

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Seattle School District

Docket No. 06-2024-OSPI-02239

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2024-SE-0079

A due process hearing was held before Administrative Law Judge (ALJ) Courtney Beebe on October 24, 2024, by video conference. The Parent of the Student whose education is at issue¹ appeared and represented herself. The Seattle School District (District) was represented by Susan Winkleman, attorney at law. Also present for the District was Rachel Desario, Senior General Counsel, and Michael Bylsma, District Representative.

STATEMENT OF THE CASE

Procedural History

1. On May 22, 2024, the Parent requested an Independent Educational Evaluation (IEE) because she disagreed with the District's April 4, 2024, reevaluation of the Student (Reevaluation). (June 3, 2024, Due Process Hearing Request.) On June 3, 2024, the District filed a Due Process Hearing Request with the Office of Administrative Hearings (OAH). (*Id.*)
2. A Scheduling Notice issued on June 5, 2024, giving notice of a prehearing conference on June 18, 2024, at 2:00 p.m. OAH served the Parent with a copy of the Scheduling Notice via U.S. Mail and email. On June 10, 2024, the Parent contacted OAH via email and confirmed that she consented to receive correspondence and orders from OAH via email. (Parent's Consent for E-Service, June 10, 2024.)
3. The District appeared, but the Parent did not appear for the prehearing conference on June 18, 2024. (June 18, 2024, Audio Recording; Email to Parent, June

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

18, 2024, 2:09 p.m.) The prehearing conference was continued to July 15, 2024, at 10:00 a.m. (June 18, 2024, Order of Continuance of Prehearing Conference.)

4. At the June 18, 2024, prehearing conference, the District moved to extend the decision due date in this matter to thirty (30) days post close of record to allow for the continuance of the prehearing conference. (June 18, 2024, Order of Continuance of Prehearing Conference.) The motion was granted. (*Id.*)

5. The Parent did not appear for the July 15, 2024, prehearing conference, but the District appeared. (July 15, 2024, Audio Recording; Email to Parent, July 15, 2024, 10:13 a.m.) The prehearing conference was continued to August 7, 2024, at 1:00 p.m. (July 15, 2024, Order of Continuance.)

6. The District requested that the August 7, 2024, prehearing conference be rescheduled due to a scheduling conflict for the District's counsel, and the request was granted. (July 26, 2024, Order of Continuance.) The prehearing conference was continued to August 9, 2024, at 9:00 a.m. (*Id.*)

7. The District appeared for the August 9, 2024, prehearing conference, but the Parent did not appear. (Audio Recording, August 9, 2024.) The ALJ issued the First Prehearing Order giving notice of the due process hearing scheduled for October 24, 2024, by video conference. (First Prehearing Order, August 9, 2024.)

8. The ALJ gave notice of a fourth prehearing conference scheduled for September 10, 2024, in order to allow the Parent to participate and obtain information regarding the due process hearing and document filing procedures. (First Prehearing Order, August 9, 2024.) The District appeared for the prehearing conference, but the Parent did not appear. (Audio Recording, September 10, 2024.)

9. On October 14, 2024, the ALJ mailed and emailed the Parent and the District a letter inviting the Parent to contact OAH for assistance and providing her with information about the due process hearing procedures. (Letter to Parent, October 14, 2024.) The Parent did not contact OAH or the District.

10. On October 17, 2024, the District filed its witness lists, exhibit list, and exhibits with OAH, and served a copy to the Parent via email (Transcript, pp.13-14 (Winkleman).) The Parent did not file witness lists, exhibit lists, or exhibits with OAH.

11. The Parent appeared for the October 24, 2024, due process hearing. After the presentation of evidence and testimony was completed, the parties agreed to file written closing arguments by November 21, 2024.

12. On November 21, 2024, the Parent requested an additional thirty (30) days to file a written closing argument. The District did not object. The Parent's request was granted. (Order Extending Due Date for Post-Hearing Briefs, November 21, 2024.) The parties written closing arguments were due on December 21, 2024, and the decision due date in this matter was extended to January 20, 2025. (*Id.*)

13. The District filed its written closing argument before 5:00 p.m. on December 21, 2024. The Parent did not file her written closing argument by 5:00 p.m. on December 21, 2024.

14. On December 24, 2024, the Parent emailed OAH a request for an extension of seven (7) additional days to file a written closing argument. The District, via email, objected to the Parent's request.

15. The tribunal granted the Parent's request for a second extension of time to file a written closing argument, and ordered that the Parent's written closing argument was due by 5:00 p.m. on January 2, 2025. (Second Order Extending Due Date for Post-Hearing Briefs, December 27, 2024.)

16. The Parent filed her written closing argument on January 2, 2025.

Due Date for Written Decision

The record closed on January 2, 2025. The decision in this matter is due thirty (30) days thereafter, or February 1, 2025.

EVIDENCE RELIED UPON

Exhibits Admitted:

District's Exhibits: D1, D2, D3, D4, D5, D6, D7, D8, D9, D10.²

Parent's Exhibits: None submitted.

² At the beginning of the hearing the Parent asserted she had not received the District's exhibits via email. (Tr., pp.12-17.) The Certificate of Service for the District's Witness List, Exhibit List, and Exhibits states: "I certify that on the 17th day of October, 2024, I caused the [District's] Witness List, Exhibit List, and Exhibits D1-10 to be delivered as follows: . . . I further certify that, on the same date, I caused a true and correct copy of the same to be delivered via secure email to the Parent as follows . . ." The District's legal representative on the record stated that the Parent was in fact served via email with the District's Exhibits D1 through D10. (Tr., pp.13-14 (Winkleman).) The Parent was provided with an additional copy of the District's Exhibits D1 through D10 at the due process hearing via email to her email address on record. (Tr., pp.12-17.)

Witnesses Heard (in order of appearance): Stacy Leggitt, Emma Mochnick, Parent, Samuel Riedeman, and Janet Aurelius.

ISSUES

The District's June 3, 2024, Due Process Hearing Request presents one issue for resolution:

Whether the April 4, 2024, Reevaluation of the Student is appropriate, and if not, whether the Parent is entitled to an IEE at public expense.

(First Prehearing Order, August 9, 2024.)

FINDINGS OF FACT

The Student and Previous Evaluations

1. As the result of an initial evaluation completed on January 27, 2020, the Student was determined eligible for special education services in the areas of reading and social / emotional behavior under the category of Specific Learning Disability. (D7, p.6.)
2. The District reevaluated the Student in March 2022, and determined that the Student no longer qualified for special education services in reading. (D7, pp.6-7.) However, the Student qualified for special education services in the areas of social / emotional behavior, as well as study / organizational skills and written language, with support for school personnel in occupational therapy (OT) consultation. (*Id.*) As part of the March 2022 reevaluation, the Student was assessed in the area of cognitive using the Weschler Intelligence Scale for Children, Fifth Edition (WISC-V) and she performed in the "well-above average range in the working memory index, and above average processing speed index." (*Id.*)
3. The Student's eligibility category was changed to Emotional Behavioral Disability. (*Id.*) Specifically, the Student's adverse educational impact was described as follows:

[The Student] has an Emotional Behavioral Disability that manifests in inappropriate types of behavior or feelings under normal circumstances and fears associated with personal or school problems. Specifically, her disability adversely affects her capacity to produce written work in class, organize her thoughts into a structured written composition, to learn and retain computational steps when solving math problems, to sustain

focused attention in class, to plan organize and prioritize her workload, and to ignore classroom distractions. These factors prevent [the Student] from accessing the general education curriculum and from producing adequate written work. As a result, [the Student] requires Specially Designed Instruction in written expression, social behavioral skills, and study / organizational skills, as she cannot successfully access the general education curriculum without changes to the delivery, content, or methodology of instruction.

(D1, p.7.)

January 18, 2024, Individualized Education Program

4. During the 2023-2024 academic year, the Student was an [REDACTED] sixth grader at Eckstein Middle School in the District. (D7, p.5.) The Student's most recent Individualized Education Program (IEP) dated January 18, 2024, relied on information gathered in October 2023, and provided for the following specially designed instruction (SDI):

Services 02/01/2024 - 10/22/2024

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	STUDY/ORGANIZATION SKILLS	General Education Teacher	Special Education Teacher	25 Minutes / Weekly	General Education	02/01/2024	10/22/2024
No	SOCIAL/BEHAVIOR	Special Education Staff	Special Education Teacher	25 Minutes / Weekly	Special Education	02/01/2024	10/22/2024
No	WRITTEN LANGUAGE	Special Education Staff	Special Education Teacher	75 Minutes / Weekly	General Education	02/01/2024	10/22/2024

Total minutes per week of building instructional time available for this student (excluding lunch):

1825 minutes per week

Total minutes per week student is served in a special education setting: 25 minutes per week

Percent of time in general education setting:

98.63% in General Education Setting

(D1, p.17.) The Student also received 200 minutes per year of supports for school personnel in OT consultation. (D1, pp.14-15.) The accommodations and modifications for the Student included: access to fidgets; access to follow-up practice time; frequent review of skills learned; access to movement breaks; break larger assignments in to smaller parts; extra time to complete assignments; frequent checks for understanding; post assignments visually; preferential seating; quiet area for sensory breaks; repeat directions and check for understanding; speech-to-text; systematic check-ins for understanding in math; verbal cues for activity initiation; verbal cues for activity persistence; and verbal cues for self-advocacy. (D1, pp.6-7.)

5. To develop the Student's January 18, 2024, IEP in motor skills, Stacy Leggitt,³ the District's OT, "reviewed the Student's present levels of performance gathered through skilled observation and collaboration with the IEP team" members. (D1, pp.7-9; Tr., pp.27-28 (Leggitt).) On October 23, 2023, Ms. Leggitt observed the Student in her science, math, world history, and language arts classes. (*Id.*) In Science class, Ms. Leggitt observed that the Student:

attended to, and followed along with instruction similarly to her peers, with regular check-ins by her teacher for understanding. [The Student] interacted with her peers at an age-appropriate level consistent with other student's in the class. [The Student did not exhibit any sensory avoidant or other sensory seeking behaviors during this period . . . [The Student's] science teacher reports . . . no concerns.

(*Id.*)

6. In the Student's mathematics class, Ms. Leggitt observed that the Student "followed all instructions independently... attended well to instruction with regular eye contact to teacher and instructional materials, . . . [and] did not demonstrate any sensory seeking or sensory-avoidant behaviors in this class period." (*Id.*) The Student's math teacher reported that there were a few days the Student did not focus well, and that she fidgets with her backpack zipper. (*Id.*)

7. Ms. Leggitt reported her observations from the Student's world history class, stating that the Student "attended well to teacher during class instruction," and was "not distracted by other objects or students. [The Student] interacted with her table peers consistently with other students in the class. No indications of sensory dysregulation observed." (*Id.*) The Student's world history teacher reported that the Student would "zone out a few times in class, but that is not out of the ordinary in middle school classrooms." (*Id.*)

8. In language arts, Ms. Leggitt observed the Student "demonstrated strong attention to project information and teacher, and had fast response times to directions as given." (*Id.*) The Student's language arts teacher reported that she believed the

³ Stacy Leggitt earned her bachelor's degree in psychology from the University of Washington, and a master's degree in occupational therapy from Columbia University. (Tr., pp.25-26 (Leggitt).) Ms. Leggitt holds a National Board of Certified Occupational Therapist certification and is licensed by the Washington State Department of Health. (*Id.*) Ms. Leggitt has worked as an occupational therapist for ten years and has been employed by the Seattle Public Schools for three years. (*Id.*)

Student “likes / needs to take a moment to process information,” and occasionally “zoned out.” (*Id.*)

9. Ms. Leggitt also obtained a report from the Student’s private OT clinician, who reported that they were working on “organizing materials, breaking tasks down into smaller parts, and sequencing steps.” (*Id.*)

10. Ms. Leggitt recommended continuation of OT IEP services, and suggested that the IEP team:

-Ensure that accommodations recommended by outpatient OT are included in [the Student’s IEP]

-Continue with supported, daily Study Skills class to progress executive function skills including organizing school materials, breaking down assignments into smaller parts, and tracking school assignment deadlines

-Continue to include a class in [the Student’s] daily schedule that allows for / promotes movement (e.g., Physical Education, Art/Music/Drama classes)

. . . .

-Continue monthly check-ins with case manager and teachers on [the Student’s] school participation

-Perform classroom observations on a quarterly basis

-Provide assistance in creating tools to support [the Student’s] executive function and self-advocacy development, as needed.

(*Id.*)

11. Additionally, Ms. Leggitt stated:

STATEMENT OF DISCHARGE: [The Student is not being considered for discharge at this time. The IEP team should consider occupational therapy services being discontinued as part of [the Student’s] educational plan when the Student is demonstrating adequate skills necessary to be successful in her least restrictive school environment and / or the educational team is able to meet [the Student’s] needs without the expertise of an occupational therapist.]

(Id.)

12. In the area of social emotional / behavior, the IEP team gathered reports from the Student's teachers in October 2023. (D1, pp.9-11.) According to the Student's general education teachers, the Student was able to remain on task with few reminders, and:

- Comes to class daily, participates, and has good sporting behavior. She makes friends easily to do team and partner work, and she has great enthusiasm for the various activities and sports.

-Is kind and thoughtful

-Does a good job following through on expected assignments. It is clear she is also practicing and study at home.

-It's only been a few weeks - hard to have a plethora of data thus far. Thus far The Student has been engaged in learning. Though she can be more of a social learner (e.g., sharing ideas with her tablemates), she is showing that she's learned everything we've studied thus far to mastery (integers).

-I think The Student is doing a great job acclimating to middle school! She is a pleasant student, who treats others with kindness.

(Id.) However, the Student's general education teachers reported "off-task behaviors that impede [the Student's] learning." (Id.) Specifically, they reported that "[the Student] can struggle with focusing on the expected task, managing her materials, and asking for help when she needs it." (Id.) It was noted that:

[The Student] frequently interrupts herself (and her learning) to fiddle with water bottle, markers, tissues, etc. doodles, and the like . . . [The Student] can get off-task when working with preferred peers. I also can see some issues with executive functioning skills, regarding materials and multistep processes.

(Id.)

13. The Student's social emotional / behavior goals were updated in the January 18, 2024, IEP to the following:

By 10/22/2024, when given a challenging school assignment or directions for next steps, [the Student] will ask for help when she does not understand what she needs to do improving social / behavior from

asking for help when she does not understand what she needs to do on 3/10 opportunities, to asking for help when she does not understand what she needs to do on 8/10 opportunities as measured by systematic teacher observation and student work samples.”

. . . .

By 10/22/2024, when given a naturally occurring situation in which the student feels agitated [the Student] will choose and execute a calming strategy improving social / behavior from choosing and executing a calming strategy on 6/10 opportunities to choosing and executing a calming strategy on 8/10 opportunities as measured by systematic teacher observation.

(D1, pp.10-11.)

14. In the area of study / organizational skills, the Student's general education teachers reported that the Student was able to use school tools, navigate to her classroom and through assignments, and completed work with minimal adult support. (D1, pp.11-13.) The Student's general education teachers reported that the Student “has successfully mastered her schedule of six classes, can navigate the large middle school building independently, arrives to classes on time, comes prepared to class with her materials and her computer, and competes tasks with attention to quality and detail.” (*Id.*)

15. In the area of study / organizational skills, the Student's goals were updated in the January 18, 2024, IEP as follows:

By 10/22/2024, when given a grade level classwork or homework assignment The Student will keep track of her work and turn it in when expected improving study/organizational skills from keeping track of her work and turning it in when expected on 4/10 opportunities to keeping track of her work and turning it in when expected on 8/10 opportunities as measured by systematic teacher observation and student work samples.

. . . .

By 10/22/2024, when given an assignment for class The Student will find the materials she needs for the assignment and completes the task improving study organizational skills from finding the materials she needs for the assignment and completing the task on 4 of 10 observations to finding the materials she needs for the assignment and

completing the task on 8 of 10 observations as measured by systematic teacher observation.

....

By 10/22/2024, when given a direct question by a teacher or an Instructional Assistant about upcoming homework, classroom assignments, or assessments for a class The Student will verbally communicate the expectations, rubric details, due date, or other relevant information about the project or assignment improving study organizational skills from 2 out of 5 opportunities to 4 out of 5 opportunities as measured by teacher observation and teacher created data sheets.

(D1, pp.12-13.)

16. In the area of written language, the Student's general education teachers reported in October 2023, that the Student is a "strong conversationalist," and "has adjusted well to the written expression expectations in her [English Language Arts] ELA class." (D1, pp.13-14.) Her general education teacher reported that "task-initiation is a bit of a struggle. The Student needs additional time to process prompts, sometimes not starting until supported by an adult." (*Id.*)

17. In the area of written language, the Student's January 18, 2024, IEP provided one goal:

By 10/22/2024, when given a class-wide directive to respond to a written expression prompt The Student will initiate writing within 2 minutes improving written expression from initiating writing within 2 minutes on 3 of 10 observations to initiating writing within 2 minutes on 8 of 10 observations as measured by systematic teacher observation and student work samples.

(D1, p.13.)

April 4, 2024, Reevaluation

18. At the January 18, 2024, IEP meeting, the Parent requested that the District reevaluate the Student because the Parent was concerned about the assigned eligibility category of Emotional Behavioral Disability and the Student's independent skills. (D7, p.7; D3, pp.5-6; Tr., pp.92-93 (Parent).) On January 22, 2024, Emma

Mochnick,⁴ School Psychologist, informed the Parent that the District agreed to reevaluate the Student to determine if the Student was eligible for special education services, as well as to determine an appropriate eligibility category. (D3, pp.5-6; Tr., pp.56-58 (Mochnick).)

19. The District proposed to reevaluate the Student in the areas of general background, math, motor, study / organizational skills, written language, general education teacher report, medical-physical, reading, social / behavior, and “other areas as needed during the evaluation and agreed to by the parent.” (D7, p. 3; Tr., pp. 56-57 (Mochnick); 92-93 (Parent).) The Parent signed the consent form on February 13, 2024, (Consent Form) and did not indicate additional areas of concern or report any further areas in need of assessment. (D2, pp.1-4; Tr., pp.92-93 (Parent).) The Parent also provided a letter from the Student’s pediatrician at North Seattle Pediatrics evidencing a diagnosis for Post-Traumatic Stress Disorder when the Student was six years old. (D3, p.3; Tr., pp.92-93 (Parent).)

20. The District began the reevaluation of the Student on February 13, 2024, (Reevaluation), and the Reevaluation team included the following personnel: Emma Mochnick, school psychologist; Samuel Riedman,⁵ general education teacher; Janet Aurelius,⁶ special education teacher; the Parent; Stacy Leggitt, OT; Derek Granbois, District Administrator / Designee; and Michelle Bammert, Special Education Program Specialist. (D7, p.9; Tr. pp.27-28 (Leggitt); 60-61 (Mochnick); 122-124 (Riedeman).)

21. Ms. Mochnick reviewed the Student’s special education history, including the November 2019 initial special education referral, 2020 initial evaluation, 2022, reevaluation, and the Student’s IEPs and IEP amendments. (D7, pp.6-7, 10-11; Tr., pp. 58-59 (Mochnick).)

⁴ Emma Mochnick received a bachelor’s degree in education from Western Oregon University, and an educational specialty master’s in school psychology from Seattle University. (Tr., pp.54-55 (Mochnick).) Ms. Mochnick is a nationally certified school psychologist and is a certificated teacher in the State of Washington. (*Id.*) Ms. Mochnick has worked as a school psychologist for the Seattle Public Schools for two years. (*Id.*)

⁵ Samuel Riedeman is a certificated teacher for the State of Washington and has taught at Seattle Public Schools for ten years. (Tr., pp.124-125 (Riedeman).) Mr. Riedeman teaches sixth grade English Language Arts (ELA). (*Id.*)

⁶ Janet Aurelius received her Bachelor of Education from Eastern Washington University with a major in science and a minor in mathematics. (Tr., pp.142-143 (Aurelius).) Ms. Aurelius earned a master’s degree from Washington State University in secondary educational leadership with a cognate area in diverse learners. (*Id.*) Ms. Aurelius is a certificated teacher in the State of Washington. (*Id.*) Ms. Aurelius has worked as a special education teacher and director for over twelve years. (*Id.*)

22. Specifically, Ms. Mochnick noted that the Student had undergone the WISC-V cognitive test in January 2020 (D7, pp.6-7, 10-11; Tr., pp.60-61 (Mochnick).) On this assessment, the Student received a full scale IQ score of 119, and all other scores were in the “average” to “well above average” range. (D7, p.14; Tr., pp.60-61 (Mochnick).) Ms. Mochnick did not reevaluate the Student in cognition because the Parent did not request reevaluation in that area or consent to cognitive testing. (*Id.*)

23. Ms. Mochnick reviewed the Student’s grades for the 2022-2023 academic year and the 2023-2024 academic year, noting that as of March 2024, the Student maintained a 3.925 cumulative GPA. (*Id.*).

24. Ms. Mochnick also reviewed the Student’s Smarter Balance Assessments and Measurements of Academic Progress scores for the 2021-2022, 2022-2023, and 2023-2024 academic years. (D7, pp.6-7, 11-12; Tr., pp.58-59 (Mochnick)) Ms. Mochnick’s review of the Student’s school file reflected that the Student did not have any disciplinary actions or behavioral logs. (*Id.*)

25. Ms. Mochnick obtained input from the Student’s general education teachers on March 21, 2024. (D7, pp.10-12; Tr., pp.57-58, 61-62, 82-83, 87 (Mochnick).) The Student’s math teacher reported that the Student has challenges asking for help, math problem solving, and executive functioning, and needs frequent check-ins and seating “next to friends and [so she] will talk about a learning activity with peers.” (*Id.*) The Student’s computer technology teacher relayed that the Student works well independently, stays on task, but can be “caught up in being a little too social when working around a group of friends,” but can be redirected.” (*Id.*) Mr. Rothwell did not note any specific concerns, but stated that she has “good organizational skills and understanding . . . it is rare that she is disruptive in class . . . one redirection is plenty to get her back on track.” (*Id.*)

26. Mr. Riedeman, the Student’s language arts teacher reported that the Student “is now quite independent . . . she is doing a great job reaching out and checking in,” and noted that “social emotional skills” were a specific area of concern. (D7, pp.10-12; Tr., pp.125-127 (Riedeman).) Mr. Riedeman noted that “frequent check-ins for understanding” are helpful, as well as “pairing her with the right peer.” (*Id.*) The Student’s beginning ceramics teacher Amanda Amsel reported that the Student did not have any challenges and that the Student “asks questions and is super creative,” while being on task during class. (*Id.*)

27. Ms. Mochnick observed the Student on March 14, 2024. (D7, p.12; Tr., pp.59-61, 70-73 (Mochnick); 125-127 (Riedeman).) Ms. Mochnick reported the following from the Student’s language arts class:

[The Student] is observed [watching] quietly during the brain break activity. She is not raising her hand to participate, but her eye gaze follows. [The Student] occasionally rocks in her chair while listening. When it is time to work with a peer, [The Student] stands up immediately and initiates conversation with a peer who is reading the same story. The students collect and gather needed materials, and [The Student] motions to the peer to sit at [The Student]'s table. [The Student] and the peer have some off task conversations at first, however the activity is immersed in social interactions. Other students are observed to engage in some off task conversations. The peer and [The Student] are observed to bring the conversation back to the task at hand. At the end of this task, students independently write on a sticky note to add to a class anchor chart. [The Student] takes some processing time, for about 30 seconds, then writes her ideas, and posts her submission on the board. [The Student] engages in a quick conversation with a peer on her way back to her seat.

(Id.)

28. Ms. Mochnick observed the Student on March 15, 2024, in her history class. *(Id.)* Ms. Mochnick reported the following in the Reevaluation Report:

[The Student] is observed to engage in some doodling while listening to the mini-lecture on PPT. She looks up to watch and listen, and her gaze shifts between the teacher and doodling. It is observed that many other students are able to doodle, possibly as a fidget tool while listening. [The Student] does not raise her hand to engage in whole class discussions. However, at transitions, she is observed to get her materials out and ready immediately after being instructed. [The Student] has an appointment soon, so the teacher provides her with a modified goal to complete before heading down to the office. The teacher engages in 1:1 check in to review the modified work goal at the start of independent work, and before [The Student] is excused. The teacher roams the classroom, conducting 1:1 check in with many students. [The Student] scans through the questions before initiating the work. Following the teacher check in, she initiated the task. [The Student] packed up at 11:26 AM for her appointment, while the class ended at 11:44 AM. Students in the class had 12 more minutes to work on homework during class time, while [The Student] may have had to finish her assignment during homeroom or after school.

(Id.)

29. Ms. Mochnick observed the Student a third time on March 19, 2024, in the Student's math class using the "Behavioral Observation of Students in Schools (BOSS) form which "uses 15 minutes of interval observations where every 15 second there is a mark about whether the student is actively engaged, passively engaged, or exhibiting one of three off task behaviors." (Tr., pp.59-60, 73-75 (Mochnick).) Ms. Mochnick included the following observation in the Reevaluation Report:

[The Student] is observed to immediately initiate the warm up problem, and use her calculator as a tool. All students are using their calculators as a universal accommodation. The warm up problem that students work on is practical problem solving skill for students to make a quick guess of unit rates, as if they were shopping at the grocery store. The students then go back and complete unit rates using their calculator and comparing how close they guessed. [The Student] remains focused on task without reminders. She is seated by a positive peer student; both students are on task and infrequently engage in off-task verbal behaviors during the duration of the observation. The teacher asked students to raise their hand if done with questions on the front. [The Student] does not raise her hand, since she and many other students are still working. During the whole class review, [The Student] looks up at the teacher's projected screen to compare and check her answers. She continues to work independently on the problems she hadn't finished, instead of simply copying other answers, as some students in the room are observed to do. [The Student] doesn't raise her hand for the whole class discussion about how many guesses were correct. She is observed to doodle in her notebook instead (off task motor). Students turn their chairs around to make groups of four. [The Student]'s small group works independently. The teacher encourages students to ask their table mates for help if needed. The teacher brings the class together again for a whole class review of their small group work. She looks up occasionally and otherwise continues her unfinished problems during the review. During the final observed transition, [The Student] gets her materials out at her desk after being instructed.

(Id.)

30. Ms. Mochnick compared the Student's behavior to her peers using the BOSS form. (D7, p.12; Tr. pp.58-59, 74-78 (Mochnick).) According to the results, the Student was actively engaged 64.58% of the time, and her peers averaged 66.67% active engagement. (Id.) The Student was passively engaged 20.83% of the time compared to her peers who were passively engaged 2.08% of the time. (Id.) The Student was off

task engaging in motor behaviors 6.25% of the time, and off task using verbal behaviors 8.33% of the time. (*Id.*) However her peers were off task with verbal behaviors 2.83% of the time, and off task motor behaviors by the Student's peers were not observed or recorded. (*Id.*)

31. Ms. Mochnick observed the Student on a fourth and final occasion on March 19, 2024, during a science class. (D7, p.13; Tr., pp.59-61 (Mochnick).) Ms. Mochnick reported the following observations:

[The Student] is seated in a cushioned chair. [The Student] is observed to review her past notes in her notebook. It is observed that many pages in her notebook are organized with a title page. [The Student] finishes her BOCA before other students, and closes her notebook. As another student shares with the whole class, her eye gaze follows the speaker. At times, her gaze switches between doodling on her notebook. She does not raise her hand to participate in the whole class discussion. She appears to listen to directions while doodling with her pen, because once instructed, [The Student] gets out her materials immediately after instructed. She is prepared with her notebook, SIM sheet, pencil, eraser, and computer at her desk. The teacher roams the classroom, conducting 1:1 check in with all students. He shares with [The Student] that she has made great progress on her work this week. [The Student] independently navigates the SIM. She is taking leadership in her group, while a peer watches her navigation to better understand how to start herself. [The Student] is talking with a peer about what they observe in the SIM and making hypotheses. She and the peer make a joke about how hot the sun is. There are graphic organizers glued along her notebook. [The Student] writes notes as she works through the SIM. She uses her scissors to cut along the line of her new notebook graphic organizer to then glue. She is observed to be collaborating and actively partnering in the SIM work with two other peers. The teacher is roaming around the room, and [The Student] initiates asking a clarifying question. The teacher confirms that she is correct and on track. The teacher roams the room again for a 1:1 check in, and confirms that [The Student] and her group is already working on mission #3. The students in [The Student]'s group, including [The Student], demonstrated impressive time management skills during this observation.

(*Id.*)

32. On March 8, 2024, Ms. Mochnick interviewed the Student, inquiring about how the Student is successful and what she finds difficult about school. (D7, p.13; Tr., pp.64-65 (Mochnick).) The Student reported that she has a good group of friends, that people are nice to her, and that her favorite class is PE. (*Id.*) The Student reported that she uses her memory and a 2-inch binder to track her homework, class papers, and assignments, and that she uses the Schoology tool for virtual assignments. (*Id.*) The Student reported she mostly finishes her work in class and does not have homework and does not use the District provided 6th grade planner. (*Id.*) The Student reported that she is comfortable asking teachers for help, and that check-ins are helpful. (*Id.*) The Student reported that she enjoys her out of class activities and would like to be a veterinarian. (*Id.*)

33. To assess the Student in the areas of reading, writing, and math, Ms. Mochnick administered the Kaufman Test of Educational Achievement, Third Edition (KTEA-3). The Student scores were as follows: Reading Composite, Well Above Average (97th percentile); Decoding Composite; Above Average (88th Percentile); Reading Understanding Composite, Above Average (90th percentile); Written Language Composite, Average (70th percentile); Written Expression, High Average (79th percentile); Spelling, Average (63rd percentile); Math Composite, Average (61st percentile); Math Concepts & Applications, Average (37th percentile); and Math Computation, High Average (81st percentile). (D7, pp.15-17, 20-23, 34-36; Tr., pp.60-61 (Mochnick).)

34. To evaluate the Student in the area of social emotional / behavior, Ms. Mochnick reviewed the Student's January 18, 2024, IEP, and the March 2020 Behavior Assessment System for Children, Third Edition (BASC-3) general education teacher ratings for the Student. (D7, pp.23-24; Tr., pp.63-65 (Mochnick).)

35. On March 8, 2024, Ms. Mochnick assessed the Student using the Social Skills Improvement System Social – Emotional Learning Edition (SSIS-SEL), which is a student self-report rating form that measures social-emotional skills like Self-Awareness, Self-Management, Social Awareness, Relationship Skills, and Responsible Decision Making. (D7, pp.23-24; Tr., pp.63-64 (Mochnick).) The Student scored in the Average Range in all areas. (*Id.*)

36. Ms. Mochnick next evaluated the Student in social emotional / behavior by asking the Parent to complete the BASC-3 rating form, which assesses the Students functioning through three composite areas: externalizing problems, internalizing problems, and school problems. (D7, pp.23-27; Tr., pp.64-65 (Mochnick).) The BASC-3 rating scales showed that the Student was “at-risk” in attention problems and functional communication but all other skills are average. (*Id.*) “Attention Problems”

are “maintenance of attention levels at school, while Functional Communication is described as the skills needed to communicate feelings, present ideas, and obtain needed information and in general to communicate clearly.” (*Id.*)

37. Based on the SSIS-SEL and the BASC-3 assessments, Ms. Mochnick recommended that the Student receive targeted accommodations to address attention problems and executive functioning skills, but recommended that the Student not receive SDI in the area of social emotional / behavior. (*Id.*)

38. To evaluate the Student in the areas of study / organizational skills, Ms. Mochnick reviewed the Student’s March 2022 Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2) rating scales and her 2023-2024 grades, as well as the Student’s January 18, 2024, IEP. (D7, pp.27-30; Tr., pp.65-67 (Mochnick).) Ms. Mochnick’s review of the Student’s IEP progress notes dated January 31, 2024, reflected that the Student made significant progress towards her goals. (D7, pp.27-30; Tr., pp.65-67; Tr., pp. 65-67 (Mochnick); 144-146 (Aurelius).) Ms. Aurelius, the Student’s special education services case manager, monitored the Student’s progress by observing the Student in the general education environment and making notes about the Student’s progress. (Tr., pp. 144-146 (Aurelius).)

39. The BRIEF-2 assesses executive function “through three broad composite areas: Behavior Regulation, Emotion Regulation, and Cognitive Regulation.” (*Id.*) The BRIEF-2 provides a “Global Executive Composite (GEC) score that serves as an overall estimate of executive functioning.” (*Id.*) Ms. Mochnick administered the BRIEF-2 by asking the Student’s computer technology, ELA, and math teachers to complete the assessment rating scales. (D7, pp.27-30; Tr., pp.65-66 (Mochnick).) The Student’s GEC score was average based on the general education teacher rating scales, but the Student received a clinically elevated score in the area of working memory from the Student’s ELA teacher. (*Id.*) The Student also completed the BRIEF-2 self-report form on March 22, 2024, and her GEC score for executive functioning fell in the average range. (*Id.*)

40. Ms. Mochnick noted that Mr. Riedeman’s score in the area of working memory was inconsistent with the above average working memory index score the Student received on the WISC-V cognitive assessment in 2020 during the initial evaluation. (D7, pp.27-30; Tr., pp.125-128 (Riedeman).)

41. Based on the BRIEF-2 assessment and the Student’s records and progress notes, Ms. Mochnick recommended that the Student receive a 504 evaluation and the following “potential accommodations”:

visual cues such as schedules, checklists, and reminder notes to assist on task behaviors; break down complex tasks into smaller, manageable steps; offer minimized distraction location for test taking; offer movement breaks during class time; allow fidget tools; extra time to complete assignments; preferential seating; repeat directions and check for understanding; verbal cues for activity initiation; and verbal cues for activity persistence.

(*Id.*)

42. Ms. Leggitt began working with the Student's IEP team during the 2022-2023 academic year, and she was responsible for delivering the OT related services in the Student's January 8, 2024, IEP. (Tr., pp.27-29 (Leggitt).) Ms. Leggitt's role was to consult with the Student's IEP team and general education teachers. (*Id.*) As part of the Reevaluation, Ms. Leggitt assessed the Student in Functional Fine and Visual Motor Skills, Sensory Processing, and Functional School Skills / Executive Functioning. (D7, pp.18-20; Tr., pp.29-30 (Leggitt).)

43. Ms. Leggitt first conducted a file review, which included a review of the previous evaluations and IEPs for the Student, and Parent input, and noted the Student's IEP motor skills accommodations in the Reevaluation Report. (D7, p.17; Tr., pp.30-31 (Leggitt).)

44. Ms. Leggitt also interviewed the Student, and observed the Student in the academic classrooms of Math, World History, Science, English Language Arts, and Computer Technology. (D7, pp.18-20; Tr., pp.30-32, 35-37 (Leggitt).) Ms. Leggitt summarized her observations as follows:

During OT observations, [The Student] was a model student in each of her classes. She readily participates as instructed and uses class time productively. Teachers report that OT observations are consistent with typical performance. [The Student] is appropriately social during class time, conversing with tablemates at start/end of class periods and during prescribed group activities. [The Student] keeps her school materials well-organized, able to readily find and retrieve items from her backpack. She also keeps her desk area clear of extraneous materials. During OT interview and testing, [The Student] verbalized and demonstrated confidence in her skills, growth, school performance, and extracurricular activities.

(D7, pp.18-20; Tr., pp.41-42 (Leggitt).) More specifically, Ms. Leggitt observed the following:

The Student arrived to class on time and navigated directly to her seat. Her seat placement in all classes gave her a clear line of sight to the primary teacher instruction area and visually projected information.

She readily found items that she needed in her backpack, and maintained a desk space clear of distracting items.

She maintained strong attention in class as indicated by body language, eye gaze direction, and responsiveness to teacher instruction (e.g., when the whole class was asked to get out a material or start on an activity, she did so immediately).

The Student utilized independent work time in class very well.

Teachers provided frequent check-ins including whole class verbal inquiries, walk arounds to look at work as students were working independently, and individual verbal check-ins during walk arounds. The Student did not need additional help during these particular observation days.

Class instructions were projected visually for each class including getting started checklists, the agenda for the period, and upcoming due dates/test dates. Teachers reinforced and repeated this information to their classes verbally.

The Student interacted with classmates in all classes in an appropriate manner – socially before class started, or during partner/group work.

The Student raised her hand to ask a question or volunteer an answer in two of these observed classes.

In one of her classes there was a prescribed large movement break in the middle of the period in which The Student readily participated. In another class the teacher was accepting of other students taking movement breaks on the outskirts of the classroom during instruction, however The Student did not show any indication of wanting to do this as well.

Special education support was in two class periods observed by OT, an IA in one period and a Department Head in another. The Department Head reports that The Student has never needed additional help from her in that class, and the IA did not need to help The Student on the day of observation.

The Student required a verbal reminder from one teacher to attend to the visually projected getting started checklist as she had not retrieved a needed resource.

(Id.)

45. To assess the Student in the area of functional fine and visual motor skills, Ms. Leggitt observed that the Student was “able to retrieve items from her backpack, manipulate her school materials, and return items to her backpack without increased time or effort.” (D7, pp.18-20; Tr., pp.30-35 (Leggitt).) Ms. Leggitt also observed that the Student used scissors, wrote legibly on provided lines, touch typed using two hands, and navigated applications and websites efficiently. *(Id.)* The Student, during the interview with Ms. Leggitt, expressed confidence in her motor skills and described her participation in extra-curricular activities like tennis. *(Id.)*

46. Ms. Leggitt administered the Goal-Oriented Assessment of Life skills (GOAL) standardized assessment to measure “fundamental fine motor abilities needed for daily living.” *(Id.)* The Student performed in the 90th percentile (above average). *(Id.)*

47. Ms. Leggitt interviewed the Student and the Student’s general education teachers and special education case manager. *(Id.)* The interview results were consistent with Ms. Leggitt’s observations. (D7, p.19; Tr., pp.33-34 (Leggitt).) Based on the assessment results, Ms. Leggitt recommended that the Student did not need supports for school personnel OT services in the areas of functional fine and visual motor skills. *(Id.)*

48. The Parent reported that the Student had been diagnosed with a “sensory processing disorder,” and that the Student should continue to receive specially designed instruction in the areas of social / emotional behavior. (D7, pp.6-9.) Ms. Leggitt assessed the Student in the area of sensory processing by performing skilled observations in the Student’s five academic classes, and reviewed teacher feedback. (D7, pp.19-20; Tr., pp.33-36.) Ms. Leggitt’s observed that the Student “demonstrated no outward indicators of sensory dysregulation,” and that she “maintained strong attention to classroom instruction via eye contact, body language, and responsiveness to directions.” *(Id.)*

49. Ms. Leggitt administered the “Sensory Profile: Adolescent / Adult Self Questionnaire,” and the Student responded to the 60 statements related to sensory processing. (D7, pp.19-20; Tr., pp.35-38 (Leggitt).) The Student scored “less than most people” in the area of low registration, but scored “similar to most people” in the areas of sensation seeking, sensory sensitivity, and sensation avoiding. (*Id.*) Based on the results and her observations of the Student, Ms. Leggitt did not recommend supports for school personnel OT services in the area of sensory processing. (*Id.*)

50. As part of the Reevaluation, Ms. Leggitt, via email on March 19, 2024, asked the Parent to provide input regarding the Student’s strengths, and areas of concern, and “what you hear from [the Student] outside of school hours about her school experience.” (D4, pp.2-3; Tr., pp.38-40 (Leggitt).) The Parent responded via email on March 22, 2024, stating that the Student’s strengths included “being committed to doing well at school, being a mathematical and scientific thinker . . .” (*Id.*) The Parent stated her concerns were “around executive functioning, working memory, fine motor, and . . . ongoing back pain . . . [The Student] often comes home not understanding or knowing about assignments, forgets things she needs to ask in class, and struggles to keep up with writing as quickly as other students.” (*Id.*) Ms. Mochnick included the Parent’s input from the March 22, 2024, emails in the Reevaluation Report. (D7, pp.5, 12-13.)

51. In a second email, also on March 22, 2024, the Parent expressed that the Student “struggles with maintaining eye contact and being distracted during class and in social interactions . . . She can be found doodling many times during class which is a distraction . . . She often reports the accommodation in her IEP “frequent checks for understanding” is not being followed.” (D4, p.1; D7, pp.5, 12-13.) Ms. Mochnick also included the Parent’s email input in the Reevaluation Report. (D7, pp.13-14.)

52. Ms. Leggitt concluded, based on the assessments, observations, Student input, Parent input, teacher input, and file review that the Student did not require supports for school personnel OT services because she “is demonstrating the skills necessary to functionally participate in her least restrictive school environment.” (D7, p.20; Tr., pp.33-40, 47-49 (Leggitt).) However, Mr. Leggitt recommended that the Student receive accommodations as per a Rehabilitation Act 504 Plan. (*Id.*)

April 4, 2024, Reevaluation Report and Reevaluation Team Meeting

53. The Parent was provided with a draft copy of the Reevaluation Report prior to the April 4, 2024, Reevaluation Team meeting. (D9, pp.3-43.) At the April 4, 2024, Reevaluation Team meeting, the Parent was accompanied by Larry Davis, a special education advocate. (D7, p.9; Tr., pp.67 (Mochnick); 95-96 (Parent).) The Parent

requested that the Student remain eligible for special education services under the category of Other Health Impairment, and that the Student's IEP continue to be implemented through the Fall of 2024 to assist with transitioning to seventh grade. (D7, p.38; D9, p.1; Tr., pp.95-96 (Parent).)

54. The District also provided the Parent with an "Evaluation Summary" that listed the Student's current services, current class schedule with grades, extracurricular activities, and Reevaluation assessment results. (D6, pp.1-2; Tr., pp.56-57 (Mochnick).) At the bottom of the document was a chart to assist with the eligibility discussion and a list of action items that included notes regarding initiating a Rehabilitation Act 504 Plan and contacting the 504 coordinator. (*Id.*)

55. At the Reevaluation Team meeting, Ms. Leggitt recommended that the Student not be eligible for supports for school personnel in the area of OT. (D8; Tr., pp.39-40 (Leggitt).)

56. The Parent disputed the results of the April 4, 2024, Reevaluation during the Reevaluation Team meeting, and after the Reevaluation meeting, the Parent emailed her dissenting opinion on April 6, 2024. (D7, pp.37-38; Tr., pp.66-68 (Mochnick); (Parent).) Ms. Mochnick included the Parent's dissenting opinion in the final Reevaluation Report. (*Id.*)

57. On April 17, 2024, Ms. Mochnick emailed the Parent a copy of the final Reevaluation Report dated April 4, 2024, and stated that the Parent would hear from the 504 Plan evaluation team that week. (D9, p.1; Tr., pp. (Mochnick).) Ms. Mochnick informed the Parent that her "dissent to the evaluation conclusions" was included in the Reevaluation Report on page 37." (*Id.*)

Eligibility Determination

58. The District issued a Prior Written Notice (PWN) on April 4, 2024, proposing to discontinue the Student's eligibility for special education services, and refer the Student for a Rehabilitation Act 504 Plan evaluation to determine accommodations needed to support the Student. (D9, p.43.) The action of discontinuing the Student's eligibility for special education services was implemented on April 4, 2024. (*Id.*)

59. Ms. Mochnick requested a Rehabilitation Act 504 evaluation on April 5, 2024. (D7, p.8; Tr., pp. .) The District's 504 Plan Coordinator Bryan Manzo emailed the Parent on May 21, 2024, seeking to schedule a meeting to discuss evaluating the Student for a 504 Plan. (D10, pp.1-3; Tr., pp.98-99, 112-113 (Parent).) As of the date of the due process hearing, the Parent has not attended a 504 Plan meeting with District personnel or consented to a 504 Evaluation. (Tr., pp.98-99, 112-113 (Parent).)

Independent Educational Evaluation

60. The Parent requested an IEE on May 22, 2024, via email to Ms. Mochnick and Mr. Manzo. (D10, p.1; Tr., pp. (Parent).)

61. On May 29, 2024, via email, the District denied the Parent's request for an IEE. (D10, p.3.)

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 Parent Presented Issues for Resolution that are Not Properly Before the Tribunal and Beyond the Scope of the Issue Presented in the District's Due Process Hearing Request.

4. At the hearing and in her closing brief, the Parent raised the following additional claims: 1) District's failure to provide the Parent with record of notes taken at the Reevaluation Meeting; 2) the Reevaluation Team "predetermined" the Student's

eligibility for special education services; 3) the Student's IEP Team did not discuss the Student's eligibility or the April 4, 2024, Reevaluation; 4) the Student's IEP could be implemented in the general education setting until the Fall of 2024; 5) inconsistent implementation of the Student's IEP (specially designed instruction and accommodations); and 6) removal of the Student's IEP without parental consent.

5. The Parent testified and reiterated in her written closing argument that she primarily challenges the Reevaluation Team's eligibility determination that resulted from the April 4, 2024, Reevaluation.

6. The District argues that the eligibility determination, as well as the other issues the Parent presented at hearing and in her closing brief, are not properly before this tribunal and are outside the scope of the issue presented by the District's due process hearing request.

7. 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.*)

8. 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 or raise any other issues, 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 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.").

9. Parties to a due process hearing may not raise issues during a due process hearing that were not raised in the complaint unless the other party agrees. WAC 392-172A-05100(3); 20 U.S.C. § 1415(f)(3)(B). "Administrative and judicial review in IDEA cases is specifically limited to the issues raised in the due process complaint, unless the parties agree otherwise." *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 *34-35 (W.D. Wash. May 8, 2019), *aff'd sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022) (upholding ALJ's refusal to address claims raised for first time in post-hearing brief where Parents cited no evidence that parties agreed to expand scope of due process hearing). This is consistent with

Washington administrative law requiring that a notice of hearing include a statement of the issues (RCW 34.05.434) and that prehearing orders identify all issues and provide an opportunity to object. WAC 10-80-130.

10. Here, the District filed the June 3, 2024, Due Process Hearing Request identifying the sole issue as whether the District's April 4, 2024, Reevaluation is appropriate. This issue statement is consistent with WAC 392-172A-05005(2)(a) because that provision only addresses disagreement with a school district's evaluation, not disagreement with the eligibility determination or other potential issues that may arise as the result of a reevaluation.

11. Unfortunately, the issues raised by the Parent, including her primary challenge to the eligibility determination, are not before this tribunal for resolution. Therefore, these issues will not be addressed by the tribunal in this Order.

The District's Reevaluation of the Student was Appropriate

12. A parent has the right to obtain an IEE at public expense if the parent "disagrees with a school district's evaluation," whether it is conducted or obtained by the school district." 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.*

13. 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 392-172A-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.*

14. The school district's burden of proof relates to the procedural appropriateness of the district's evaluation. See *Avila v. Spokane Sch. Dist.* 81, 686 F. App'x 384 (9th Cir. 2017) (upholding review of appropriateness of district evaluation in response to IEE request). Decisions about how to evaluate a student are left to the district's discretion. Indeed, "[t]he 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. 2002). Therefore, when reviewing the appropriateness of a school district's evaluation, the focus is on whether the district adequately followed the procedures in conducting the evaluation, not the substantive result of the evaluation. *E.P. By &*

Through J.P. v. Howard Cty. Pub. Sch. Sys., No. CV ELH-15-3725, 2017 WL 3608180, at *18 (D. Md. Aug. 21, 2017), *aff'd sub nom. E.P. v. Howard Cty. Pub. Sch. Sys.*, 727 F. App'x 55 (4th Cir. 2018) (appropriateness of evaluation based on whether proper methodologies were utilized, not results or conclusions); *W. Chester Area Sch. Dist. v. G.D.*, No. CV 16-4471, 2017 WL 379440, at *3 (E.D. Pa. Jan. 25, 2017) (pivotal question for appropriateness of evaluation is whether the district's methods were adequate).

15. Long-standing Ninth Circuit precedent rejects awarding an IEE at public expense solely based on minor procedural defects in a district's evaluation, where the validity of the evaluation overall is not impacted. See, e.g., *Ford v. Long Beach Unified Sch. Dist.*, 291 F.3d 1086, 1089 (9th Cir. 2002).

16. The Ninth Circuit reaffirmed application of this so-call "harmless error" standard to a district's defense of its evaluation in the face of an IEE request. *R.Z.C. by & through David C. v. Northshore Sch. Dist.*, 755 F. App'x 658, 659-660 (9th Cir. 2018) (upholding application of harmless error analysis by Washington ALJ to district evaluation in denying IEE request). As concluded by the ALJ whose analysis was upheld by the Court:

In summary, while the reevaluation 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 undersigned ALJ holds that, apart from the procedural violations identified above, none of which denied the Student FAPE, the procedures and the report are legally sufficient under the facts and circumstances of this case to find they are appropriate under the IDEA.

In re Northshore Sch. Dist., 116 LRP 17594 (SEA WA, 2016)

17. 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 (9th Cir. 2001); see also *R.Z.C. v. Northshore Sch. Dist.*, 755 F. App'x 658 (9th 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.)

A. The District's Group of Qualified Professionals Used a Variety of Assessment Tools, Strategies and Technically Sound Instruments.

18. 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).

19. 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.*

20. The District has shown that the members of the Reevaluation Team (Ms. Leggitt, Ms. Mochnick, Mr. Riedeman, and Ms. Aurelius) are qualified professionals who have the education and experience necessary to perform the evaluation, as required by WAC 392-172A-03020(2). The Parent has not produced any evidence to the contrary.

21. The record reflects that Ms. Mochnick and Ms. Leggitt both used a variety of assessment tools, including the SSIS-SEL, BASC-3, BRIEF-2, GOALS, BOSS, KTEA-3, and Sensory Profile: Adolescent / Adult Self Questionnaire. Notably a number of these assessment tools required obtaining information directly from the Student, the Parent, and three of the Student's general education teachers.

22. Additionally, Ms. Mochnick and Ms. Leggitt conducted a plethora of skilled observations of the Student in a variety of general education classes, reviewed all available documentation, and interviewed the Student and general education teachers, as well as obtained written input from the Parent about her concerns.

23. The Reevaluation Team did not use any single measure to assess the Student in any of the identified areas of concern, and the instruments selected addressed the relative contribution of cognitive, behavioral, physical and developmental factors. For example, Ms. Mochnick relied on the Student's 2020 WISC-V full scale IQ score and how this cognitive assessment contributed to the Student's BRIEF-2 and BASC-3 results, as well as the Student's KTEA-3 scores. Another example is Ms. Leggitt observing the Student's behavior in class and administering the GOALS assessment.

24. The Parent has not offered any evidence or testimony that the District failed to use a variety of assessment tools, strategies and technically sound instruments.

25. Given the variety of assessment tools and multiple strategies employed, then, it is concluded that the District's April 4, 2024, Reevaluation of the Student meets the requirements of WAC 392-172A-03020(2).

B. The District Revaluated the Student in All Areas of Suspected Disability as per the Parents' Informed Consent

26. 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, to determine "other factors that may be affecting the student's communicative status, and motor abilities." WAC 392-172A-03020(3)(d). See, e.g., *Razzaghi v. Dist. of Columbia*, 44 IDELR 271 (D.D.C 2005); *Moses Lake Sch. Dist.*, 109 LRP 26490 (2008).

27. "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).

28. School districts must also evaluate each student for the purpose of determining eligibility or continued eligibility for special education services, and therefore, "a reevaluation 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." WAC 392-172A-03020(3)(g). To that end, a school district must use "assessment tools and strategies . . . that provide

relevant information that directly assists persons in determining the educational needs of the student.” WAC 392-172A-03020(3)(h).

29. 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.

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. The record shows that the District reevaluated the Student in all areas related to her previously identified disabilities in motor, reading, math, written language, study / organization skills, and social emotional / behavior. No other disabilities were suspected, including health, vision, hearing, communication or general intelligence. The record also shows that the District obtained a medical statement regarding the Student’s sensory processing and PTSD diagnoses. Further, the variety of assessments, tools, and strategies employed were not designed to provide a single general intelligence quotient, but instead were selected and administered to accurately reflect the Student’s aptitude or achievement level in the identified areas of concern and administered over a variety of days and environments.

32. Additionally, as part of the April 4, 2024, Reevaluation, Ms. Mochnick and Ms. Leggitt reviewed all existing data regarding the Students impairments and academic abilities, including previous IEPs and evaluations, progress notes, Parental input, and the Student’s grades and standardized test scores.

33. Based on the record, then, it is concluded that the District has met its burden and has shown that the April 4, 2024, Reevaluation meets the relevant requirements of WAC 392-172A-03020(3)(b), (c), (d), (e), (g), and (h).

34. In her closing brief, the Parent asserts that 1) the District should have assessed the Student in the area of cognition; 2) the Student has a PTSD and sensory processing diagnosis that was not accounted for in the April 4, 2024, Reevaluation; 3) Ms. Aurelius’ testimony was either not relevant or should be given no weight because the Student did not know Ms. Aurelius; 4) the data regarding the Student’s peers engaging in off-task behaviors in math class gathered by Ms. Mochnick was incomplete; and 5) the Reevaluation Team did not collect or interpret data about the Student’s behavior and performance outside of school.

35. The Parent has asserted for the first time in her closing argument that the Student should have been evaluated in cognition because she has a PTSD and sensory processing diagnoses. The Parent also asserts that these diagnoses were not accounted for in the Reevaluation. The Reevaluation Team assessed the Student in all identified areas of concern as per the February 13, 2024, Consent Form signed by the Parent, and the Parent provided a medical statement regarding the Student’s sensory processing and PTSD diagnoses. There is nothing in the record that shows the District failed to reevaluate the Student in an area that is identified in the Consent Form or that the Student’s medical providers had not already diagnosed.

36. There is no information in the record that shows the Student required reevaluation in cognition because of the PTSD and sensory processing diagnoses. The Parent had the opportunity to add cognition to the Consent Form prior to signing the document, and had the opportunity to describe to the District concerns about the Student's cognition. Nowhere in the Parent's input emails or in the Parent's participation in the assessments does the Parent identify cognition as an area of concern, nor does she describe any disabilities or impairments or changes in the Student's cognition. Also, the Student's sensory processing and PTSD diagnoses were accounted for by Ms. Leggitt in her Sensory Processing assessment, and by Ms. Monchnick in her social emotional / behavior assessment.

37. Moreover, the Student's assessments did not reflect, and general education teachers did not report, any concerns, changes, or issues with the Student's cognition. Importantly, the Student's cognition was evaluated in 2020 using the WISC-V and the Student received a full-scale IQ score that placed her cognition in the average range. There is no indication or information that the Student's subsequent PTSD and sensory processing diagnoses impacted the Student's cognition.

38. Given the record, then, it is concluded that the District assessed the Student in all areas as required by WAC 392-172A-03020(3)(e), (d) and (g).

39. Regarding the Parent's claims about the weight of Ms. Aurelius' testimony, the Parent relies on statements by the Student that are not part of the record and are not under oath. Because the Student's statements are not part of the record and under oath, the tribunal cannot compare the Student's statements with Ms. Aurelius' testimony. Even so, Ms. Aurelius only testified about one portion of the information relied on during the reevaluation: Ms. Aurelius' IEP progress notes between January 18, 2024, and the Reevaluation. Ms. Aurelius' testimony regarding her observations is the only portion of her testimony that is given weight and that is relied on in making a finding of fact above.

40. The Parent's claim that the District should have collected complete data about the Student's peers during the March 22, 2024, math class observation by Ms. Mochnick is confusing. Ms. Mochnick testified that she used the BOSS form to track the Student and her peers during the observation, and that she filled out the form with the information she observed. It is true that Ms. Mochnick did not record data regarding task motor behaviors from the Student's peers, but as she explained in her testimony her goal was to record the data available and the peer off-task motor behaviors data was not available. The Parents assertion that the data was incomplete, then, is not persuasive.

41. Finally, the Parent's claim that the Reevaluation Team failed to collect data about the Student's activities outside of the school day or academic classes conflicts with the record. Both Ms. Mochnick and Ms. Leggitt obtained information from the Parent and the Student about her extra-curricular activities, homework activities, and outside interests. The Reevaluation Report is replete with statements about the Student's activities outside of the classroom that the Student and the Parent made during assessments and in-person interviews. Further, the Reevaluation Team members testified that they reviewed and discussed this information at the Reevaluation Meeting. The Parent has not presented information to the contrary.

42. The Parent's has shared valid concerns about the April 4, 2024, Reevaluation and the resulting eligibility determination. However, there is no testimony or evidence that supports the Parent's assertions that the April 4, 2024, Reevaluation was not appropriate. The record available instead shows that the District has met its burden and conducted a reevaluation of the Student that meets the standards of WAC 392-172A-03020 and 03025. The April 4, 2024, Reevaluation, then, is appropriate.

ORDER

The District has carried its burden and has shown that its April 4, 2024, Reevaluation of the Student is appropriate. The Parent is not entitled to an Independent Educational Evaluation at public expense.

SERVED on the date of mailing.



Courtney Beebe
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Legal Services, PO Box 47200, Olympia, WA 98504-7200. To request the administrative record, contact OSPI at appeals@k12.wa.us.

DECLARATION OF SERVICE

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

Parent

[REDACTED]

via First Class Mail and
via E-mail

[REDACTED]

Rachel C. Disario
Senior Assistant General Counsel
Seattle School District
PO Box 34165, MS 32-151
Seattle, WA 98124-1165

via E-mail
rcdisario@seattleschools.org
dacamacho@seattleschools.org

Susan Winkelman
Pacifica Law Group LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101

via E-mail
susan.winkelman@pacificallawgroup.com
grace.mcdonough@pacificallawgroup.com

Dated January 29, 2025, at Olympia, Washington.

Jazmyn Johnson

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

cc: Administrative Resource Services, OSPI