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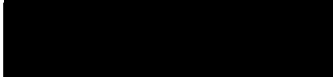
OCT 25 2013

SEATTLE - OAH

STATE OF WASHINGTON  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
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October 25, 2013

Parent



Chris Willis, Director of Student Support Services  
Federal Way School District  
33330 - 8<sup>th</sup> Avenue South  
Federal Way, WA 98003

Jeffrey Ganson, Attorney at Law  
Porter Foster Rorick LLP  
800 Two Union Square  
601 Union St  
Seattle, WA 98101

**In re: Federal Way School District - Special Education Cause No. 2013-SE-0051**

Dear Parties:

Enclosed please find the Findings of Fact, Conclusions of Law, and Order in the above-referenced matter. This completes the administrative process regarding this case. Pursuant to 20 USC 1415(i) (Individuals with Disabilities Education Act) this matter may be further appealed to either a federal or state court of law.

After mailing of this Order, the file (including the exhibits) will be closed and sent to the Office of Superintendent of Public Instruction (OSPI). If you have any questions regarding this process, please contact Administrative Resource Services at OSPI at (360) 725-6133.

Sincerely,

A handwritten signature in cursive script that reads "Matthew D. Wacker".

MATTHEW D. WACKER  
Administrative Law Judge

cc: Administrative Resource Services, OSPI  
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator

MAILED

OCT 25 2013

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION

SEATTLE - OAH

IN THE MATTER OF:

FEDERAL WAY SCHOOL DISTRICT

SPECIAL EDUCATION  
CAUSE NO. 2013-SE-0051

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND FINAL ORDER

**Estela es su interprete designado a su audiencia administrativa. Si usted necesita ayuda para leer estos documentos, llame: Jeanine Horton (206) 291-5501.**

A due process hearing in the above matter was held before Administrative Law Judge (ALJ) Matthew D. Wacker in Federal Way, Washington, on September 27, 2013. The Parent of the Student whose education is at issue<sup>1</sup> failed to appear after due and proper notice. The Federal Way School District (District) appeared through Christopher Willis, District co-director of secondary student support services, and was represented by Jeffrey Ganson, attorney at law. Also present was Jeanine Horton, Washington State court-certified Spanish interpreter. The following is hereby entered:

**STATEMENT OF THE CASE**

Procedural History

The District filed a Due Process Hearing Request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on May 13, 2013. The Complaint was forwarded to the Office of Administrative Hearings (OAH) and an administrative law judge was assigned. On May 14, 2013, a Scheduling Notice was mailed to the parties, setting a prehearing conference for May 21, 2013, and a due process hearing for June 13, 2013. The Parent failed to appear for the prehearing conference on May 21, 2013, after due and proper notice. The prehearing conference was rescheduled to May 29, 2013, in order to provide the Parent with another opportunity to appear. The Parent failed to appear for the prehearing conference on May 29, 2013, after due and proper notice. A Prehearing Order was entered on May 30, 2013, setting the due process hearing for August 26, 2013, and a readiness prehearing conference for August 19, 2013. The Parent failed to appear for the readiness prehearing conference on August 19, 2013, after due and proper notice. A Prehearing Order was entered on August 23, 2013, setting the due process hearing for September 16, 2013. A prehearing conference was held on September 13, 2013, at which the Parent appeared and represented herself. Ivan Guirado, Washington court-certified Spanish interpreter was present at the prehearing conference for the Parent. On September 15, 2013, a Prehearing Order was entered which set the due process hearing for September 27, 2013. The Parent failed to appear for the due process hearing on September 27, 2013.

<sup>1</sup>In the interests of preserving the family's privacy, this decision does not name the parents or student. Instead, they are each identified as "Parents," "Mother," "Father," and/or "Student."

### Due Date for Written Decision

The due date for the written decision in this matter is close of record plus thirty (30) calendar days.<sup>2</sup> The record of the hearing closed with the last day of hearing on September 27, 2013. Thirty (30) calendar days from September 27, 2013, is October 27, 2013. Therefore, the due date for a written decision in this matter is **October 27, 2013**.

### Evidence Relied Upon

Exhibits Admitted: District Exhibits D1 through D8.

Witnesses Heard: Christopher Willis, District co-director of secondary student support services; and Nash Perkins, District school psychologist.

### ISSUE

The issue for the due process hearing is whether the District's evaluation of the Student was appropriate, and if not, whether the District shall provide the Student with an independent educational evaluation (IEE) at public expense.

See Prehearing Order entered September 16, 2013.

### FINDINGS OF FACT

#### Background

1. The Student was initially determined eligible to receive special education and related services under the Individuals with Disabilities Education Act (IDEA) based on an evaluation completed by the District in May 2009, when the Student was in second grade. The Student was determined eligible under the *other health impairment* category. Exhibit D1.
2. At the time of his initial evaluation in May 2009, the Student's primary language was Spanish, and Spanish was the language spoken in the Student's home. The Student attended an English Language Learner (ELL) class during first grade. The Student continued in an ELL class during second grade. Exhibit D1:1-2.<sup>3</sup>
3. The cognitive assessment component of the Student's initial evaluation utilized the Universal Nonverbal Intelligence Test (UNIT). The UNIT is an individually administered comprehensive intelligence test for children aged 5 to 17 years who may be disadvantaged by traditional verbal and language-loaded measures. The UNIT can be administered to and

<sup>2</sup> See Prehearing Order entered May 30, 2013.

<sup>3</sup> Reference to the exhibits of record is to the exhibit and page number. For example Exhibit D7:1-2 is reference to Exhibit D7 at pages 1 to 2.

completed by the individual being assessed without the use of any verbal language. Testimony of Perkins; Exhibit D1:4. This assessment tool was chosen due to the Student's limited English proficiency at the time of his initial evaluation.

4. The Student earned a Full Scale IQ of 93 on the UNIT. The Student's scores on the UNIT subtests ranged from 88 to 100. Exhibit D1:5-6.

#### The District's Reevaluation of the Student

5. The Student had a triennial reevaluation for eligibility, which was completed during May 2012 (the reevaluation). Exhibit D4.

6. Nash Perkins, District school psychologist, was the primary District staff person who initiated and conducted the assessments of the Student for his reevaluation. Testimony of Perkins.

7. Ms. Perkins earned an Ed.S. degree from the Seattle University School of Education, an M.S.W. from Boston University School of Social Work, and a B.A. from Evergreen State College. She is licensed in the State of Washington as an Independent Clinical Social Worker (LICSW), is a member of the Washington State Association of School Psychologists (WASP), is credentialed as a National Certified School Psychologist (NASP), and holds Professional Education Staff Associate (ESA) Certification through the Washington State Office of Superintendent of Public Instruction. Ms. Perkins has been employed with the District as a school psychologist since 2005. Her duties as a school psychologist include screening and assessment of initial special education referrals, completion of reevaluations, and support and guidance to both general education programs and special education programs, including special education resource rooms and social/emotional/behavioral programs. Exhibit D7:1-2.

8. Based upon her education, training, and experience, it is found as fact that Ms. Perkins was qualified to administer the assessment tools used for the Student's reevaluation. Ms. Perkins was also qualified to interpret the results of those assessments with respect to how the Student's disabilities affect the Student's involvement and progress in the general education curriculum, and to recommend special education and related services needed by the Student.

9. Ms. Perkins discussed the scope of the reevaluation with the Parent during a telephone call. Ms. Perkins obtained current medical information on the Student from the Parent, learned through the Parent that the Student had recently been diagnosed with sleep apnea, and the Parent informed her of the Parent's concern with the Student's limited academic skills. Exhibit D4:5.<sup>4</sup> Ms. Perkins obtained the Parent's consent for the Student's reevaluation. Testimony of Perkins; Exhibit D5.

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<sup>4</sup> The reference in the reevaluation report that the Parent indicated the Student may be coping with something else in addition to his ADHD was the Parent's reference to the Student's recently diagnosed sleep apnea. Testimony of Perkins.

10. Ms. Perkins consulted with the Student's classroom teacher to collect additional information regarding the Student for the reevaluation, and reviewed the planned scope of the reevaluation with the classroom teacher, seeking the teacher's input. Testimony of Perkins; Exhibit D5.

11. As part of the reevaluation, Ms. Perkins reviewed and considered the Student's initial evaluation from 2009, his then most recent IEP dated March 8, 2012, and his IEP progress reports covering the time of his then most recent IEP goals and objectives. Exhibits D1, D2, D3; Testimony of Perkins.

12. Ms. Perkins used this information provided by the Parent, the Student's teacher, and her review of the Student's records to determine the scope of the Student's reevaluation. Testimony of Perkins. The scope of the reevaluation included testing in the areas of reading, math, written language, cognitive, and social/emotional/behavioral. Exhibit D4:2.

13. Ms. Perkins conducted classroom observations of the Student in his fifth-grade, self-contained classroom as part of the reevaluation. Testimony of Perkins.

14. By the time of his reevaluation, the Student was attending the Academic Core Program at his elementary school, and was no longer receiving ELL services after having met standard. The Academic Core Program is a small, self-contained classroom for students with academic challenges who have not responded well to instruction in a resource room setting. Testimony of Perkins.

15. For his reevaluation, the Mother and the Student both reported the Student's preferred language was English, although his Spanish comprehension remained strong. Exhibit D4:1. The reevaluation team believed the Student's dominant language was English, and the Student was clearly more comfortable speaking English than Spanish. Testimony of Perkins.

16. Ms. Perkins selected the Kaufman Assessment Battery for Children, Second Edition (KABC-II) to assess the Student's cognitive development for the reevaluation. The KABC-II is designed to assess cognitive development.

17. The KABC-II is based on a dual theoretical foundation that allows an examiner to select between two models, Luria and CHC. The Luria model focuses on mental processing abilities, deemphasizing language-based acquired knowledge. The CHC model includes an assessment of acquired or crystallized knowledge. Exhibit D4:3.

18. Ms. Perkins selected the CHC model because it includes assessment of knowledge acquired via language and classroom access, and Ms. Perkins wanted to determine how the Student acquired knowledge through the use of language. She also selected this assessment tool because it is a normed assessment, and it was an appropriate tool to assess the Student. Testimony of Perkins. Ms. Perkins is qualified by her education, training, and experience to administer the KABC-II, and she administered it in accordance with the tool's instructions.

19. The Student earned a Fluid Crystallized Intelligence Index of 71 on the KABC-II. Exhibit D4:3. This index provides the most generalized or broadest estimate of cognitive functioning using the KABC-II. The KABC-II includes other indexes which reflect more differentiated or more specific abilities that make up generalized cognitive functioning. The

Student's scores on these more differentiated indexes varied widely from 66 to 86. Exhibit D4:3.

20. Due to the wide variability of index scores, Ms. Perkins determined the Fluid Crystallized Intelligence Index of 71 was not a valid assessment of the Student's generalized cognitive functioning.

21. Ms. Perkins interpreted the results of the Student's KABC-II assessment to construct a pattern of strengths and weaknesses which more accurately reflected the Student's cognitive abilities than his Fluid Crystallized Intelligence Index score. And it was this more nuanced pattern of cognitive strengths and weaknesses that Ms. Perkins used to determine how the Student's disability would affect his involvement and progress in the general education curriculum, and make recommendations for special education and related services.

22. Ms. Perkins concluded that the Student has the ability to do well with tasks that require visual learning, but he will likely struggle with learning that requires other styles or modes of learning, and will likely require much repetition to succeed.

23. The apparent conflicting assessments of the Student's cognitive abilities from his initial evaluation in 2009 using the UNIT and his reevaluation in 2012 using the KABC-II are difficult to reconcile because they are two very different assessment tools. The UNIT is administered and completed with no dependence on verbal language skills.

24. The UNIT was an appropriate assessment tool to evaluate the Student in 2009, given the Student's limited English proficiency at that time. By 2012, however, the Student's proficiency in English had developed sufficiently that use of the KABC-II was appropriate to assess the Student. Testimony of Perkins; testimony of Willis.

25. In addition to administration of the KABC-II, the reevaluation used the Woodcock-Johnson III Tests of Achievement to evaluate the Student's reading, math, and written expression skills. Exhibit D4:4-5. The reevaluation used the Brown Attention-Deficient Disorder Scales for Children rating form, observational reports from the Student's special education teacher, and classroom observations by Ms. Perkins to evaluate the Student's social/emotional/behavioral performance. Exhibit D4:5; testimony of Perkins. These assessment tools were technically sound, and administered by qualified professionals in accordance with instructions provided by the producers of the tools. Testimony of Perkins.

26. After completing her assessments of the Student, Ms. Perkins drafted her reevaluation report. Exhibit D4.

27. Ms. Perkins called and spoke with the Parent to arrange a meeting of the reevaluation team, including the Parent, to consider the report. Ms. Perkins and the Parent both spoke in English during the telephone call. At no time did the Parent ever indicate she did not understand what Ms. Perkins was saying in English, or request a Spanish interpreter for the telephone call. Ms. Perkins understood the Parent's responses and statements during the telephone call, and had no reason to believe the Parent did not understand what she was telling the Parent over the phone.

28. The Parent responded that she was tired of attending meetings, and affirmatively stated to Ms. Perkins that she did not want to attend the reevaluation team meeting. Ms. Perkins then took the time to discuss the results of the Student's reevaluation with the Parent over the phone.

29. The reevaluation report states that the Student has a disability that meets the eligibility criteria (Exhibit D4:6), and includes a discussion of the data that supports that conclusion (Exhibit D4:5-6). It states how the Student's disability affects his involvement and progress in the general education curriculum (Exhibit D4:5-6), and makes recommendations for special education and related services (Exhibit D4:6-7). The report includes the date and signature of each professional member of the reevaluation team (Exhibit D4:9).

30. Ms. Perkins completed her assessments, prepared the reevaluation report, spoke with the Parent, and met with the other members of the reevaluation team all within thirty-five school days of obtaining the Parent's consent for the reevaluation. Testimony of Perkins

31. On May 29, 2012, the District sent a letter to the Parent. The purpose of the letter was to inform the Parent of the reevaluation results. It identified the procedures, assessments, and records or reports used to make the determinations, explained that the Student was eligible to receive special education services under the health impaired category, and informed the Parent of her procedural safeguards. Exhibit D5.

#### The Parent's Request for an Independent Educational Evaluation

32. On May 1, 2013, nearly a year after the Student's reevaluation was complete, the District received a letter from the Parent. Exhibit D6.

33. In her letter, the Parent requested an independent educational evaluation (IEE) for the Student at the District's expense. The Parent's letter states in relevant part;

This request is based on my concerns and observations:

- [The Student's] current evaluation [the 2012 reevaluation] does not explain or address the drop in his IQ from 93 to 71.
- [The Student's] evaluation [the 2012 reevaluation] says that his learning problems are probably caused by multiple disabilities, and it lists ADHD and sleep apnea. Last week, we took [the Student] to Children's Hospital. The doctor evaluating [the Student] said that he believed that [the Student] did not have ADHD. The doctor did say that he thought [the Student] had learning problems.
- [The Student] has developed behavioral or emotional problems that require an evaluation.
- [The Student] has problems with his memory and he forgets what he learned during the summertime. I think he needs Extended School Year services this year so he does not regress.
- ...[The Student] continues to need extra help with his homework, and his IEP should provide help with his homework.

For these reasons, please arrange for an IEE for [the Student] as soon as possible.

Exhibit D6.

34. After receipt of the Parent's request for an IEE, Christopher Willis, District co-director of secondary student support services, contacted the Parent and scheduled a meeting with the Parent and the Student's reevaluation team to discuss the request for an IEE. The Parent requested, and the District provided, a Spanish interpreter for the Parent at the meeting.

35. At the meeting, the Parent raised two specific concerns regarding the Student's reevaluation, by then nearly a year old. The Parent was concerned that the reevaluation did not explain how or why the Student's IQ apparently decreased from 93 to 71 between his initial evaluation in 2009 and his reevaluation in 2012. The Parent was also concerned that the doctor at Children's Hospital did not believe the Student had ADHD, but did say he thought the Student had learning problems. Testimony of Willis.

36. The District filed a Due Process Hearing Request with the Office of Superintendent of Public Instruction on May 13, 2013, to defend the appropriateness of its reevaluation of the Student.<sup>5</sup>

### CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 U.S.C. §1401 *et seq.* (Individuals with Disabilities Education Act), Chapters 28A.155, 34.05, and 34.12 Revised Code of Washington (RCW), and the regulations promulgated thereunder; 34 Code of Federal Regulations (CFR) §300 *et seq.*, and Chapter 392-172A Washington Administrative Code (WAC).

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. See *Schaffer v. Weast*, 546 U.S. 49 (2005). As the District is the party seeking relief in these matters, it has the burden of proof.

3. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *Hendrick Hudson District Board of Education vs. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

First, had the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these

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<sup>5</sup> The District's Due Process Hearing Request was not entered as an exhibit of record, but is maintained in the administrative file in the above matter.



requirements are met, the state has complied with the obligations imposed by Congress and the courts can require no more.

*Id.* at 458 U.S. at 207; 102 S. Ct. at 3051.

4. A "free appropriate public education" consists of both the procedural and substantive requirements of the Individuals with Disabilities Education Improvement Act (IDEA). *Id.*

#### Independent Educational Evaluation (IEE)

5. If Parents of a student eligible for special education disagree with a school district's evaluation, they have the right to obtain an IEE; an evaluation conducted by a qualified examiner who is not employed by the school district. WAC 392-172A-05005.

6. If a parent requests an IEE at public expense, the school district must either initiate a hearing within fifteen days to show that its evaluation is appropriate, or ensure that an IEE is provided at public expense without unnecessary delay. WAC 392-172A-05005(2)(c).

#### The District's May 2012 Reevaluation of the Student

7. A school district must obtain informed parental consent prior to conducting any reevaluation of a student eligible for special education services. WAC 392-172A-03000(3)(a); 34 CFR §300.300(c). Ms. Perkins obtained the Parent's consent after discussing the proposed reevaluation with her, and there is no evidence to find the Parent's consent was not informed. It is concluded the District complied with the applicable state and federal regulations.

8. Once a student is determined eligible for special education, the student must be reevaluated at least once every three years unless the parent and the school district agree that a reevaluation is unnecessary. WAC 392-172A-03015(2)(b); 34 CFR §300.303(b)(2). The reevaluation must also be completed within thirty-five (35) school days after the date consent is obtained from the parent. WAC 392-172A-03015(3)(a). In this case, the Student was initially evaluated for eligibility in May 2009. The Student was reevaluated in May 2012, three years later, and the reevaluation was completed within thirty-five school days of obtaining the Parent's consent. It is concluded the District complied with the applicable state and federal regulations.

9. Both the Washington Administrative Code and the Code of Federal Regulations set out procedures for evaluations and reevaluations. WAC 392-172A-03020 provides:

#### Evaluation procedures.

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

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

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

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

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

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

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

(3) Each school district must ensure that:

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

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

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

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

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

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

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

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

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

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

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

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

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

See also 34 CFR §300.303.

10. The District's reevaluation of the Student was conducted by qualified professionals, and used a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the Student. The reevaluation did not use or rely upon any single measure or assessment to determine whether the Student continued to be eligible for special education; or for determining an appropriate educational program for the Student. The assessment tools chosen were technically sound, and were provided and administered in the Student's native language, as by the time of the 2012 reevaluation the Student was proficient in English and Spanish, and both the Student and the Parent reported he preferred English. The assessment tools were used for the purposes for which they were valid and reliable, and were administered in accordance with instructions provided by the producers. See generally WAC 392-172A-03020 above, and 34 CFR §300.303.

11. In her May 1, 2013, letter requesting an IEE at District expense and at her subsequent meeting with the reevaluation team, the Parent raised her concern that the Student might not have ADHD and might have some type of learning problem. Her concern was based on a recent visit to see a doctor at Children's Hospital. A reevaluation must assess a student in all areas related to any suspected disability. WAC 392-172A-03020(3)(e); 34 CFR §300.303(c)(4). There is not sufficient evidence to conclude, however, that at the time the reevaluation was designed and completed in May 2012 either the District or the Parent had any reason to suspect the Student had disabilities other than ADHD and his then recently diagnosed sleep apnea. Based on the information known to the District at the time of the reevaluation, it is concluded that the reevaluation assessed the Student in all areas related to his suspected disabilities. It is also concluded the reevaluation was sufficiently comprehensive to identify all of the Student's special education and related services needs.

12. The Parent also raised a concern for the apparent conflicting assessments of the Student's cognitive or intellectual functioning from his initial evaluation in 2009 (Full Scale IQ 93) and the reevaluation in 2012 (Fluid Crystallized Intelligence score of 71). This apparent discrepancy in cognitive or intellectual functioning was fully considered by Ms. Perkins during the reevaluation. Based upon her education, training, and experience as a school psychologist,

Ms. Perkins' testimony at the due process hearing explained how the apparent decrease in the Student's cognitive or intellectual functioning could reasonably be attributed to the two different assessment tools used; the UNIT in 2009 and the KABC-II in 2012. Ms. Perkins' expertise led her to conclude that the *pattern of strengths and weakness* she derived from the KABC-II indexes were more indicative of the Student's true cognitive or intellectual abilities than either of the more generalized scores. Ms. Perkins' expertise and careful consideration of the evidence is very persuasive. It is concluded that the results of the Student's cognitive or intellectual functioning assessment in the 2012 reevaluation are not evidence the reevaluation was procedurally or substantively flawed, or not in compliance with the applicable legal requirements.<sup>6</sup>

13. WAC 392-172A-03025 is applicable and provides:

Review of existing data for evaluations and reevaluations.

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

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

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

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

(c) Observations by teachers and related services providers.

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

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

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

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

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

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

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<sup>6</sup> The Parent's May 1, 2013, letter requesting an IEE raised concerns in addition to the two considered above. Those additional concerns, however, do not go to the appropriateness of the District's reevaluation of the Student, which is the only legal issue to be decided in this matter.

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

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

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

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

See also 34 CFR §300.305.

14. Ms. Perkins reviewed the Student's initial evaluation from 2009, gathered information from the Parent and the Student's classroom teacher, conducted her own classroom observations of the Student, reviewed the Student's most recent IEP progress reports, and then, after completion of the additional assessments of the Student, she drafted the reevaluation report. Ms. Perkins contacted the Parent to arrange for a team meeting, including the Parent, but the Parent affirmatively declined to participate in another meeting. Ms. Perkins took the extra step of explaining the reevaluation results to the Parent, and then met with the remaining members of the team to review and sign the final reevaluation report on May 15, 2012. Ms. Perkins followed up with the May 29, 2012 letter to the Parent, informing her the Student remained eligible for special education and advising her of her procedural safeguards. It is concluded the District complied with the procedural requirements for the Student's reevaluation pursuant to WAC 392-172A-03025.

15. WAC 392-172A-03035 is applicable and provides:

Evaluation report.

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

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

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

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

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

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

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

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

16. After careful review, it is concluded that the reevaluation report prepared by Ms. Perkins meets the requirements of WAC 392-172A-03035, above. The reevaluation report contains the required elements for content. While the report does not include the signature of the Parent, this is solely due to the Parent affirmatively declining Ms. Perkins' invitation to participate in a team meeting. The District cannot be faulted for failing to obtain the Parent's signature under these facts.

17. Based upon the above findings of fact and conclusions of law, it is concluded that the District's May 2012 reevaluation of the Student was appropriate, and therefore the Parent's request for an IEE at District expense should be denied.

### ORDER

The District's May 2012 reevaluation of the Student was appropriate. The Parent's request for an independent educational evaluation (IEE) at District expense is **DENIED**.

Signed at Seattle, Washington on October 25, 2013.



MATTHEW D. WACKER  
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. If a timely petition for reconsideration is filed, this ninety-day period will begin to run after the disposition of the petition for reconsideration pursuant to RCW 34.05.470(3). 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, Administrative Resource Services.

CERTIFICATE OF SERVICE

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein. *Jan*

Parent  


Chris Willis, Director of Student Support Services  
Federal Way School District  
33330 - 8<sup>th</sup> Avenue South  
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cc: Administrative Resource Services, OSPI  
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY