WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of: North Thurston School District	Docket No. 12-2024-0SPI-02430 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER** Agency: Office of Superintendent of Public Instruction Program: Special Education Cause No. 2024-SE-0179

A due process hearing was held before Administrative Law Judge (ALJ) Pamela Meotti on May 23, 2025, at the North Thurston School District (District) offices. The Parents of the Student whose education is at issue[1] appeared and represented themselves.[2] The District was represented by Lynette Baisch, attorney at law. Also present for the District was Kari Lewinsohn, Director of Special Education. Sierra McWilliams, a friend of the Parents, attended but did not participate in the hearing.

STATEMENT OF THE CASE

Procedural History

On December 16, 2024, the District filed a Due Process Hearing Request (Complaint). The matter was assigned to ALJ Paul Alig then reassigned to ALJ Pamela Meotti.

The due process hearing was set for February 24, 2025. By agreement of the parties, it was continued to May 16, 2025, and then to May 23, 2025. ALJ Meotti issued prehearing orders on January 14, January 17, February 5, February 13, March 19, and March 26, 2025. An Order on the District's Motion to Quash Subpoenas was issued on April 10, 2025.

Due Date for Written Decision

The deadline for a written decision was extended at the District's request to thirty (30) days after the record of the hearing closes. The record of the hearing closed on June 27, 2025, at 5:00 p.m., when the parties timely submitted post-hearing briefs. The due date for a written decision is July 27, 2025.

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

[2] Mr. Parent was present for the morning portion of the hearing.

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EVIDENCE RELIED UPON

Exhibits Admitted:[3]

District's Exhibits: D1 through D20.

Witnesses Heard (in order of appearance):

Alexandra Franks-Thomas, District school psychologist
Erin Kelley, District speech language pathologist
Matthew Hart, District occupational therapist
Erin Bonvouloir, District general education teacher
Makaylahj White, District behavior interventionist
Kacy Adams, District mental health specialist
Luke Nelson, District counselor
Amy Jones, District assistant principal
Ms. Parent.

ISSUES

The sole issue for the due process hearing is whether the District's evaluation of the Student conducted in December 2024 was appropriate and, if not, whether the Parents are entitled to an independent educational evaluation (IEE) at public expense?

FINDINGS OF FACT

Background

1. At the time of the hearing, the Student was [redacted] and attended second grade at Lakes Elementary School in the District.[4] D14p6.[5]

[3] At the start of the hearing, the District objected to the Parents' proposed exhibits P9, P10, and P11. The Parents later sought to admit exhibit P9, a private provider's report, as an example of the type of methodology likely to result in accurate findings about a student's disability and support needs, and to show deficiencies in the District's evaluation. T89, 91. The District renewed its objection. Exhibit P9 was not admitted for the following reasons: it held limited probative value because it was completed after the evaluation; the Parents did not intend to call the author to testify at the hearing, meaning the report was not subject to cross-examination and the author could not testify about their education, training, and experience; and the Parents could question the District about procedures it used or did not used without reference to the report. T91-92. The ALJ later reminded the Parents that they had not moved to admit exhibits P10 and P11, but they did not seek to admit those exhibits. T234.

[4] [redacted]

[5] Citations to exhibits are by party ("D" for District; "P" for Parent), followed by exhibit number and page number. For example, citation to D1p1 is to District exhibit 1 at page 1. Citations to the transcript are to "T" followed by the page number.

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2. The Student has received accommodations under a 504 plan due to attention deficit hyperactivity disorder (ADHD) and anxiety since February 2024, when he was in first grade. Accommodations included: allowing the Student to have a small comfort item in class; a class job to facilitate positive reinforcement; a moving seat (stool, rocking chair, etc.); a weighted vest or similar; removing recess only due to safety concerns; and providing color cards for the Student to show feelings. D6p3.

3. On May 31, 2024, the Parents contacted school psychologist Alexandra Franks-Thomas to start the special education evaluation process for the Student.[6] D1p3.

4. On June 3, 2024, the District issued a prior written notice (PWN) proposing to initiate a special education referral. T29-30. The PWN stated that the Parents had expressed concerns about the Student's adaptive skills, social-emotional, speech, sensory processing, and executive functioning. D1p4; T27.

5. On June 4, 2024, Erin Kelley, a District speech-language pathologist (SLP),[7] spoke with the Parents, who raised concerns about "S" sounds, fluency, and pragmatic speech.[8] D4pp5-6; T133. Ms. Kelley also communicated with private providers who had given SLP therapy to the Student. D3. Based on this communication, Ms. Kelley looked at whether cluttering might be a speech concern for the Student.[9] T132; D6p4; D3.[10] Ms. Kelley then met with the Student, who engaged in conversation, did not seem shy to talk to her, and was expressive and engaged. Ms. Kelley heard minimal stuttering or cluttering moments and a slight S distortion; however, the Student was 100 percent intelligible. T134. The Student's first grade teacher reported the Student could express himself and speech did not affect academic or social progress. D2p1; T122-23. Based on this information, Ms. Kelley initially informed Ms. Parent she was

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[6] Ms. Franks-Thomas has bachelor's degrees in children's studies and applied developmental psychology, with a minor in special education. She obtained her educational specialist degree in school psychology in 2014, and is a nationally certified school psychologist. Ms. Franks-Thomas has been employed by the District as a school psychologist since 2014. D18p1. She conducts between sixty and ninety evaluations each year. T26. As a school psychologist, Ms. Franks-Thomas supports special education programs including integrated classrooms for students with autism spectrum disorder. D18p2.

[7] Ms. Kelley completed a master's degree in speech-language pathology in 2018, and holds a certificate of clinical competence from the American Speech-Language Hearing Association (ASHA). D19p1. Ms. Kelley also holds certification to work as an SLP in Washington public schools and has been employed by the District as an SLP since 2018. D19p1; T122. She has experience with students with various diagnoses including autism spectrum disorder, ADHD, and anxiety. D19p1.

[8] Pragmatic speech refers to how we communicate to interact socially and how we understand communication rules for interacting with peers, such as in conversations or through nonverbal language. T135.

[9] "Cluttering" is a type of fluency disorder characterized by interjections such as "like," or "um." T131.

[10] At hearing, the Parents disputed the accuracy of information provided by the private SLP. No findings of fact are made related to the Student's private SLP services because the private SLP did not testify and was not subject to cross-examination, and an initial evaluation conducted by the private SLP is not part of the record. T124-128; D3p1.

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not recommending a speech assessment. She later decided to evaluate disfluencies and pragmatic language based on the Parents' request. D4p3; T136.

2024-2025 School Year–Second Grade

6. During the 2024-2025 school year, the Student was in Erin Bonvouloir's second grade general education classroom.[11] T177.

7. During the first few months of the year, the Student engaged in some behaviors. T190. One behavior incident occurred in the bathroom, when the Student climbed a stall wall and looked over. T178, 228. In another instance, the Student falsely reported that a student had hit him. T179. Makaylahj White, a positive behavior intervention support paraeducator who worked with the Student at this time, considered the bathroom incident to be a "major" behavior that would typically lead to a discipline referral. T193. Amy Jones, Assistant Principal at Lakes Elementary School, spoke about the second incident with the Student, who admitted to making a false report. T217-18.

8. Ms. Bonvouloir, Ms. Parent, and Ms. White discussed the Student behaviors, which were frequent in the fall. T178, 190. At that time, the Student was trying a new medication that could cause impulsivity. T192. Early in the school year, Ms. Bonvouloir gives students "grace" regarding behaviors by teaching expectations and routines before writing a discipline referral. T180. When Ms. Bonvouloir discussed the Student's behaviors with Ms. Parent and Ms. White, they decided to make the Student's behaviors a "teachable moment" as opposed to writing a referral. If the behaviors continued to be a problem, they would be addressed at that time. T178-79. However, the behaviors stopped when the Student's medication trial stopped, around October 2024. T192; 223.

9. In the fall of 2024, Ms. Bonvouloir contacted Kacy Adams, a school mental health specialist, to support the Student, who was experiencing anxiety. T198. Ms. Adams started providing weekly services to the Student.[12] T197. At hearing, Ms. Adams explained that the Student's anxiety primarily stemmed from social interactions and that developing friendships and self-esteem was the main focus of their work. T199.

[11] Ms. Bonvouloir has been a second grade teacher for ten years. T176.

[12] Ms. Adams has a master's degree in clinical mental health and is a fully licensed mental health counselor in Washington state. T201. She has been employed by the District as a mental health specialist for three years. T197.

Special Education Referral

10. In September 2024, Ms. Franks-Thomas prepared a special education referral based on her review of existing information about the Student. D6; T29. The Parents informed Ms. Franks-Thomas that the Student had been diagnosed with ADHD by his pediatrician and that his sibling had been diagnosed with autism and a tic disorder by Mary Bridge Children's Hospital (Mary Bridge). Ms. Parent noted that the Student had "an upcoming evaluation at Mary Bridge in October." D5p4.

11. Ms. Franks-Thomas and Ms. Parent met to review the referral document, which recommended evaluating the Student for special education services, and to discuss an evaluation plan. T28-30; D5p1. On September 23, 2024, the Parents provided signed consent for the District to evaluate the Student in the areas of medical-physical; adaptive; communication; general education; observation; and social-emotional, which includes emotional regulation and executive functioning. D7p1; T36-37. Ms. Franks-Thomas and Ms. Parent discussed evaluating the Student's cognitive skills but determined that an executive functioning assessment would better address Ms. Parent's concerns related to working memory. T36; D6p5. The Parents did not suggest any other areas for assessment. D7p1. Also on September 23, 2024, the District issued a PWN proposing to initiate a special education evaluation, which was due by November 13, 2024. D6p5.

12. Ms. Franks-Thomas oversaw the Student's evaluation and prepared a draft evaluation report. T26, 38. She conducted the medical-physical, general education, social-emotional, and adaptive portions of the evaluation. D9pp2-7. Ms. Kelley conducted the communication portion of the evaluation. D9pp8-11.

13. On November 6, 2024, Ms. Franks-Thomas sent a draft evaluation report to the Parents. D9p1. In response, the Parents discussed concerns to be addressed:

> -providers had recommended occupational therapy for emotional regulation;
> -from the Student's perspective, he had been in "serious trouble" a few times and felt he was in trouble at school, especially on the bus and in PE;
> -Ms. Adams, the Student's mental health counselor, had relevant information;
> -bright kids who are good at masking, or hiding, feelings of discomfort can internalize and then let these feelings out at home where they feel safe;
> -the Student dreaded the bus and had missed several days of school in first grade because he refused to go;
> -recess and the bus were constant sources of anxiety at home; and
> -anxiety disrupted the Student's sleep. D10p6.

The team, including the Parents, agreed to extend the evaluation timeline to give District occupational therapist Matthew Hart time to conduct a sensory assessment.[13] D10pp2-3. On November 12, 2024, the District issued a PWN documenting the agreement to add a sensory assessment and to extend the evaluation timeline to December 5, 2024. The Parents consented to these actions by email on November 8 and 11, 2024. D11pp10-11; D14p28.

14. Ms. Franks-Thomas then took additional steps to address the Parents' other concerns. As discussed further below, she obtained information from Ms. Adams and the Student's P.E. teacher, reviewed attendance data a second time, conducted three additional direct observations of the Student in different settings, and added an additional standardized assessment. T39-40; Compare D13pp3-7 with D9pp3-5.

15. On December 3, 2024, Ms. Franks-Thomas sent the Parents an updated copy of the draft evaluation report. D13p1.[14]

Medical-Physical

16. For the medical-physical portion of the evaluation, Ms. Franks-Thomas reviewed health and developmental history provided by the Parents, the Student's school vision and hearing screening, and a form completed by the Student's pediatrician, D14p10; D17. As stated on the form and in the evaluation report, the Student had been diagnosed with ADHD, predominantly hyperactive, and generalized anxiety disorder. D17p1; D14p10. The form noted that the educational implications of the Student's diagnoses included difficulty paying attention and completing work, and problems with change. D14p10; D17. For school, the pediatrician recommended additional time to complete work and quiet time as needed, and noted that one-on-one help and school counseling could be beneficial. D17p1. There is no recommendation for school-based occupational therapy. T48.

17. Ms. Parent reported that the Student was taking medication, was on a waitlist for occupational therapy, and had previously participated in play and SLP therapy. D14p10.

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[13] Dr. Hart completed his Ph.D. in occupational therapy in 2015 and holds an educational staff associate (ESA) certificate in Washington state. Dr. Hart has been employed by the District as an occupational therapist since 2016, and also has experience in a clinical setting. D20pp1-2.

[14] The draft evaluation report is contained in Exhibit D13 and the final evaluation report is contained in Exhibit D14. For convenience, this order generally refers to Exhibit D14.

General Education

18. In the general education section of the evaluation, Ms. Franks-Thomas reviewed the Student's attendance history for first and second grade. After they received the first draft of the evaluation report, the Parents raised concerns that the Student had missed several days of first grade because he refused to attend and dreaded riding the bus. D10p6. Based on these concerns, Ms. Franks-Thomas reviewed attendance a second time. During first grade, the Student was absent for twelve days, or 6 percent of instructional days. The Student had missed two days of instruction during second grade. Because attendance typically becomes a concern after a student has missed 10 percent or more instructional days, Ms. Franks-Thomas did not consider attendance to be an area of concern. D14p11.

19. Ms. Franks-Thomas also considered the results of two screening tools. The first, referred to as the DESSA, is a social-emotional learning assessment. It is a rating scale that general education teachers complete three times a year for all of their students, and includes questions related to a student's self-awareness and to acknowledging, recognizing and expressing their feelings. T32, 95. The DESSA results indicated the Student's social-emotional learning skills were typical when compared to same-age peers. T32; D14p11.

20. The second screening, referred to as easyCBM, showed that the Student's math and reading skills were above average. T33, 52; D14p11. Scores include "low risk," "some risk," and "high risk," and the Student was ranked "low risk" in both areas. T52. Similarly, the Student's report card showed that he was meeting grade level standards in reading, math, and writing. Academic performance was not an area of concern for the evaluation. D9p3; D14p11.

21. The Student's report card also reflected he was meeting grade level standards for social-emotional learning except in physical education (P.E.), where he was approaching standard and had difficulty with cooperation and sportsmanship. D9p3. After Ms. Franks-Thomas sent the first draft of the evaluation report to the Parents, they raised concerns about the Student being in trouble in P.E. D10p5. Ms. Franks-Thomas then spoke to the Student's P.E. teacher who stated that he had seen an improvement in the Student's behaviors. The teacher was impressed by how the Student was managing his behaviors in second grade. T45; D14p11.

22. Ms. Franks-Thomas also considered that the Student had not received any discipline referrals for the school year. D9p3; D14p11. She was aware that the Student was trying a new medication and had been informed by Ms. Bonvouloir that the Student had had some behavioral issues at the start of the school year. T83.

Social-Emotional

23. For the social-emotional portion of the reevaluation, Ms. Franks-Thomas reviewed the results of the DESSA and the Student's report card, as discussed above. She also considered input from Ms. Parent and Ms. Bonvouloir, engaged in direct observations of the Student, and conducted two standardized assessments – the Vineland Adaptive Behavior Scales – Third Edition (Vineland-3) and the Brown Executive Function/Attention Scales (Brown EF/A). D14pp11-15.

24. Ms. Parent informed Ms. Franks-Thomas that she was concerned about emotional regulation and anxiety. The Student had a difficult time doing boring activities, was extremely sensitive to criticism, and came home exhausted and overwhelmed every day. D14p12.

25. Ms. Bonvouloir, the Student's second grade teacher, stated he had strong communication skills, was very well-spoken, and was not afraid to ask questions or get help. The Student was self-aware, worked well in groups, and showed empathy for others. His leadership skills were strong and he was good at helping others. D14p12. Ms. Bonvouloir indicated the Student sometimes became anxious. At times, he "got stuck on something" and had a hard time moving on. Although the Student could be impulsive, he was usually self-aware when he made mistakes. D14p12.

26. Ms. Franks-Thomas also obtained input from Ms. Adams after the Parents stated she had relevant information. D10p5; T44. The Student did not like to miss class for his weekly session with Ms. Adams, so she rescheduled multiple times to find an appointment time that worked for him. Ms. Adams offered the Student a chance to have lunch with selected friends in her room but the Student declined. D14p12; T200.

27. As discussed above, Ms. Franks-Thomas also obtained input from Student's P.E. teacher. He noted the Student was managing himself and his emotions better and showed respect toward others. After obtaining this additional information, Ms. Franks-Thomas did not feel any further investigation was required. T114; D14p12.

28. Ms. Franks-Thomas also administered the Vineland-3 and the Brown EF/A to assess the Student's social-emotional skills.[15] D14pp13-15. Ms. Parent and Ms. Bonvouloir completed forms for both assessments. *Id*. In administering these assessments, Ms. Franks-Thomas reviewed and followed the test manufacturer's instructions. Both assessments were administered in English, the language spoken by the Student and both raters, and there were no concerns that either assessment

[15] The Brown EF/A was conducted after the first draft of the evaluation report had been sent to the Parents. Compare D9pp4-5 with D13pp4-7.

discriminated against students of the Student's racial and cultural background. T57-58; 61.

29. The Vineland-3 is a norm-referenced, standardized assessment of adaptive behavior, or the things that people do to function in everyday life. D14p16. It also provides a valid and reliable measure of social-emotional functioning in children of the Student's age. T56-57. The Vineland-3 provides an adaptive behavior composite along with scores in three domains: communication, daily living skills, and socialization. D14p13. Ms. Franks-Thomas considered the socialization scores as part of the social-emotional portion of the evaluation. She considered the remaining scores in the adaptive portion of the evaluation. T66-67.

30. The socialization domain of the Vineland-3 includes three subdomains: interpersonal relationships; play and leisure; and coping skills.[16] D14pp13, 17. One reason Ms. Franks-Thomas chose this assessment is because the coping skills subdomain addresses how well a student demonstrates behavioral and emotional control in difficult situations involving others. T56; D14p13. The interpersonal relationship subdomain assesses how a student responds and relates to others; it focuses on friendships, caring, social appropriateness, and conversation. The play and leisure subdomain focuses on engagement in play and activities with others and measures skills such as taking turns, following rules, and asking others to play or spend time together. D14p13. Scores in the socialization domain also reflect a student's ability to make social overtures. T96.

31. The Student's scores were as follows:

	Teacher Form		Parent Form	
	Standard/V Score	**Classification**	**Standard/**V Score	**Classification**
Socialization	**97**	**Adequate**	**87**	**Adequate**
Interpersonal Relationships	14	Adequate	13	Adequate
Play and Leisure	15	Adequate	13	Adequate
Coping Skills	14	Adequate	12	Moderately Low

[16] Coping skills refers to a strategy or tool to deal with emotional discomfort that may be a positive or a negative strategy. T87.

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D14p17. The results indicated the Student showed age-appropriate skills in all measured areas at school. At home, the Student showed age-appropriate skills in all areas except coping skills, which was an area of growth. D14pp13, 17. The Student demonstrated many coping skills in both settings; however, skills were more consistently demonstrated at school than at home. The results indicated the Student easily transitioned from one activity to another at school, whereas Ms. Parent reported he could not demonstrate this skill at home. D14p13.

32. The Vineland-3 also included a maladaptive behavior domain, which assessed problematic internalizing and externalizing behaviors.[17] The Student demonstrated internalizing behaviors, including being overly needy or dependent and being extremely fearful of common objects or situations, more often at home than at school. He demonstrated externalizing behaviors, including being more active or restless and having temper tantrums, more often at home than at school. Scores from Ms. Bonvouloir placed the Student in the elevated range for both internalizing and externalizing maladaptive behaviors. Ms. Parent placed the Student in the clinically significant range in both areas. D14p13. Both Ms. Bonvouloir and Ms. Parent rated the Student as extremely anxious or nervous very often. Scores in the maladaptive behavior domain would also flag if a student has stereotyped behaviors or restricted interests--none were reported for the Student. T97.

33. It is very common to see significant differences between teacher ratings and parent ratings. School and home environments tend to be different and involve different routines, task demands, expectations, norms, and comfort levels. T100-101.

34. Ms. Franks-Thomas also administered the Brown EF/A, which is a standardized assessment that measures executive functioning in six areas and provides an overall composite score. It asks the rater to indicate if executive functioning performance is "no problem, little problem, medium problem, or big problem" in their environment. Results are compared with a nation-wide normative sample and indicate how performance compares to same-age peers. D14p14. Ms. Franks-Thomas often uses this tool to assess students who have an ADHD diagnosis, as this Student did. T60. Additionally, the rating scales look at the impact of something that happens, rather than how often it happens. T60.

[17] Questions about internalizing are typically phrased as whether a student visibly appears frustrated or worried, or says things like, "I feel worried," or "I'm not good at this," or I don't have any friends. . . ." T116. Questions about externalizing focus on behaviors that are very visible and external, such as physical aggression or hyperactivity. TT116.

35. Ms. Parent and Ms. Bonvouloir completed rating scales for the Brown EF/A. They rated the Student as follows:

	Teacher Rating	Parent Rating
Activation: organizing, prioritizing, and activating to work.	Typical (42)	Markedly Atypical (84)
Focus: focusing, sustaining, and shifting attention to tasks.	Typical (49)	Markedly Atypical (75)
Effort: regulating alertness, sustaining effort, and adjusting processing speed.	Typical (49)	Markedly Atypical (81)
Emotion: managing frustration and modulating emotions.	Moderately Atypical (67)	Markedly Atypical (91)
Memory: utilizing working memory and accessing recall.	Typical (44)	Typical (44)
Action: monitoring and self-regulation action.	Typical (49)	Markedly Atypical (76)
Total composite score	Typical (50)	Markedly Atypical (83)

D14pp14-15.[18]

36. Ms. Parent rated multiple items in all six areas except memory as a "big problem" at home. D14pp14-15. In contrast, the only "big problem" reported at school was that the Student gets overly sensitive and defensive when teased or criticized, which was in the emotion domain. T63. Other questions in the emotion domain did not reflect a problem for the Student and did not reflect academic impact. T63-64.

37. Ms. Franks-Thomas also observed the Student on four separate days and in various settings. She made an effort to observe him during times that would be less structured and predictable, and that offered more opportunity for social engagement. T46, 54-55. Environments with little predictability provide situations in which a student would attempt to hide, or "mask," any emotional discomfort or dysregulation, and provide the most opportune situations to see what a student does. T87; 99. Observations included:

> November 4, 2024: During morning entry routine and morning meeting, the Student used adaptive seating options at the back of the classroom. He focused his attention on the entry task and transitioned quickly following prompts to the class. He sat quietly on the carpet with classmates listening to the teacher. He also actively participated and paired up to complete tasks.

[18] Results are reported as T-scores with a mean of 50 and standard deviation of 10. D14p14.

November 4, 2024: At lunch recess on the playground, the Student had a conversation with another student for more than 10 minutes and showed sustained attention and engagement. The playground was wet from rain so the Student did not engage in play. Other groups of students were engaged in conversation as well. D14p12.

November 13, 2024: During an assembly that included a very loud brass band, the Student sat with his class, appeared to watch the program, did not engage in any off-task motor or verbal behaviors, and did not require prompts or feedback from the teacher. D14p12.

November 25, 2024: During recess, the Student played a game of tag with two to four other students on the playground and engaged with the other students for at least ten minutes. D14p12.

November 26, 2024: During a classroom observation that lasted 45 minutes, the Student participated in class activities and lessons and transitioned to the carpet independently several times. He paid attention to a group discussion for more than thirty minutes, which included raising his hand to add to the conversation, participating with peers in a "pair-and-share" activity, and asking a clarifying question. In a social-emotional learning lesson, the Student raised his hand to recognize a classmate for being a good friend. He also used sensory tools (wobble stool and resistance band at bottom of desk legs). D14p12.

38. Observation data indicated the Student was using existing accommodations in his 504 plan to appropriately and effectively manage anxiety. T71. Body language showed the students were taking turns in the conversation, but Ms. Franks-Thomas could not hear what they were saying. T94. At no point during her observations did Ms. Franks-Thomas observe concerns related to the Student's ability to regulate his emotions. T56. At hearing, in response to questioning by Ms. Parent, Ms. Franks-Thomas acknowledged that if the Student had been successfully masking his feelings, she was unsure how she would be able to tell. T88. However, if significant differences between parent and teacher ratings on assessments indicated that a student was masking feelings or discomfort at school and then falling apart at home, Ms. Franks-Thomas would suggest school-based mental health as the most appropriate support. T104.

39. Based on the information she gathered to assess the Student's social-emotional skills, Ms. Franks-Thomas concluded that the Student showed many social-emotional strengths and age-appropriate skills at home and at school. Information from the various data points indicated the Student consistently demonstrated

appropriate social-emotional and self-regulation skills throughout the school day with classroom accommodations. The Student effectively participated in academic and non-academic activities with peers and independently throughout the school day during both structured and unstructured time. Because the Student was demonstrating age-appropriate social-emotional and executive functioning skills in his educational environment with his existing accommodations, Ms. Franks-Thomas did not recommend specially designed instruction (SDI) for social skills or study skills. D14p15.

Adaptive

40. In the area of adaptive, Ms. Franks-Thomas considered input from Ms. Parent and Ms. Bonvouloir. She also observed the Student and administered the Vineland-3. D14pp15-18. The Student's adaptive skills had not been assessed previously in an educational setting. Ms. Bonvouloir noted that the Student met all of his self-care needs independently, and also ran errands to different parts of the school. He maintained focus and attention during instructions and tasks, and could divide attention between two or more activities. D14p12.

41. Ms. Franks-Thomas observed the Student on November 4, 2024, in his classroom and again during recess, as discussed above. See D14p12; D14p16. For purposes of assessing the Student's adaptive skills, Ms. Franks-Thomas focused on self-help, completing classroom routines, and asking for help when needed. T65. The Student completed transitions and routines independently without additional prompts or reminders and was able to have his wants and needs met. D14pp15-16.

42. As discussed above, Ms. Franks-Thomas administered the Vineland-3 to measure the Student's adaptive behavior in addition to his social-emotional functioning. For adaptive, she considered the overall adaptive behavior composite in addition to scores for the communication and daily living skills domains. For the adaptive behavior composite, ratings from Ms. Parent indicated the Student was functioning in the adequate, or average, range at home. Likewise, Ms. Bonvouloir's ratings placed the Student in the adequate range as compared to same-age students in the general education setting. D14p16; T66.

43. The communication domain measured the Student's ability to exchange information with others and included scores for receptive, expressive, and written language. This was an area of strength for the Student both at home and at school. Ms. Bonvouloir's ratings placed the Student in the moderately high range in all measures. Ms. Parent's ratings placed the Student in the adequate range in all measures. D14p17.

44. The daily living skills domain measured the Student's ability to perform practical, everyday tasks appropriate for their age. It included scores for personal, numeric/domestic, and school/community adaptive skills. Ms. Bonvouloir's ratings placed the Student in the adequate range for all measures in this domain. Ms. Parent's ratings placed the Student in the adequate range for the school/community subdomain and in the moderately low range for the personal and numeric/domestic subdomains. D14p17.

45. Based on the results of the evaluation, Ms. Franks-Thomas concluded that the Student showed age-appropriate self-help skills at school. These skills included completing classroom routines, navigating the school environment, and effective communication to advocate for needs and wants. Because evaluative data indicated the Student demonstrated age-appropriate adaptive skills in his educational environment with existing accommodations, Ms. Franks-Thomas did not recommend SDI in adaptive skills. D14p18.

Communication

46. Ms. Kelley conducted the communication portion of the evaluation, which focused on assessing the Student's pragmatic language and fluency. T122. In addition to considering parent and teacher input, Ms. Kelley observed the Student, measured his fluency using three speech samples, asked him to complete a criterion referenced questionnaire (A-19 Scale), and conducted two standardized assessments – the Pragmatics Profile of the Clinical Evaluation of Language Fundamentals (CELF-5) and the Test of Problem Solving, Third Edition Elementary: Normative Update (TOPS-3E: NU). D14pp18-21.

47. On October 8, 2024, Ms. Kelley asked Ms. Parent if she could provide a voice recording of the Student talking so that she could understand what disfluency the Parents were hearing at home. Ms. Kelley explained that she had observed the Student several times in class but had not heard or seen any disfluencies at school. D8p1. Ms. Parent discussed that disfluency tended to occur when the Student was competing to be heard, excited, worried about being interrupted, or trying to read as fast as possible. D8p1. Ms. Kelley reviewed a clip provided by Ms. Parent, but she did not hear cluttering, or only very minor cluttering. T137. At the Student's age, some disfluency is developmentally typical under the circumstances discussed by the Parent. T137.

48. To assess the Student's pragmatic language, Ms. Kelley administered the CELF-5, which is a rating scale that provides information about a student's use of social language in comparison to same-age peers. D14p18. Scores ranging from 7 to 13 are considered average. Ms. Bonvouloir and Ms. Parent completed rating scales. *Id.*

49. Ms. Bonvouloir's ratings (scaled score of 11; 63rd percentile) indicated the Student was demonstrating average pragmatic language skills at school. Ms. Bonvouloir identified multiple pragmatic strengths, including making relevant contributions to a conversation or discussion, asking for clarification or help as necessary, participating in group activities, asking others to change their actions, knowing how a person is feeling based on nonverbal cues, and interpreting and using appropriate nonverbal communication. Ms. Bonvouloir's ratings did not identify any areas of need. *Id*.

50. Ms. Parent's ratings (scaled score of 6; 9th percentile) indicated the Student's pragmatic language skills in the home environment were slightly below average. D14pp18-19. Like Ms. Bonvouloir, Ms. Parent identified multiple pragmatic strengths. However, she also identified multiple areas of need. These included avoiding the use of repetitive information, observing turn-taking rules in social situations; modifying language based on situation; reminding others/responding to reminders; and responding to teasing, anger, failure or disappointment. D14p19.

51. Ms. Kelley also administered TOPS-3E: NU, which assesses a child's ability to use language in social situations. Children look at pictures and respond by answering negative questions, solving problems, making predictions, sequencing events, making inferences, and determining causes. Average scores range from 85 to 115. D14p19; T141.

52. The Student's score of 123 (94th percentile) on the TOPS-3E: NU placed him in the superiorly above average range. D14p19; T142.

53. Ms. Kelley reviewed and followed test manufacturer's instructions in administering the CELF-5 and the TOPS-3E: NU. She administered both assessments in English and had no concerns that either test discriminated against students of the Student's racial and cultural background. T139-42.

54. Ms. Kelley measured the Student's speech fluency by analyzing three speech samples for types and frequency of disfluencies. The speech samples were taken during a reading task, during a conversation, and when the Student was describing a wordless picture book. T142. For each sample, Ms. Kelley analyzed syllables for stuttering events, percent of syllables stuttered, types of disfluencies, and percent of stuttering-like disfluencies. D14pp19-20.

55. On average, the Student's percentage of syllables stuttered was 4.6 and the percentage of stuttering-like disfluencies was 1.2. D14pp19-20. When a student's percentage of syllables stuttered exceeds 15 percent, and their percentage of stuttering-like disfluencies exceeds 5 percent, it raises concerns about the impact of

fluency on a student's education. The Student was well below those levels on average and in each sample area. T143; D14p20. His fluency levels fell within the normal range for an educational setting. D14p21.

56. Additionally, the Student did not demonstrate any irregular or distracting movements when he spoke. T143; D14p20. His speech was mostly even and steady in all three speech samples. When he was excited about something, he spoke quickly, but that did not create more disfluencies. D14p20.

57. Ms. Kelley also assessed the Student's feelings and attitudes towards speaking. She used the A-19 scale, which is a questionnaire that asks 19 yes or no questions aimed at providing an understanding of how a student feels about their speech. The A-19 scale is criterion-referenced, meaning it does not provide a standard score that compares a student to a normative sample. Ms. Kelley assessed this area because students may have negative feelings about their disfluencies even if they do not exhibit many.

58. If a student is feeling anxious about communication at school, it would be reflected in a student's answers on the A-19 scale. The Student's answers did not reflect any areas of concern to Ms. Kelley. T144-45; D14p20.

59. Ms. Kelley also observed the Student on three occasions. On September 25, 2024, she observed the Student in Ms. Bonvouloir's class as students arrived at school, completed morning tasks, and sat on the carpet for morning meeting. The Student transitioned well and followed all verbal directions. He spoke with at least three classmates and laughed intermittently, although Ms. Kelley could not hear what was said. D14p20; T147-48. During the meeting, the Student raised his hand to answer a question and also asked questions. D14p20.

60. On October 2, 2024, Ms. Kelley observed the Student at recess. D14pp20-21. The Student ran toward a play area and got in line with peers to wait for a turn to play a game. He waited his turn and spoke with at least one other peer in the line. The Student played the game appropriately when it was his turn and exited without complaint when he was told he was out. He joined the line again and waited for another turn. D14pp20-21.

61. Ms. Kelley observed the Student a third time in science class; the date of the observation is unclear. The Student sat at his desk with a wiggle chair and fidget; the teacher reported he had been very fidgety at the carpet. The Student was invited to rejoin the carpet and came quietly to his spot. He paid attention to the teacher and raised his hand to answer every question. He did not answer until he was called on.

When called on, the Student thought and then gave a succinct answer. The Student followed directions when the class was dismissed to their seats. D14p21.

62. Based on Parent and teacher input, observations, and assessments, Ms. Kelley concluded that the Student's pragmatic language skills were within normal limits for his age, and that his fluency levels were within a normal range for an educational setting. She concluded that the Student did not require SDI in pragmatic language or speech fluency and did not recommend SDI or related services in the area of communication. D14p21; T146.

Sensory

63. To assess the Student's sensory processing skills, Dr. Hart administered the Sensory Profile 2, which is a valid and reliable measure of sensory functioning in children of the Student's age. T161. Ms. Bonvouloir completed the Sensory Profile 2-School Companion Questionnaire and Ms. Parent completed the Sensory Profile 2, Caregiver Questionnaire. D14pp21-23.

64. The Sensory Profile 2 provides a rating on whether a student requires or would benefit from sensory supports at school. T172. Dr. Hart reviewed and followed test manufacturer's instructions in administering the Sensory Profile 2. T161. The test was administered in English and Dr. Hart did not have any concerns that it discriminated against students of the Student's racial and cultural background. T161.

65. Ms. Parent completed the caregiver questionnaire. T161. Her responses indicated the Student had difficulty in many areas, as detailed extensively in the evaluation report. D14pp22-23; T162. She rated the Student as "just like the majority of others" in only one area – body position. In all other areas, she noted that the Student responded to stimuli "much more than others" or "more than others." D14pp22-23.

66. Ms. Bonvouloir's responses on the school questionnaire indicated that the Student was "just like the majority of others" in most areas (visual and tactile stimuli, movement, behavior, seeking and registration, sensitivity and avoiding). However, the Student responded to auditory stimuli "more than others." D14p22. He struggled to complete tasks in a noisy environment. T165. The Student also perseverated, which interfered with his ability to participate. D14p22. However, the Sensory Profile 2 rating regarding the need for school services indicated the Student did not require additional sensory supports at school. D14p22.

67. Although Ms. Parent's questionnaire indicated the Student had difficulties with sensory processing outside of the academic setting, Dr. Hart did not have any concerns

about the Student's ability to function independently in the school setting. T164. The Student experienced a slight lack of modulation (over responded) to auditory stimuli in school but he did not experience a lack of modulation in the areas of visual, touch, movement or behavioral. His scores in those areas were average. D14p22; T165. Additionally, Ms. Bonvouloir's questionnaire did not indicate a negative academic impact as a result of sensory modulation. D14p23.

68. Overall, scores indicated that the Student was modulating sensory input similar to typically developing peers at school and did not need additional sensory supports in that setting. T172; D14p22.

Evaluation Meeting

69. The evaluation team met to discuss the evaluation on December 5, 2024, with the following attendees: the Parents; Ms. Franks-Thomas; Dr. Hart; Ms. Bonvouloir; Becky Cornwall, a special education teacher; Taylor Swedberg, an administrator; and Julia Barta, a psychologist invited by the Parents. D16p1; T43. Ms. Kelley was unable to attend the meeting on December 5, 2024, and the Parents agreed to meet on that date without her. T47, 114. Ms. Franks-Thomas took notes during the meeting that accurately summarized the meeting discussion. T72; D15.

70. During the evaluation meeting, the Parents provided additional medical-physical information, which was discussed and added to the evaluation report:

> -An evaluation appointment for private occupational therapy was scheduled for May 2025;
> -A sleep study was scheduled for the week of December 9, 2024;
> -An appointment with Mary Bridge Children's Hospital as part of an autism evaluation process was scheduled for late December 2024;
> -The Student had a history of severe food allergies;
> -Dr. Barta was considering evaluating the Student for obsessive-compulsive disorder but no such evaluation was underway;
> -The Student's moro reflex was disturbing his sleep.

D14p10.

71. The team discussed that the Student had upcoming medical appointments, but determined that it had sufficient medical information at that time. T49.

72. At hearing, Ms. Franks-Thomas explained that although a diagnosis of autism could be helpful, it was not necessary to identify an adverse educational impact that requires SDI. T49-50. The purpose of the Student's evaluation was to determine if he

required SDI to meaningfully access and participate in his education. T104. He was evaluated in the areas that are typically included in an evaluation to identify the educational impact of autism (social-emotional, communication, adaptive, sensory, and executive functioning). T50. Ms. Franks-Thomas acknowledged during cross-examination that she is familiar with the Autism Diagnostic Observation Schedule (ADOS) but is not trained to administer it. T93-94. She is also familiar with an anxiety screening tool referred to as SCARED, but has typically seen that tool used in a medical setting and has not used it or seen it used in an evaluation report by another school psychologist. T93. Ms. Franks-Thomas did not use screening tools for anxiety as part of the evaluation. T92. Additionally, she did not use assessment tools that measured reciprocal communication, eye contact, or facial expressions. T94-97.

73. The team also discussed the Student's attendance. Ms. Parent acknowledged that the Student's attendance was good but discussed that he had a lot of school anxiety and required coaxing to attend school on some days. D15p1. However, attendance data did not reflect a significant number of absences or late arrivals. T72. During the hearing, Ms. Parent discussed a need to physically force or drag the Student to attend school on occasion, but she did not refer to the need for such action at the evaluation meeting. T51.

74. Ms. Franks-Thomas discussed the social-emotional portion of the evaluation and her recommendation that the Student did not require SDI in this area. She recommended continuing the Student's 504 plan and school-based mental health services, which are available to general education students at Lakes Elementary School. T72; D15p1.

75. Dr. Hart discussed the sensory portion of the evaluation. He did not recommend school-based services but discussed the possibility of outside therapy. D15p2. School-based occupational therapy focuses on a student's ability to function independently in a school setting. Outpatient occupational therapy focuses on a student's ability to function outside of the school setting but may include focus on abilities that also apply in school. T163-64.

76. The Parents discussed their belief that the Student required school-based occupational therapy and mental health services and requested an independent educational evaluation (IEE) at public expense. D15p1.

Eligibility Decision

77. Ultimately, the evaluation team decided not to qualify the Student for special education services and to instead continue his 504 plan and school-based mental health services. D14pp7-8; T68. The team determined that the Student did not require

SDI because data in the evaluation indicated that his behaviors and performance in the school setting were similar to that of his peers. Further, the data indicated that the Student was using coping skills and accommodations in his 504 plan to appropriately and effectively address his anxiety. T71. Ms. Bonvouloir, who sees the Student five days each week for the majority of each day, believed the evaluation report provided an accurate reflection of the Student. T184-85.

78. In Ms. Franks-Thomas's opinion, the team had sufficient information to make a decision regarding the Student's eligibility for special education services. T67. Each team member signed the evaluation summary on December 5, 2024, with the Parents and Dr. Barta dissenting from the conclusion that the Student was not eligible for special education services. P16p1.

79. The Parents' dissenting opinion stated:

> As a gifted child who is very aware of school expectations, [the Student] is often able to mask during school hours to avoid drawing attention to themselves, but at great cost to their mental and physical health. We see their behavioral issues at home and their attempts to refuse school as evidence that they are masking, not coping, and school is the cause of their anxiety and sleep disturbances. An independent evaluation is necessary to accurately assess the educational impact of their disability.

D14p25.

80. After the evaluation meeting, Ms. Franks-Thomas prepared an evaluation summary to reflect the team's decision that the Student was not eligible for special education services. T67. It stated: "Reason not eligible: Evaluation data reflects that [the Student] is demonstrating age-appropriate social-emotional, adaptive, communication, and sensory regulation skills at school with existing accommodations and support, and does not require specially designed instruction at this time." D14p7.

81. With respect to sensory, the evaluation summary noted that there did not appear to be a negative impact as a result of sensory modulation. It further stated that the Student had a 504 plan that provided accommodations for sensory supports, that these supports appeared to be working well for the Student, and that he did not require additional sensory supports at school. Occupational therapy in the academic setting was not recommended. D14p7.

82. On December 11, 2024, Ms. Franks-Thomas sent the Parents a final copy of the evaluation report, which included the information the Parents had provided during the evaluation meeting. T46-47; D14p10.

Hearing

83. From the Parents' perspective, the Student had already been struggling for a long time when they requested an evaluation. He would come home from school in tears, refuse to get on the bus in the morning, and have panic attacks at bedtime. The Student had a 504 plan and was receiving private speech and play therapy, but the Parents did not believe anything was helping. They were waiting for an autism assessment from Mary Bridge and a sleep evaluation. T223. At the time of the hearing, the Parents were concerned about the Student's pragmatic speech and his ability to express his feelings and relate to peers. T227.

84. In December 2023, the Student refused to attend school for a three day period. T223. Ms. Parent was able to get the Student into the car and to the office of Luke Nelson, a school counselor at Lakes Elementary School. T207, 224. The Student could not be persuaded to stay at school and "[a]fter about an hour of arguing and cajoling and persuading," the Student went to work with the Parent. T224. After the three day period, Ms. Parent was successful in getting the Student to school for the remainder of the 2023-2024 school year. T231. At hearing, Mr. Nelson, who has a very large caseload, did not recall the incident or communications from Ms. Parent related to getting the Student to school or issues on the bus. T209-10, 214-15.

85. During the 2024-2025 school year, the Student sometimes attempted to refuse to go to school, such as by running home from the bus stop, but ultimately attended despite those attempts. T232-33. Ms. Parent explained that at bedtime, the Student would start worrying about school the next day and would panic and meltdown. He mentioned fears about recess and the bus and felt like he was always getting in trouble. T225. Although teachers assured Ms. Parent that the Student was not really in trouble, these concerns were a huge problem to the Student. T225.

86. At hearing, Ms. Parent discussed concerns that the evaluation report did not reflect concerns they discussed with the District, such as the Student's sleep disturbances, nightmares, refusal to go to school, medication trial, and behaviors in the fall of 2024. T227-29.

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

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

2. The District requested this due process hearing and bears the burden of proof in this matter. RCW 28A.155.260; *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof in a due process hearing is a preponderance of the evidence. RCW 28A.155.260.

The IDEA and FAPE

3. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

4. In *Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the individualized education program developed under these procedures is reasonably calculated to enable the child to receive educational benefits. "If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." *Rowley*, 458 U.S. at 206-07.

5. Procedural safeguards are essential under the IDEA, particularly those that protect the parent's right to be involved in the development of their child's educational plan. *Amanda J. v. Clark County Sch. Dist*., 267 F.3d 877, 882 (9th Cir. 2001). Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

> (I) impeded the child's right to a free appropriate public education;
>
> (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or
>
> (III) caused a deprivation of educational benefits.

20 USC §1415(f)(3)(E)(ii); WAC 392-172A-05105(2); 34 CFR §300.513(a)(2).

6. "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the

child's circumstances." *Endrew F.* v. *Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).

Independent Educational Evaluations (IEEs)

7. Parents have a right to obtain an IEE if they disagree with a school district's evaluation of their child, under certain circumstances. WAC 392-172A-05005; 34 CFR 300.502(a)(1). An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district, at district expense. WAC 392-172A-05005(1)(c)(i); 34 CFR 300.502(b). If a parent requests an IEE, a district must either ensure that an IEE is provided at no cost to the parent without unnecessary delay or initiate a due process hearing within 15 calendar days to show that the district's evaluation is appropriate. WAC 392-172A-05005(2)(c).

8. If the district initiates a due process hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to obtain an IEE but not at public expense. WAC 392-172A-05005(3).

Evaluations

9. Evaluations and reevaluations must comply with the requirements in WAC 392-172A-03020. In conducting the evaluation, a "group of qualified professionals selected by the school district" must use a "variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent . . .." WAC 392-172A-03020(2)(a). The group must not use any single measure or assessment as the sole criterion for determining eligibility or educational programming and must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical, and developmental factors. WAC 392-172A-03020(2)(b) and (c). School districts must ensure assessments and evaluation materials are selected and administered so as not to be discriminatory on a racial or cultural basis, and are provided and administered in the student's native language. WAC 392-172A-03020(3)(a); *see also* 34 CFR §300.304.

10. Assessments must be administered by "trained and knowledgeable personnel" and "in accordance with any instructions provided by the producer of the assessments." Students must be assessed "in all areas related to the suspected disability" and the evaluation must be "sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified." WAC 392-172A-03020(3); *see also* 34 CFR §300.304(c).

11. Under WAC 392-172A-03025, as part of any evaluation or reevaluation, the team must review existing data on the student, including evaluations and information provided by the parents, current classroom-based, local, or state assessments, classroom-based observations, and observations by teachers and related services providers.

12. Additionally, the District must prepare and provide the parents with an evaluation report. WAC 392-172A-03035. The evaluation report must include, among other things, a statement of whether the student has a disability that meets applicable eligibility criteria, a recommendation as to what special education and related services the student needs, and the date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. WAC 392-172A-03035(a), (d) and (f).

13. After the "administration of assessments and other evaluation measures," the parent of the student and qualified professionals "determine whether the student is eligible for special education and the educational needs of the student." WAC 392-172A-03040(1)(a).

14. A school district has thirty-five school days to complete an evaluation after it receives written consent to evaluate from the parent. WAC 392-172A-03015. A school district and a parent may agree to a different time period for completing the evaluation and may agree to extend the timeline for completing the evaluation. *Id.*

15. The IDEA does not give Parents the right to dictate the areas in which a school district must assess a student as part of a special education evaluation. *See Letter to Unnerstall,* 68 IDELR 22 (OSEP 2016); *L.C. v. Issaquah Sch. Dist.,* 2019 U.S. Dist. LEXIS 77834, 2019 WL 2023567 (W.D. Wash 2019)(citing *Avila v. Spokane Sch. Dist. 81,* 686 F. App'x 384, 385 (9th Cir. 2017)), *aff'd sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022). Further, "[s]chool districts have discretion in selecting the diagnostic tests they use to determine special education eligibility." *E.M. v. Pajaro Valley Unified Sch. Dist.*, 652 F.3d 999, 1003 (9th Cir. 2011), citing *Ford v. Long Beach Unified Sch. Dist*., 291 F.3d 1086, 1088-89 (9th Cir. 2002).

16. Autism is defined as "a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences." WAC 392-172A-01035(2)(a)(i).

17. An IEP team's decision on whether a student is eligible for special education is not relevant to the question of whether the school district's evaluation was appropriate. *A.S. v. Shoreline Sch. Dist.,* 2025 U.S. Dist. LEXIS 121802 *6 (W.D. Wash. 2025)

The District's Evaluation of the Student was Appropriate

18. Before the District evaluated the Student, it obtained the Parents' consent to evaluate and sent PWN to the Parents stating that it was planning to evaluate the Student in accordance with the referral and consent. WAC 392-172A-05105(2).

19. The District has shown that its evaluation was conducted by a group of qualified professionals. Ms. Franks-Thomas is a highly qualified and experienced school psychologist. She has bachelor's degrees in children's studies and applied developmental psychology, with a minor in special education, and an educational specialist degree in school psychology. A nationally certified school psychologist, Ms. Franks-Thomas has been employed by the District as a school psychologist since 2014. She conducts between sixty and ninety evaluations each year. Ms. Kelley, who conducted the communication portion of the evaluation, has a master's degree in speech-language pathology and holds a certificate of clinical competence from the American Speech-Language Hearing Association (ASHA). She has been employed by the District as an SLP since 2018, and has experience with students with various diagnoses including autism spectrum disorder, ADHD, and anxiety. Dr. Hart has a Ph.D. in occupational therapy and holds an educational staff associate (ESA) certificate in Washington state. He has been employed by the District as an occupational therapist since 2016, and also has experience in a clinical setting.

20. The Parents contend that they require an IEE because the District's evaluators were not trained to administer autism-specific tools. Assessments must be administered by "trained and knowledgeable personnel." WAC 392-172A-03020(3). As the District points out in its brief, this does not mean evaluators must have expertise in autism to administer assessments to children who may be autistic. *Baltimore City Pub. Schs*., 112 LRP 49343 (Md. SEA April 30, 2012); *Seattle Sch. Dist*., 116 LRP 50623 (Wash. SEA July 20, 2016)("autism expert" not required for evaluation to be appropriate). A preponderance of the evidence establishes that all of the individuals who participated in the evaluation had the education, training, and experience necessary to conduct the evaluation.

21. The District has further established that the evaluation assessed the Student in all areas of suspected disability. The evaluation included assessments in all areas to which the Parents consented: medical-physical; adaptive; communication; general

education; observation; and social-emotional, which included emotional regulation and executive functioning. The District then added the area of sensory in response to the Parents' concerns. Moreover, the District's evaluation assessed the Student's functioning in the areas typically included in an evaluation to identify the educational impact of autism (social-emotional, communication, adaptive, sensory, and executive functioning). Finally, there is no evidence that the Parents or any District teachers or staff raised concerns that the Student needed to be assessed in any other areas.

22. In addition, the District used a variety of technically sound assessment tools and strategies to gather relevant information about the Student. In addition to standardized assessments and ratings scales (Vineland-3; Brown EF/A;CELF-5; TOPS-3E NU; A-19 Scale; and Sensory Profile 2), the evaluation included input from the Parents and the Student's teachers, school-based mental health counselor, pediatrician, and private SLP. The evaluation also included a total of eight observations of the Student, which took place in multiple settings, both structured and unstructured. In addition, the evaluation included a review of existing data including the Student's medical history; report card; attendance; discipline reports; input from teachers, the Parents, and private providers; and the results of screening tools focused on social-emotional functioning (DESSA) and academics (easyCBM).

23. Moreover, Ms. Franks-Thomas, Ms. Kelley, and Dr. Hart reviewed test manufacturer instructions and followed those instructions when administering the assessments. All assessments were administered in English and there were no concerns that this was not the native language of the Student, Ms. Parent, or Ms. Bonvouloir. Nor were there concerns that assessments administered as part of the evaluation discriminated against students of the Student's racial and cultural background.

24. The Parents contend that Ms. Franks-Thomas should have used screening tools for autism and anxiety and an autism-specific assessment. They further argue that the assessment tools and strategies used by the District were not designed to assess autism or tic disorders, and that certain skills or areas typically included in the ADOS should have been assessed. This claim is not persuasive. The Ninth Circuit Court of Appeals has recognized that school districts have discretion to select the assessments they use as part of an evaluation. *E.M.*, 652 F.3d 1003. The record establishes that Ms. Franks-Thomas, an experienced school psychologist, was thoughtful in determining which assessment tools to use in order to obtain complete information about the Student's skills and functioning. Although the Parents disagree with the evaluation results, and have opinions about what tools should have been used to assess the Student, and what skills should have been assessed, there is no evidence

that either Parent has any education, training, or experience in how to conduct a special education evaluation.

25. Moreover, the evaluation *did* include most of the areas the Parents contend were not addressed but should have been. During cross-examination by Ms. Parent, Ms. Franks-Thomas made clear that she had assessed stereotyped behaviors or restricted interests (Vineland-3 maladaptive domain), ability to explain feelings (DESSA) and ability to make social overtures (Vineland-3 socialization domain). The CELF-5 included assessments of turn-taking in social situations and the ability to interpret and use appropriate nonverbal communication. Additionally, both Ms. Franks-Thomas and Ms. Kelley observed the Student engaging and taking turns during peer conversations, although they could not hear what he said.

26. The District has also shown that its evaluation of the Student was sufficiently comprehensive to determine all of his special education and related service needs. WAC 392-172A-03020(3). The evaluation included extensive information about the Student's skills and functioning for each assessment area. It included information from a variety of sources about the Student's communication skills, including pragmatic language and fluency; social-emotional skills, including emotional regulation, coping skills, and executive functioning; adaptive skills; and sensory processing. The results of standardized assessments and ratings scales, which indicated that the Student was demonstrating a number of age-appropriate skills, particularly at school, was consistent with observations by Ms. Franks-Thomas and Ms. Kelley. Additionally, the Student was observed a total of eight times in various settings, both structured and unstructured, to provide information about his functioning in the classroom and in unpredictable settings. Finally, the team specifically discussed that it had sufficient medical information, even though the Student's medical appointments were ongoing. While an autism diagnosis could have been helpful to the team, it was not necessary to determine his educational needs.

27. The Parents raise a number of reasons why they believe the evaluation was not sufficiently comprehensive. First, they dispute the District's conclusion that the Student did not have behavior concerns or discipline referrals. They contend that if Ms. Franks-Thomas had spoken with Ms. White, she would have learned that the Student engaged in frequent behaviors that would normally result in referrals. However, the evidence establishes that Ms. Franks-Thomas was aware that the Student had engaged in behaviors at the start of the 2024-2025 school year when he was trying out a new medication. She had been informed of them by Ms. Bonvouloir, who had as much information about the Student's behaviors as Ms. White. This evidence establishes that the District considered the Student's behaviors but did not view them

in the same light as the Parents. This does not mean the District overlooked key information.

28. The record also demonstrates that the District considered the Parents' concerns about the Student's school refusal, nighttime anxiety, and feelings of being overwhelmed emotionally. The team considered the Parents' concerns that the Student was anxious about school and needed coaxing to attend on some days. Ms. Parent acknowledged the Student's attendance was "good," despite some attempts to stay home from school. Additionally, the team considered the Student's anxiety, both at home and at school. Input from Ms. Parent and Ms. Bonvouloir and scores on the Vineland-3 maladaptive behavior domain indicated that the Student was extremely anxious or nervous very often, both at school and home. In the Parents' view, this information clearly demonstrated a need for SDI. However, evaluation data indicated the Student was using existing accommodations appropriately and effectively to manage anxiety in the school setting. This conclusion was supported by the Student's scores in the coping skills subdomain of the Vineland-3, which indicated the Student demonstrated age-appropriate skills in his ability to deal with difficult situations at school. These scores were also consistent with the fact that Ms. Franks-Thomas observed the Student during two recess periods and one very loud assembly but did not see any signs of emotional dysregulation during these unstructured and unpredictable periods. Nor did she have any concerns about the Student's ability to regulate his emotions during her two observations in the classroom, when the Student listened, participated, and transitioned appropriately, and made use of his 504 accommodations. Similarly, Ms. Kelley administered the A-19 scale to determine if the Student was experiencing anxiety related to speech, but he was not.

29. The Parents further contend that the Student was masking, rather than coping with his anxiety at school. They argue that Ms. Franks-Thomas failed to investigate differences between home and school ratings sufficiently. However, Ms. Franks-Thomas credibly testified at hearing that even if a discrepancy between parent and teacher ratings indicated masking, school-based mental health services would be the appropriate support. Moreover, it is common for students to behave differently at school and at home given the significant differences between the two environments.

30. Additionally, the Parents argue that the District failed to gather input from recess monitors, lunchroom staff, or bus drivers about the Student's struggles, and was unaware of the incident that occurred in Mr. Nelson's office. While this input would have been relevant, it was not necessary in order for the team to have sufficient information to make a decision about the Student's need for special education and related services. Ms. Franks-Thomas and Ms. Kelley observed the Student a total of four times at recess, in addition to observations in the classroom and during an

assembly. These observations were sufficient to provide data about the Student's functioning and behaviors in unstructured and unpredictable settings. Similarly, the evaluation team was aware of the Parents' concerns about school refusal, fear of the bus, and nighttime anxiety, because the Parents discussed these concerns at the evaluation meeting. Although the Parents now contend that the evaluation could not be complete without information about what happened in Mr. Nelson's office, Ms. Parent was present during that incident and could have discussed it at the evaluation meeting.

31. In conclusion, while the Parents disagree with the District's conclusion that the Student did not require special education services, a preponderance of the evidence establishes that the District's evaluation of the Student was sufficiently comprehensive to determine his special education and related services needs.

32. The Parents next argue that the sensory portion of the evaluation was "inconsistent and confused." They point to the fact that Dr. Hart "could not recall what sensory challenges he found in his report." Given that witnesses in these hearings routinely refer to their own reports to refresh their recollections, this alone does not indicate that Dr. Hart was confused. The Parents also contend that Dr. Hart identified the Student as having problems with auditory modulation, difficulty completing tasks in noisy environments, and perseveration, but failed to recommend school-based occupational therapy. As Dr. Hart explained, and as noted in the evaluation report, while the Student had a slight lack of modulation to auditory stimuli, his scores in other areas were average. Overall, the Student's scores on the Sensory Profile 2 indicated that he was modulating sensory input similar to typically developing peers at school. Moreover, the Sensory Profile 2 rating indicated that he did not need additional sensory supports in the school setting. Dr. Hart did not have any concerns about the Student's ability to function independently in the school setting. Additionally, Ms. Bonvouloir's questionnaire did not indicate a negative academic impact as a result of sensory modulation.

33. The District also prepared an evaluation report that satisfied the requirements of WAC 392-172A-03035. The report stated that the Student had been diagnosed with ADHD and generalized anxiety. D14p10. It contained extensive information in all areas evaluated and discussed that the Student was demonstrating age appropriate skills in each area at school with existing accommodations and support. The report discussed the assessments and data used to support the conclusion that the Student did not require SDI and was not eligible for special education services. Additionally, all members of the evaluation team signed the evaluation report, with the Parents and Dr. Barta indicating their disagreement and reasons for dissent.

34. Finally, the evaluation was completed in a timely manner. A school district has 35 school days from its receipt of written consent to complete an evaluation unless the parent and school district agreed to another time period. WAC 392-172A-03015(3). In this case, the parties agreed to extend the deadline for completing the evaluation until December 5, 2024, and the evaluation was timely finalized on that date.

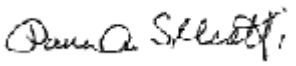
Conclusion

35. In conclusion, the evidence demonstrates that the District fulfilled its obligation to conduct a comprehensive evaluation of the Student in all areas of suspected disability. The District has established by a preponderance of the evidence that the December 2024 evaluation of the Student is appropriate. Consequently, the Parents are not entitled to an IEE at public expense.

ORDER

The North Thurston School District's December 2024 reevaluation is appropriate. The Parents are not entitled to an independent educational evaluation at public expense.

SERVED on the date of mailing.



Pamela Meotti
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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:

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Dated July 17, 2025, at Olympia, Washington.

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cc: Administrative Resource Services, OSPI