measures “the skills that [the Student] is going to employ every day at school . . . it is directly applicable to the school setting and the skills that he is going to need to access his education.” (*Id.*) The BRIEF-2 is administered by giving the Parents, the Student’s teachers, and the Student a rating form with “three embedded scales that provide information on validity: the Inconsistency Scale, the Negativity Scale, and the Infrequency Scale. (*Id.*) The Father, Ms. Uhl, Mr. Maron, and the Student completed the BRIEF-2 assessment. (D3, p.17-19; Tr., pp.70-71, 217-218 (Father); 104-107 (Pruett); 207-208 (Uhl); and 285-286 (Maron).)

27. Ms. Uhl and Mr. Maron’s ratings suggested “that in the school setting, [the Student] is displaying Mildly Elevated executive functioning skills for a student his age.” (D3, pp.17-19; Tr., pp.105-107 (Pruett); 207-208 (Uhl); 283-284, 296-299, 300 (Maron).) Additionally, in the home and school setting the Student received from the Parent and Ms. Uhl a “Clinically Elevated on the Emotional Regulation Index (ERI)” rating which was “two standard deviations away from the mean.” (*Id.*)

### **Reevaluation Report and Reevaluation Meeting**

28. The Parents were provided with a draft of the Reevaluation report (“Reevaluation Report”) on April 19, 2024, prior to the Reevaluation Team meeting on

April 22, 2024. (P23, p.1; P24, p.1; Tr., pp.47-48 (Mother); 71-72 (Father); 87-92, 114 (Pruett).) This draft of the Reevaluation Report did not include Mr. Maron's feedback form or BRIEF-2 results because he did not provide that information to Ms. Pruett until April 23, 2024. (Tr., pp.90-93, 105-107, 117-120 (Pruett); 285-286, 294-295 (Maron).) Ms. Pruett included Ms. Uhl's classroom performance feedback and BRIEF-2 ratings in the draft Reevaluation Report dated April 19, 2024. (D3, pp.8-9; Tr., pp.92-94 (Pruett); 296-297 (Maron).)

29. The Reevaluation Team, including the Parents, met on April 22, 2024, to review and discuss the draft April 19, 2024, Reevaluation Report ("Reevaluation Report") and assessment results. (D3, pp.22-24; Tr., pp.45-46, 48-49 (Mother); 69-70 (Father); 87-92 (Pruett).) The Parents participated in the discussion of the Reevaluation assessments and data, as well as the Reevaluation Report. (*Id.*) The Parents expressed their concerns regarding the Student's ability to spell and his reading ability and the lack of an observation. (Tr., pp.220-222 (Father).) The Parents also communicated information about the Student's behavior at home and discussed Ms. Uhl's BRIEF-2 rating form results. (*Id.*)

30. After the meeting, Ms. Pruett filled in the portion of the Reevaluation Report relating to eligibility factors and considerations because she always waits to complete the eligibility portion until after the Reevaluation Team meeting. (D3, p.20; Tr., pp.107-109 (Pruett).) The information regarding eligibility was based on the review of existing data, Initial Evaluation, parental input, medical information, observations, and assessment results. (*Id.*) Ms. Pruett also had the benefit of receiving Mr. Maron's feedback information form and BRIEF-2 rating scale received after the April 22, 2024, Reevaluation Meeting. (*Id.*)

31. Ms. Pruett, as part of her eligibility analysis, compared the Student's WISC-V full IQ score of 102 from the Initial Evaluation, and the March 28, 2024, WIAT-IV average composite criterion scores in reading, which were 85 and above. (D3, pp.12, 20; Tr., pp.100-102 (Pruett).) Based this information and the Discrepancy Table which required a score of 84 or lower to support an SLD eligibility determination, Ms. Pruett did not further consider that the Student would be eligible for special education services due to an SLD in reading. (*Id.*) However, Ms. Pruett recommended that the Student's reading and written expression be monitored and supported with accommodations. (D3, pp.12; Tr., pp.100-102 (Pruett).) Ms. Pruett did not include any discussion of this analysis in the Reevaluation Report.

32. However, the Reevaluation Team concluded that the Student experienced an adverse educational impact and need for SDI in Social Emotional Learning ("SEL"). (D3, p.20; Tr., pp.108-109 (Pruett).) In the Reevaluation Report, Ms. Pruett

recommended providing the Student with SDI in social / emotional behavior, and creating “goals around emotional regulation, . . . [which] could be beneficial for him to access his general education curriculum.” (D3, pp.17-19; Tr., pp.105-107 (Pruett); 207-208 (Uhl); 283-284, 296-299, 300 (Maron).) The Reevaluation Team determined that the Student was eligible for special education services in the category of “Other Health Impairment” because of the Student’s medical diagnoses of ADHD – Inattentive Type and Dyslexia, as well as the clinical elevation of the Emotional Regulation Index score in the BRIEF-2 assessment. (*Id.*)

33. The Reevaluation Team recommended that the Individualized Education Program (“IEP”) team subsequently determine the Student’s SDI and accommodations. (Tr.,p.153-155 (Pruett).)

34. The Parents were provided with updated versions of the Reevaluation Report on May 17, 2024, and June 6, 2024. (P20, pp1-2; P41; P12; Tr., pp. 55-56 (Mother); 117-122 (Pruett).) The April 19, 2024, draft of the Reevaluation Report did not include Mr. Maron’s feedback form and BRIEF-2 results and because Mr. Maron submitted this information after the meeting on April 23, 2024. (D3, P12 P16, P19, P20, P41; Tr., pp.45-57 (Mother); 87-92, 105-107, 117-120 (Pruett).) However, Ms. Pruett gathered information from Mr. Maron on April 19, 2024, during a phone conversation, and discussed the information at the Reevaluation Team meeting. (*Id.*) Ms. Pruett subsequently added Mr. Maron’s feedback form information and BRIEF-2 ratings to the Reevaluation Report in the June 6, 2024, version of the Reevaluation Report. (*Id.*) Ms. Pruett did not add Mr. Maron’s feedback form information or BRIEF-2 ratings to the May 17, 2024, version of the Reevaluation Report. (*Id.*) The Parents did not have the benefit of this information until they received the June 6, 2024, Reevaluation Report.

35. The April 19, 2024, and May 17, 2024, Reevaluation Reports included an incorrect reference to an evaluation performed in 2021. (P20; Tr., pp.115-117 (Pruett).) The error occurred because the form Ms. Pruett used a google form and a template that included a reference to an evaluation and she did not catch the error when including the report in the District’s evaluation management system. (*Id.*) Ms. Pruett removed this information from the June 6, 2024, Reevaluation Report. (*Id.*)

36. Thirty-five school days after February 29, 2024, is April 25, 2024. (D7, p.1.)

### **General Education Classroom Observation for April 22, 2024, Reevaluation**

37. On April 10, 2024, the Mother emailed Mr. Maron, Ms. Pruett, and another individual at HMS:

*I'm reaching out to the three of you because [the Student] is undergoing his re-evaluation for his IEP, and we would appreciate your assistance in this regard. Lee Pruitt (sic) from BISD (copied here) is facilitating the re-evaluation and has requested that some of [the Student's] teachers complete forms relating to [the Student]. Please respond (copying Lee if you are able to assist by completing the form. Also, we are trying to coordinate when Lee can observe [the Student] in class. She is available during the mornings next Tuesday 4/16 or Thursday 4/18. Would one of these work well for her to observe [the Student] during a class lesson or assignment?*

(D1, p.3; P16; (Tr., pp. 61-62 (Mother); 282 (Maron); 112-114(Pruett).)

38. On April 11, 2024, Mr. Maron responded that he would be available as requested but that he wanted to talk with Ms. Pruett first because “it’s a small class and having an unknown person in the class would be intriguing to the kids . . . and thus I’d want to know how to provide context (or not) for her being in the classroom.” (D1, p.3; P16; Tr., pp.282-283 (Maron).)

39. The Mother emailed Mr. Maron on April 15, 2024, to follow up on the scheduling of the observation, noting “I know [the Student] isn’t keen on being singled out, so if there is a way to avoid that, we would appreciate it.” (P27, p.1; Tr., pp.62-63 (Mother).) Ms. Pruett was not copied on this email. (*Id.*)

40. Ms. Pruett was not able to observe the Student by April 16, 2024, but asked Mr. Maron if she could come observe the Student on April 19, 2024. (D1, p.2; P16; Tr., pp. 112-114 (Pruett).) Ms. Pruett stated that “the observation is just to see how he functions in the classroom. I’m not looking for anything particular. Additionally, did you receive the teacher input email I sent you?” (*Id.*)

41. Mr. Maron responded the next day, stating that he would not have the Student in his class on April 19, 2024, and that he thought it would be “best to chat before coming for an in-person observation. It’s a small class and I want to prep you / them of the observation.” (D1, p.1; P16; Tr., pp.112-114 (Pruett); 287-292 (Maron).)

42. Mr. Maron and Ms. Pruett talked on the phone on April 19, 2024, and discussed the Student’s classroom participation and behaviors. (Tr., pp.91-92, 112 (Pruett); 287-292 (Maron).) Ms. Pruett asked open ended questions and Mr. Maron provided information about the Student’s strengths and weaknesses, and she relied on the information because Mr. Maron observed the Student every day. (Tr., p.122-123 (Pruett); 287-292 (Maron).) Ms. Pruett used this information to make her

recommendations at the April 22, 2024, Reevaluation Team meeting, but did not include the information in the April 19, 2024, draft of the Reevaluation Report. (*Id.*)

43. Ms. Pruett and Mr. Maron also discussed observing the Student in the general education classroom at HMS. (Tr., pp.112-114, 288-292 (Pruett); 287-293 (Maron).) Mr. Maron was “open to it,” but informed Ms. Pruett that HMS had small classes, that the students would be interested in why Ms. Pruett was in the classroom and what she was doing, and he did not want to lie or make up a story about why Ms. Pruett was at HMS. (*Id.*) Mr. Maron also expressed that he did not want to draw attention to or embarrass the Student by having Ms. Pruett in the classroom. (*Id.*) Mr. Maron informed Ms. Pruett that he use to teach special education and “I have a sense of how kids are doing. I can give you a kind of snapshot of what the Student looks like over the phone here.” (Tr., p.288 (Maron).) Ms. Pruett agreed to “hold off on the observation for now,” and that she would let Mr. Maron know if she needed to do an observation. (*Id.*)

44. At the April 22, 2024, Reevaluation Meeting, the Parents expressed concerns that Ms. Pruett had not observed the Student in the general education classroom at HMS. (Tr., pp.54-55 (Mother).) The Parents were not aware of Mr. Maron’s concerns about Ms. Pruett coming to HMS to observe the Student in his class. (Tr., p.227 (Mother).)

45. Ms. Pruett did not observe the Student in the general education classroom at HMS. (Tr., p.112-113 (Pruett).) Ms. Pruett has tools for observing students who exhibit behavior problems externally, but no specific tool for observing this Student’s potential executive functioning issues in the classroom because he did not necessarily externalize behaviors. (Tr., pp.126-127 (Pruett).) Ms. Pruett’s opinion was that the Student’s social / emotional and behavior and its impact to accessing his education is best evaluated through data collection by the Student’s general education teachers because they observe him frequently and know him personally, and also through the normed BRIEF-2 assessment. (*Id.*)

46. Ms. Pruett had also accepted at the beginning of the Reevaluation process that the Student had disabilities due to ADHD-Inattentive Type and Dyslexia, and did not believe there was a need to observe the Student to determine whether he had these disabilities or an SLD. (Tr., pp.126-127, 182-184 (Pruett).) “There is no observation tool for reading or writing, just kind of behavior tools” to observe behavioral problems such as task refusal, or frustration. (*Id.*)

## IEE Request and Due Process Hearing Request

47. The Parents requested an IEE at public expense on June 2, 2024. (P15, p.1; Tr., pp.117-118 (Pruett).) The District filed its due process hearing request on June 13, 2024.

## 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. As per WAC 392-172A-05005 and 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 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).

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

4. A parent has the right to obtain an IEE at public expense if the parent disagrees with the school district's evaluation. WAC 392-172A-05005. An IEE is “an evaluation conducted by a qualified examiner who is not employed by the school district.” *Id.* “Public expense means that the school district pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.” *Id.*

5. If a parent requests an IEE at public expense, 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 [IEE] is provided at public expense without unnecessary delay . . .” WAC 392-1721A-05005(2). “A parent is only entitled to one [IEE] at public expense each time the school district conducts an evaluation with which the parent disagrees.” *Id.*

6. Here the Parents argue the Reevaluation is not appropriate because: 1) Ms. Pruett did not personally conduct a classroom observation of the Student at HMS or review the Student’s classroom work; 2) the Reevaluation Reports did not meet the requirements of WAC 392-172A-03035; 3) the Student was not evaluated for an SLD as per WAC 392-172A-03080; 4) Ms. Pruett did not assess the Student’s reading using the KTEA-3; 5) the Reevaluation lacks consideration of Parents’ input; 6) the District failed to obtain the Parents’ informed consent; 7) the Reevaluation was not completed timely; and 8) the eligibility determination and disability classification are incorrect. (P15, p.1; Parent’s Closing Statement.)

7. The District argues that the Reevaluation was appropriate because 1) Ms. Pruett was not required to conduct a classroom observation or review the Student’s classroom work; 2) the Reevaluation was completed timely; 3) the Student’s disability was established without an SLD evaluation; 4) assessing the Student with the KTEA-3 was not required; 5) the Parent’s input was considered and included; 6) the Parents consented to the scope of the Reevaluation; 7) the draft April 19, 2024, Reevaluation Report met the requirements of WAC 392-172A-03080; and 8) the eligibility category and timeliness of the Reevaluation are not at issue.

#### **A. Applicable Law**

8. When a school district conducts a special education evaluation, a “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 services 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 . . .*

WAC 392-172A-03020(2).

9. The Students must be 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.” WAC 392-172A-03020(3)(e). The school district may obtain a medical statement or assessment to complete the assessment or other evaluation, do determine “other factors that may be affecting the student’s communicative status, and motor abilities.” WAC 392-172A-03020(3)(d).

10. The group cannot use “any single measure or assessment as the sole criterion” for determining eligibility or educational programming. *Id.* The group must use a variety of technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical, and developmental factors. *Id.*

11. “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.” WAC 392-172A-03020(3)(b). Such assessments and other evaluations must be “selected and administered” to ensure that the assessment results accurately reflect a “student’s aptitude or achievement level . . . rather than reflecting the student’s impaired sensory, manual, or speaking skills.” WAC 392-172A-03020(3)(c).

12. WAC 392-172A-03025 concerns the review of existing data:

*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.*

13. “Dyslexia” is defined in RCW 28A.320.250 as:

*. . . "dyslexia" means a specific learning disorder that is neurological in origin and that is characterized by unexpected difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities that are not consistent with the person's intelligence, motivation, and sensory capabilities. These difficulties typically result from a deficit in the phonological components of language that is often unexpected in relation to other cognitive abilities. In addition, the difficulties are not typically a result of ineffective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.*

14. “Emotional / Behavioral disability” means a “a condition where the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student’s educational performance:

*(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.*

*(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.*

*(C) Inappropriate types of behavior or feelings under normal circumstances.*

*(D) A general pervasive mood of unhappiness or depression.*

*(E) A tendency to develop physical symptoms or fears associated with personal or school problems.*

WAC 392-172A-01035(2)(e)(i).

15. “Other Health Impairment” means “having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

*(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and*

*(ii) Adversely affects a student's educational performance.*

WAC 3921-172A-01035(2)(j).

16. 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); see also *R.Z.C. v. Northshore Sch. Dist.*, 755 F. App'x 658 (9<sup>th</sup> Cir. 2018) (holding that while the reevaluations procedures and the reevaluation report itself could have been better, could have been more carefully explained, could have been more comprehensive, or could have been more detailed, the evaluation was appropriate.)

**B. The District Used a Variety of Assessment Tools and Strategies to Gather Relevant Functional, Developmental, and Academic Information about the Student, Including Information Provided by the Parents.**

17. The Parents argue that the District failed to prove that it used a variety of assessment tools and strategies and academic information, and instead only used the WIAT-IV as the “single measurement as the sole criterion” when assessing the Student in reading and writing.” WAC 392-172A-03020(3)(d). Specifically, the Parents assert that Ms. Pruettt did not assess the Student using the KTEA-3 or the WIAT-IV Dyslexia Index subtests (more specifically, the phonemic proficiency subtest). The Parents also assert that the Reevaluation lacks consideration parental input, and they generally “doubt” the accuracy of the Student’s scores on the assessments because his performance varied in comparison to his classwork and the decoding and spelling subtest scores seem discrepant.

18. As per *Smith ex rel. C.M. v. Tacoma Sch. Dist.*, assessment results, along with classroom observation, parent input, and medical information together constitute a sufficient variety of assessment tools and strategies for the purposes of the

reevaluation at issue. 476 F. Supp. 3d 1112 (W. Dist. WA 2020), citing *Robert B. ex rel. Bruce B. v. W. Chester Area Sch. Dist.*, No. Civ. A. 04-CV-2069, 2005 U.S. Dist. LEXIS 21558, 2005 WL 2396968 (E.D. Penn. Sept. 27, 2005) (upholding administrative conclusion that "reevaluations may be properly limited under the statute to a review of records, observations, curriculum-based measures and other non-standardized assessments when the child's broad needs have already been established and when there is no evidence that the child's needs have changed substantially.").

19. Ms. Pruett administered only one norm referenced assessment, the WIAT-IV, to assess the Student in reading. The Parents assert that Ms. Pruett should have also used the KTEA-3 to assess the Student because Pearson, the producer of the WIAT-IV and KTEA-3 assessments, recommends on their website that they be used in conjunction when assessing students with dyslexia. While the Mother was able to authenticate and describe the relevancy of the Pearson information in Exhibit P38, the Parents did not present any testimony about why administering the KTEA-3 to a Student known to have Dyslexia would further inform the Reevaluation.

20. On the other hand, Ms. Pruett was able to credibly testify that, based on her training and experience in evaluating students with Dyslexia, once a Student's Dyslexia disability is known there is not a reason to administer more than one reading assessment to evaluate the Student in the area of reading. Given Ms. Pruett's experience and expertise, as per the *Smith* case cited above, it is concluded that the combination of the WIAT-IV reading assessment, along with the Sentence Completion Test, observations, general education teacher feedback, the Student's Dyslexia diagnosis, and parental input constituted a variety of assessment tools and strategies.

21. Similarly, the Parents assert that the District should have administered the "phonemic proficiency subtest" under the WIAT-IV Basic Reading Skills assessment section because the Student was previously identified as needing intervention for phonological processing. However, Ms. Pruett credibly testified that the Dyslexia Index subtests (including the phonemic proficiency subtest) are used to determine whether a Student may have a reading disability or to initially evaluate a student with Dyslexia, but this subtest is not appropriate for assessing a student with a known Dyslexia diagnosis. Again, the Parents have not shown otherwise.

22. The Parents also claim that the District did not sufficiently consider Parental input. However, the District has shown, and the Parents both testified, that they participated in the Reevaluation by 1) defining the scope with Ms. Pruett, 2) providing medical information, 3) submitting the BRIEF-2 Rating form, and 4) participating in the

Reevaluation meeting on April 22, 2024. The Parents were also provided with time after the April 22, 2024, Reevaluation meeting to review the Reevaluation Report and comment regarding its contents, as well as make requests to address errors and omissions. The District demonstrated that Ms. Pruett made two efforts to address the Parents' concerns with the Reevaluation Report and answered their questions and concerns after the April 19, 2024, May 17, 2024, drafts and before the June 6, 2024, Reevaluation Report. The Parents have not shown otherwise.

23. The Parents also generally disagree with the assessment results because it is difficult to understand how the Student's poor spelling and writing and his discomfort with reading could be reflected as an average score on the WIAT-IV reading and writing assessments. The District, however, has demonstrated that classroom work is not an appropriate reflection of a student's ability because of several identified factors, and comparing the classroom work to a norm referenced assessment is not a recognized method of evaluating a student.

24. The District, then has carried its burden and has shown that Ms. Pruett used a variety of assessment tools and strategies and academic information, including observations and interviews of the Student, the WIAT-IV academic assessments in reading, writing, and math, the BRIEF-2 assessment, teacher input forms from Ms. Uhl and Mr. Maron, an interview with Mr. Maron, parental input, medical records, and a review of the Initial Evaluation.

25. The District has also carried its burden and has shown that the assessments and tools were selected and administered to ensure that the result accurately reflect the Student's aptitude or achievement levels. The District has also shown that the Reevaluation Team was comprised of a group of qualified individuals, and that the Reevaluation relied on existing data. Thus, the District has met its burden as to these requirements in WAC 392-172A-03020(2) and 03020(3) and the Reevaluation is appropriate.

**C. The District Reevaluated the Student in All Areas of Suspected Disability as per the Parents' Informed Consent**

26. The Parents argue that they did not knowingly consent to the Reevaluation because the Mother wished to have the Student reevaluated in cognition and she was persuaded to forego this area of concern by Ms. Pruett. Also, the Parents assert that they were not informed that the District was not required to perform all the assessments, strategies, and methods listed in the consent form. Finally, the Parents argue that the scope of the Reevaluation should have included a cognitive evaluation.

27. The District argues that the Parents had an opportunity to review the Consent Form before signing it and did not object to the District not including the area of cognitive. The District also asserts that it assessed the Student in all areas of suspected disability and was not required to assess the Student in cognition.

28. In the IDEA, “consent” means:

*(a) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;*

*(b) the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity . . .; and*

*(c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.*

WAC 392-172A-01040(1). Parents cannot selectively consent to only portions of a reevaluation. See e.g., *Dublin City Schools*, 117 LRP 21604 (Ohio SEA 2017)(Parent consented to evaluation related to speech and language needs, but not autism).

29. When conducting special education evaluations, districts must ensure that a child is assessed in “all areas of suspected disability.” WAC 392-172A-03020 (3)(d). But a district need not evaluate in areas in which it does not suspect a disability. See, e.g., *Razzaghi v. Dist. of Columbia*, 44 IDELR 271 (D.D.C 2005); *Moses Lake Sch. Dist.*, 109 LRP 26490 (2008). But an evaluation must be “sufficiently comprehensive to identify all of the student’s special education and related services needs.” WAC 392-172A-03020(3)(g).

30. The IDEA does not give a parent the right to dictate specific areas in which a school district must assess a student as part of a special education evaluation. See *Avila v. Spokane Sch. Dist.* 81, 686 F. App'x 384, 385 (9th Cir. 2017) (holding that the school district properly assessed a student for a Specific Learning Disability and rejecting the parents' contention that the district was obligated to administer subtests designed to assess dyslexia and dysgraphia). “The IDEA does not prescribe substantive goals for an evaluation, but provides only that it be ‘reasonably calculated to enable the child to receive educational benefits.’” *J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175, 1185 (W.D. Wash. 2022).

31. Here, the both the Mother and Ms. Pruett corroborated each other’s testimony that they spoke on the phone about whether the Student should be assessed cognition and this testimony shows the Mother was aware that the Student would not be

assessed in that area. The record also shows that the Mother was provided with a written copy of the Consent Form excluding an assessment in cognition, and she voluntarily chose to sign knowing that cognition would not be included in the scope of the Reevaluation. Thus, the District obtained the Parents' knowing and voluntary consent to assess the Student.

32. Regarding the use of all the assessments, strategies, and methods listed on the Consent Form, above this list the introductory sentence specifically provides that: “[t]he assessments will be in the areas noted in the above “Evaluation Areas” section and may include: . . . .” (D3, p.1 (emphasis added).) Given the use of the permissive “may” in the consent form and because the District determines the kinds of assessments, tools, strategies and methods used in a reevaluation, it is concluded that the District has shown that it complied with the Consent Form language and the law. See also Section B above.

33. Granted, Ms. Pruett also wrote in the “other” section on the Consent Form “observations, interviews and organization and study skills” as areas where “additional information or testing was needed.” As described above and below, however, observations, interviews, and classroom performance were addressed in the Reevaluation through general education teacher input, observations by Mr. Maron and Ms. Uhl, observations by Ms. Pruett, and the BRIEF-2 rating scales.

34. Regarding the scope of the Reevaluation, the Consent Form states that “the Evaluation Team will determine the need, if any, for replicating previous assessment procedures and the need for additional procedures.” (D3, p.2.) While the Parents desired that the Student be reevaluated in cognition, as Ms. Pruett credibly testified, “cognition is something you can’t intervene for” and the Student was previously evaluated in this area in 2018. Given that again, the District determines the need for replicating previous assessments and another cognitive assessment would not further identify either the Student’s disabilities, it is concluded that the District has carried its burden as to defining the scope of the Reevaluation and excluding cognition.

35. Based on the record presented it is concluded that the scope of the Reevaluation was appropriate even though it did not include the area of cognition. Further, the District has carried its burden has shown that the Parents were informed of the scope of the Reevaluation in writing, and knowingly and voluntarily signed the Consent Form. Finally, the record reflects that the District evaluated the Student as per the Consent Form. The Reevaluation, then, is appropriate.

**D. Ms. Pruett was not Required to Conduct an Observation of the Student at HMS or Review the Student's Classwork**

36. The Parents are adamant that Ms. Pruett should have 1) observed the Student in the classroom at HMS, and 2) obtained and reviewed the Student's classroom work to assess his reading and writing abilities.

37. The District argues that 1) Ms. Pruett was not required to observe the Student, 2) Ms. Pruett attempted to observe the Student but was not able to do so, and 3) the observation of the Student would not have yielded the information the Parents claim. Also, the District argues that Ms. Pruett was not obligated to review the Student's classwork to assess his reading and writing abilities.

38. WAC 392-172A-03025 provides that “. . . as part of any reevaluation, the . . . qualified professionals, as appropriate, must: (1) review existing evaluation data on the student, including . . .(c) Observations by teachers and related service providers.” This provision does not specify that the school psychologist must perform an in person observation of the Student in his classroom environment during a reevaluation. See *Jasmin Richardson, et al., v. Dist of Columbia* 273 F. Supp 3d. 94 (Dist. of Columbia 2017); see also, *Cynthia K v. Portsmouth school Department*, 76 IDELR 278, 120 LRP 20471 (Dist. N.H. 2018). There is no obligation, then, that Ms. Pruett observe the Student in the classroom at HMS.

39. The District did include “observations” and “interviews” in the Consent Form, and therefore the District did commit itself to engage in some sort of observation and interview, but the specific subject of the observation was not designated on the Consent Form. Ms. Pruett credibly testified that if she was able to observe the Student at HMS she would not be observing the Student regarding his academic skills because there is not an observational tool for reading and writing. An observation of the Student at HMS to inform the Reevaluation in the areas of reading and writing, then, would not be appropriate as per WAC 392-172A-03025.

40. Ms. Pruett testified she could have observed the Student at HMS in the areas of social /emotional behavior and certainly this observation would have informed the Reevaluation. Ms. Pruett and Mr. Maron credibly testified that Ms. Pruett was diligent in her efforts to schedule and attend an observation of the Student at HMS but ultimately was deterred due to the practicalities of the Student's classroom and his emotional well-being. Instead, however, Ms. Pruett used Ms. Uhl's and Mr. Maron's classroom observations from the feedback information forms and BRIEF-2 rating scales, as well Ms. Pruett's conversation with Mr. Maron about his observations of the Student. These general education teachers consistently observe the Student in his

educational environment and were able to relay important observational information. Additionally, Ms. Pruett interviewed the Student herself and recorded her observations from the interview and the administration of assessments.

41. Given language added to the Consent Form and WAC 392-172A-03025, it is concluded that the District obligated itself to observe the Student in the area of social / emotional behavior if appropriate. The District has shown that Ms. Pruett attempts to perform the observation herself and the combined observations of Ms. Uhl, Mr. Maron, and Ms. Pruett's interview were sufficient to satisfy this obligation. On the other hand, as per WAC 392-172A-03025, the District was not obligated to perform a classroom observation of the Student in the areas of reading and writing, and Ms. Pruett herself was not obligated to observe the Student in person at HMS. The District, then, has shown that the Reevaluation was appropriate.

42. The Parents also went to pains to demonstrate the importance of obtaining and reviewing the Student's classroom work. The Parents essentially claim that if Ms. Pruett or other members of the Reevaluation Team had seen how the Student writes, spells, and decodes written language in the classroom, they would have been better informed to make an eligibility determination in reading and writing.

43. Again, there is not a requirement in the IDEA or on the Consent Form that required the District to obtain and review the Student's classroom work. As discussed above, Ms. Pruett credibly testified that a student's classroom work did not have much evaluative value due to the variables of assignment type, classroom environment, student attentiveness, etc. Thus, because there is no mandate to obtain and review the Student's classroom work, and there is credible evidence that the exercise does not inform the Reevaluation, it cannot be concluded that the Reevaluation was inappropriate for lack of review of the Student's classroom work.

**E. Because the Student's Disabilities are Known Evaluating the Student for an SLD as per WAC 392-172A-03080 is Not Required.**

44. The Parents assert that the Student was not evaluated for an SLD as per WAC 392-172A-03045. The District argues that evaluating the Student for an SLD was unnecessary given his medical diagnose of ADHD-Inattentive and Dyslexia, and the previous SLD evaluation.

45. A "specific learning disability" is:

*(i) . . . a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read,*



*write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that adversely affects a student's educational performance.*

*(ii) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.*

WAC 392-172A-01035(2)(k).

46. School districts are required to determine whether a student has an SLD by developing “procedures for the identification of students with specific learning disabilities which may include the use of:

*(1) A severe discrepancy between intellectual ability and achievement; or*

*(2) A process based on the student's response to scientific, research-based intervention; or*

*(3) A combination of both within a school district, provided that the evaluation process used is the same for all students within the selected grades or buildings within the school district and is in accordance with district procedures.*

WAC 392-172A-03045.

47. “The group described in WAC 392-172A-03050 may determine” that a student has an SLD if:

*(1) the Student does not achieve adequately for the student's age or meet the state's grade level standards when provided with learning experiences and instruction appropriate for the student's age in one or more of the following areas:*

*. . . .*

*(a) Written Expression*

*(b) Basic Reading skill*

*(c) Reading fluency skills*

*(d) Reading Comprehension*

WAC 392-172A-03055(1). Further a student may have an SLD if:

*(2)(a) The student does not make sufficient progress to meet age or state grade level standards in one or more of the areas identified in subsection (1) of this section when using a process based on the student's response to scientific, research-based intervention or the group finds that the student has a severe discrepancy between achievement and intellectual ability in one or more of the areas identified in subsection (1) of this section; and*

*(b) When considering eligibility under (a) of this subsection, the group may also consider whether the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, and through review of existing data.*

WAC 392-172A-03055.

48. Regarding observations, school districts “must ensure that a student who is suspected of having a specific learning disability is 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) (emphasis added). “The evaluation group 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) (Emphasis added).

49. It is understandable that the Parents desire the most complete and comprehensive evaluation of the Student to ensure that his disabilities are identified and his educational needs addressed. The record shows that the District did not meet the Parent’s needs because there is not an explanation in the Reevaluation Report about why Ms. Pruettt did not employ the SLD evaluative process that was used in the Initial Evaluation, with the same reading assessments, observations, and use of the Discrepancy Table.

50. It would have been beneficial to communicate in the Reevaluation Report why the SLD process was not used, given that the Student's full scale IQ score of 102 was known and the Student's WIAT-IV scores were obtained during the Reevaluation. A review of the record shows that the District's Reevaluation Report could have easily included 1) a discussion regarding why the Student was not evaluated in cognition, 2) an analysis of how the Student's full scale IQ score of 102 and the WIAT-IV assessments related to the Discrepancy Table, 3) a conclusion regarding why the Student did or did not have an SLD in reading, and 4) detailed explanation regarding why SDI in reading was not recommended for the Student given his subtest scores in decoding and spelling and Dyslexia diagnosis. This information would have better informed the Parents as members of the Reevaluation Team members, and provided information to the IEP team for designing the Student's special education services.

51. Even so, the District is correct that the purpose of conducting an SLD evaluation is to determine whether 1) the Student had disability, and 2) in which academic areas. The purpose of the SLD evaluation is not to determine the Student's educational needs or inform the IEP team. Here, the Reevaluation Team had the benefit of knowing that the Student 1) had previously been determined to have an SLD in reading, 2) received a diagnosis of ADHD-Inattentive Type, and 3) received a diagnosis for the specific learning disorder Dyslexia. As Ms. Pruettest credibly testified, she took "at face value" that the Student had two diagnosed disabilities and a previous eligibility determination because of the previous SLD process. The Parents do not seem to dispute that the Student's disabilities are known and properly identified in the Reevaluation Report. See Section G below.

52. While the District could have included the information identified above in the Reevaluation Report, the record supports a conclusion that the SLD process, had it been completed and communicated in the Reevaluation Report, would have shown that the Student did not meet the Discrepancy Table criteria for an SLD in reading. This, the Student's disability in reading and writing would not have been identified using the SLD evaluative process. Instead, as concluded above the Reevaluation as conducted was sufficiently comprehensive to identify the Student's disabilities of ADHD-Inattentive Type and Dyslexia, and recommend that the Student receive SDI in the area of SEL, as well as accommodations, and modifications in reading, and writing.

53. Regarding the Student's educational needs, as concluded above the Reevaluation was sufficient to identify that the Student's educational needs in reading and writing and the Parents have not presented any evidence or testimony that the SLD process would have altered the results of the Reevaluation. Further, as per WAC 392-172A-03040, the determination of whether the Student should receive SDI in reading and writing is part of the eligibility determination made by the Reevaluation

Team, not part of the Reevaluation itself. As set forth below, the Parents' challenges to the eligibility determination are not before this tribunal. "Special education services may not be solely based on the disability category for which the student is eligible." WAC 392-172A-01035(1)(e).

54. Even though the Reevaluation Report could have included the information identified in paragraph 50, page 27, above, it is concluded that the District's decision to not perform the SLD evaluative process as part of the Reevaluation and include the information in the Reevaluation Report does not render the Reevaluation inappropriate. The District has carried its burden on this issue.

#### **F. The Reevaluation Report Meets the Requirements of WAC 392-172A-03040**

55. The Parents argue that the Reevaluation Reports of April 19, 2024, and May 17, 2024, did not include Mr. Maron's feedback form information or BRIEF-2 assessment results, and included erroneous references to an evaluation in "2021." Also, the Parents appear to claim that the following items should be in the Reevaluation Report: 1) a "summary of qualitative observations in relation to the WIAT-4 testing," 2) "oral reading accuracy in relation to the oral reading fluency test," 3) "how the student's disability affects the student's involvement and progress in the general education curriculum," 4) "recommended special education services, and any related services," and 5) "signatures and accurate dates of signatures." (Parent's Closing Statement, p.15.)

56. The District argues that neither the minor discrepancies the Parents have identified, nor the District's efforts to repair and/or include additional information in the Reevaluation Report on May 17, 2024, or June 6, 2024, renders the entire Reevaluation inappropriate or the Reevaluation Report incomplete.

57. WAC 392-172A-03035 requires that a reevaluation report 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.

58. Observational data is only required to be included if the information is necessary and appropriate. WAC 392-172A-03020(3)(d) and (e). See also *L.C. v. Issaquah Sch. Dist.*, 2019 WL 2023567 at \*18 (W.D. Wash. May 8, 2019).

59. "Not all procedural flaws require a finding of denial of IDEA rights." *Ford v. Long Beach Unified School District*, 291 F.3d 1086, 1089 (9<sup>th</sup> Cir. 2002), citing *W.G. v. Bd. of Trustees of Target Range Sch. Dist.*, 960 F.2d 1479, 1484 (9<sup>th</sup> Cir. 1992); *Amanda*

*J. v. Clark County Sch. Dist.*, 67 F.3d 877, 892 (9<sup>th</sup> Cir. 2001). In *Ford*, the reevaluation report at issue did not include all the information required by the IDEA, but it did include assessment results and the evaluators conclusions so the alleged defects did not render the entire reevaluation inappropriate. (*Id.*) Similarly, in *R.Z.C.*, 755 Fed. Appx. at 660-661, the reevaluation report failed to include statements about the student's achievement or details of an observation, but the court determined that these omissions were harmless given the information included in the reevaluation report.

60. The April 19, 2024, draft Reevaluation Report, as well as the May 17, 2024, draft and June 6, 2024, final report, included a statement that the student has a disability in ADHD-Inattentive Type and Dyslexia that meets the eligibility criteria of "Other Health Impairment." The Reevaluation Report includes a discussion of how the disability affects the Student's progress in the general education curriculum and includes recommendations as to accommodations, SDI, and related services needs for consideration by the IEP team.

61. The April 19, 2024, and May 17, 2024, drafts include a discussion of each assessments and their results in multiple formats, the evaluations and data reviewed, the observations conducted, Ms. Uhl's feedback information form and BRIEF-2 form, and Parental input and medical information received by the District as of that date. The June 6, 2024, draft includes this information as well as Mr. Maron's feedback information form and BRIEF-2 form.

62. Regarding observational data, as discussed above, Ms. Pruett was not required to observe the Student in the classroom, and even so, she included observational data from her interview of the Student and administration of the assessments, as well as observations from general education teachers Ms. Uhl and Mr. Maron. Finally, both Ms. Pruett and Ms. Straughn signed the report. The only signatures missing are Ms. Sanchez from the District, and the Parents, which are not required for completion of the Reevaluation Report.

63. It is true that the District initially included an erroneous reference to a 2021 evaluation, but Ms. Pruett removed this reference in the June 6, 2024, Reevaluation Report. There is no evidence that the Reevaluation Team relied on the incorrect information in the April 19, 2024, draft Reevaluation Report when they met on April 22, 2024.

64. As set forth above in paragraph 50, page 27, the Parents have a valid concern that Reevaluation Report lacks a detailed discussion and analysis regarding the SLD process and the recommendation against providing SDI in reading. This information should, practically speaking, be conveniently located in the Reevaluation Report and

accessible for review and discussion by the Reevaluation Team for the purpose of making an eligibility determination. Given that the Reevaluation Team's eligibility determination is not before this tribunal as an issue for resolution, it is concluded that the District has carried its burden and has shown that the Reevaluation Report meets the requirements of WAC 392-172A-03035 even though the information identified in paragraph 50, page 27, is not included.

65. The primary issue that the Parents seem to have with the Reevaluation Report is that the District provided two drafts for review and did not finalize the Reevaluation Report until June 6, 2024. Ultimately, adding Mr. Maron's feedback form information and BRIEF-2 rating scale, deleting an erroneous reference to a 2021 evaluation, and clarifying data and statements was done at the Parent's request. Granted, this delayed the completion of the Reevaluation Report but it was done to accommodate the Parents' needs. It appears that these efforts, though made after the thirty-five (350 day date of April 25, 2024, were not required but made to enhance the Reevaluation Report for the benefit of the Student and the Parents. Because, as concluded above, the April 19, 2024, draft met the requirements of WAC 392-172A-03035, and the delay of finalizing the Reevaluation Report was to accommodate the Parents' needs, it cannot be concluded that the Reevaluation Report was not appropriate.

66. Given the circumstances presented then, it is concluded that while the April 19, 2024, Reevaluation Report could have been more inclusive and detailed in a number of respects, ultimately the Reevaluation Report is sufficient under the circumstances of this case and the law. The District has carried its burden and shown that the Reevaluation Report is appropriate.

## **G. The Parents' Raised Issues that are Not Before the Tribunal**

### *1. Eligibility Determination*

67. At the center of the parties dispute is the Parent's disagreement with the eligibility category assigned to the Student by the Reevaluation Team. The Parents argue that the Student should be found eligible for special education due to an SLD in reading and writing, and as a result, the Student should receive reading and writing SDI, specifically in decoding and spelling. The District raises the defense that this issue is beyond the scope of the District's hearing request in an IEE case.

68. A "student eligible for special education services means a student who has been evaluated and determined to need special education services because of having a disability in one of the following eligibility categories: . . . "other health impairment, a specific learning disability, . . ." WAC 392-172A-01035(1)(a).

69. The eligibility determination must be made by the “group of qualified professionals,” and this group “must include”:

- (1) *The student's general education classroom teacher; or*
- (2) *If the student does not have a general education classroom teacher, a general education classroom teacher qualified to teach a student of his or her age; or*
- (3) *For a student of less than school age, an individual qualified to teach a student of his or her age; and*
- (4) *At least one individual qualified to conduct individual diagnostic examinations of students, such as school psychologist, speech language pathologist, or remedial reading teacher.*

WAC 392-172A-03050.

70. “Special education services may not be solely based on the disability category for which the student is eligible.” WAC 392-172A-01035(1)(e).

71. As set forth above, WAC 392-172A-05005(2)(a) specifically states that “a parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district.” (Emphasis added.) This narrow provision does not state that a parent has a right to an IEE if the parent disagrees with the Reevaluation Teams’ eligibility determination. As the District states in its brief, “[t]he IDEA does not give a student the legal right to a proper disability classification.” *Weissburg v. Lancaster Sch. Dist.*, 491 F.3d 1255 (9<sup>th</sup> Cir. 2020) (citations omitted).

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

73. Here, the District filed the due process hearing request identifying the issue as whether the District’s Reevaluation is appropriate. That is the sole issue before this

tribunal. The issue of whether the District a made correct eligibility determination is not properly before this tribunal. Therefore, the Parents' challenge to the eligibility determination is not addressed.

## 2. *Timeliness of Reevaluation*

74. Special education reevaluations must be completed within "[t]hirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent." WAC 392-172A-03015(3)(a). There is a "general consensus that a failure to comply with the timeliness requirements imposed by the IDEA are typically procedural, not substantive, violations of the act. See *Leggett v. District of Columbia*, 793 F.3d 59, 67 (D.C. Cir. 2015) (classifying a school district's failure to provide an IEP by the beginning of the school year' as a procedural violation); see also *Jackson-Johnson v. District of Columbia*, No. 13-CV-528, 2015 WL 1862127, at \*1 (D. D.C. Apr. 23, 2015) ("[D]elays in evaluations and reevaluations are typically deemed procedural, and not substantive, violations of the IDEA.").

75. The Parents have alleged that the District engaged in a procedural violation of the IDEA: the Reevaluation Report was not completed in thirty-five (35) days of February 29, 2024, when the Parents signed the Consent Form. This claim appears to be beyond the scope of the issue presented by the District's complaint.

76. Regardless, if the claim is within the scope of the issue presented, the District has shown it completed all the necessary elements of the Reevaluation prior to April 25, 2024: the Reevaluation assessments were completed, the draft of the Reevaluation Report was created and distributed, Mr. Maron's feedback information form and BRIEF-2 form were received, the Reevaluation meeting was held, and the eligibility determination was made and entered into the Reevaluation Report.

77. Granted, the Reevaluation Report was not finalized until June 6, 2024, but it is unclear from the record how this extension of time to finalize the document rendered the entire Reevaluation inappropriate or how the delay meaningfully impacted the Student's right to a FAPE.

78. Further, as discussed above, the delay of finalizing the Reevaluation Report was the result of the District accommodating the Parent's requests and seeking to collaborate further with the Parents. Thus, even if there was a meaningful delay it was the result of the Parent's requests to add and remove information from the Reevaluation Report.



79. The Parent's claim that the Reevaluation was untimely as per WAC 392-172A-03015(3) is most likely not before this tribunal. Alternatively, it is concluded that the District has carried its burden and shown that the delay was caused by the Parents need for the inclusion of additional, but not required, information, and did not render the entire Reevaluation inappropriate.

**ORDER**

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

The District's April 22, 2024, Reevaluation is appropriate. The Parents are not entitled to an IEE at public expense.

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:

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Dated October 23, 2024, at Olympia, Washington.

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Representative  
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cc: Administrative Resource Services, OSPI