



STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
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July 17, 2015

Parent
 [REDACTED]
 Shoreline, WA 98155

Amy Vujovich, Director of Student Services
 Shoreline School District
 18560 - 1st Avenue NE
 Shoreline, WA 98155-2148

Lynette Meachum Baisch, Attorney at Law
 Porter Foster Rorick LLP
 800 Two Union Square
 601 Union Street
 Seattle, WA 98101

RECEIVED

In re: **Shoreline School District**
OSPI Cause No. 2015-SE-0028
OAH Docket No. 04-2015-OSPI-00046

JUL 21 2015


SUPERINTENDENT OF PUBLIC INSTRUCTION
 ADMINISTRATIVE RESOURCE SERVICES

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,


 Nicole A. Gaines Phelps
 Administrative Law Judge

cc: Administrative Resource Services, OSPI
 Michelle C. Mentzer, Acting Senior ALJ, OAH/OSPI Caseload Coordinator

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

MAILED
JUL 17 2015
SEATTLE-OAH

IN THE MATTER OF:

OSPI CAUSE NO. 2015-SE-0028

SHORELINE SCHOOL DISTRICT

OAH DOCKET NO. 04-2015-OSPI-00046

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Nicole A. Gaines Phelps in Seattle, Washington, on June 18, 2015. The Parent of the Student whose education is at issue¹ appeared and represented herself. Lynn Personcus accompanied the Parent to the hearing. The Shoreline School District (District) was represented by Lynette Meachum Baisch, attorney at law. The following is hereby entered:

STATEMENT OF THE CASE

The District filed a due process hearing request on April 8, 2015. Prehearing conferences were held on April 20, 2015 and May 20, 2015. Prehearing orders were issued on April 20, 2015, and May 22, 2015.

Pursuant to a request for continuance by the Parent, the hearing date was continued to July 3, 2015. See First Prehearing Order of April 20, 2015. The Parent also requested an extension of the decision due date to thirty (30) days after the close of record. See First Prehearing Order of April 20, 2015. Subsequently, the parent requested another continuance of the hearing date to June 18, 2015. See Second Prehearing Order of May 22, 2015. The record closed at the conclusion of the hearing. The due date for the written decision is therefore July 18, 2015.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Parent Exhibits: P1 through P6 and P8 through P10.

District Exhibits: D1 through D3.

The following witnesses testified under oath. They are listed in order of their appearance:

Stephen M. Hirsch, Ph.D, Shoreline School District Psychologist; Amy Vujovich, Shoreline School District Director of Student Services; and the Parent of the Student.

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

ISSUES

Whether the District's December 2014 Evaluation of the Student was appropriate, and if not, whether the Parent is entitled to an independent educational evaluation (IEE) at public expense. See First Prehearing Order of April 20, 2015.

FINDINGS OF FACT

Background

1. The Student is seventeen years old and recently completed his sophomore year at Shorecrest High School. (Exhibit D2 p. 1.) At age three he was evaluated and determined to qualify for special education under the category of Developmentally Delayed. *Id.* The category was later changed to Health Impaired. *Id.* During the Student's fourth grade re-evaluation his eligibility category changed to Emotional Behavioral Disability (EBD). *Id.* This has remained his eligibility category since that time. *Id.*

2. The change to the Emotional Behavioral Disability category reflected the Student's challenges with:

inappropriate reactions to normal stimuli ([Student] would get unusually angry and defiant when asked to do things), withdrawal, anxiety, depression and the presence of hallucinations.

Id. The previous triennial evaluation, dated January 9, 2012, identified the Student's need for specially designed instruction in:

math (both computation and reasoning); behavior (coping with frustration); study/organization skills (use of planner/estimation of task completion); social skills (classroom coping behavior e.g. self-advocacy [sic] asking for extra time on test).

Id. Additionally, because of the Student's self-report of having hallucinations, Hower Kwon, MD, completed a psychiatric evaluation for inclusion with the 2012 re-evaluation. (Exhibit P2.; see generally P8.) Dr. Kwon diagnoses included:

Axis I: Psychotic disorder not otherwise specified
Rule out pervasive developmental disorder not otherwise specified
Disruptive behavior disorder not otherwise specified (to describe behavioral outbursts).

...

Axis IV: Academic and social difficulties, recently exacerbated by deteriorating behavior

...

(Exhibit P2 p.4.) Based upon these diagnoses, Dr. Kwon recommended ongoing psychotherapy, evaluation of possible psychotic symptoms, and possible psychiatric medication intervention. *Id.* Some but not all of Dr. Kwon's recommendations were included in the Student's 2012

Individualized Educational Plan (IEP). (Testimony of Parent.) As of the date of hearing, the Student was no longer participating in psychotherapy. *Id.* The record is unclear why the psychotherapy sessions stopped.

The Current District evaluation

3. District school psychologist, Steve Hirsch, Ph.D. led the evaluation team. (Testimony of Hirsch.) Dr. Hirsch holds a Master's Degree in experimental psychology and received his doctorate in bio-behavioral psychology from the University of Washington in 1979. Since then he has obtained additional accreditations including an ESA Certificate in school psychology and a National Certification for school psychology endorsement. (Exhibit D3.) He has more than thirty-four years of experience as a school psychologist. (Testimony of Hirsch.)

4. On November 24, 2014, the Parent signed the written consent form for the Student's triennial evaluation.² (Exhibit D1 p.2.) Soon thereafter, Dr. Hirsch commenced the evaluation process. (Testimony of Hirsch.) The Student was cooperative with the testing process and able to complete all of the requested tasks. *Id.* Dr. Hirsch is confident the Student's scores accurately reflected his abilities. *Id.* The evaluation assessed the Student in the following areas: age appropriate transition assessment, classroom data, general education, study skills/organization, academic, behavior, cognitive, medical-physical, and social/emotional. (Exhibit D1 p.1) At the Parent's request, Dr. Hirsch added the area of executive functioning. (Testimony of Hirsch.) This was the only addition made by the Parent. (*Id.*; see also Exhibit D1 p.2.) Dr. Hirsch also reviewed the Student's prior assessments and educational transcripts. (Testimony of Hirsch.) The testing occurred in the Student's native language, English. Dr. Hirsch also took into account test limitations which may have resulted in bias but determined the possible limitations were not a significant factor in the eligibility determination. (Exhibit D2 p.3.; see also Exhibit P1 p.3.)

5. *Academic (math)*: Dr. Hirsch administered the Kaufman Test of Educational Achievement-Third Edition (KTEA-III) to assess the Student's academic skills. (Exhibit D2 p.5.; see also Exhibit P1 p.5.) The Student's math-word problem solving skills were in the 7th percentile,³ which is significantly low compared to his peers. His basic computation skills were at the 23rd percentile, which is in the low-average range. As result, specially designed instruction in math was recommended. (Exhibit D2; see also P1.)

6. *Academic (reading and writing)*: By contrast, the Student's reading and writing skills were significantly above his same-age peers. He scored in the 81st percentile in basic reading skills, in the 79th percentile in reading comprehension, and in the 61st percentile in written language skills. (Exhibit D2 p.5.; see also Exhibit P1 p.5.)

7. *Age Appropriate Transition Assessment*: Dr. Hirsch opined that the Student's strengths include his intellect, creativity and a very high vocabulary level. (Exhibit D2 p.7; see also Exhibit

² The Parent asserts she does not recall signing the written consent form but does not deny giving her permission for the re-evaluation to occur.

³ All percentile scores herein refer to the Student's score as compared with a nationwide sampling of same-age peers.

P1 p.7.) The student "enjoys friendships, being with others and to have them count on him for leadership." As an example, Dr. Hirsch spoke of the Student's decision to start a game club where students regularly meet as social activity. (Testimony of Hirsch.) Approximately, two years ago, the Student asked for Dr. Hirsch's assistance in the implementation and governance of the game club. *Id.* Since then, Dr. Hirsch has served as the group's faculty advisor. He works closely with the Student, who has served as the group's student leader for the past two years. *Id.* According to Dr. Hirsch, this activity has given the Student an opportunity for substantial growth in his communication, social, behavior and problem-solving skills. *Id.* Dr. Hirsch spoke of specific times when the Student came to him to discuss the appropriate ways to resolve conflicts within the group or other students' inappropriate behaviors. *Id.* Dr. Hirsch cited these as examples of ways the Student is making progress in the social and behavioral skills. *Id.* Despite these areas of growth, the Student still has challenges. *Id.* If he becomes emotionally overwhelmed, it is difficult for him to remain calm enough to: (1) make rational decisions and (2) appropriately engage in the decision-making process. (Exhibit D2 p.7; see also Exhibit P1 p.7.)

8. *Classroom Data:* The Student completed the Fall semester of his freshman year with grades between the A to B range, except for English 9, in which he achieved a C. (Exhibit D2 p.8; see also Exhibit P1 p. 8.) During the Spring semester, his English 9 grade dropped to a D. *Id.* His Sophomore year has proven more challenging. At the time of the evaluation, the Student's grades ranged from an "A in Math skills (special education) to 'D' in World History and an 'F' in Biology." *Id.* Dr. Hirsch noted missing assignments as the largest factor affecting the Student's grades, the exception being in biology. (Hirsch Testimony.) Dr. Hirsch opined the pace in which the information was presented in the biology class as well as the large amount of information presented overwhelmed the Student. *Id.* In his observations, the Student does better when given small segments of information at a time, followed by repetition when introducing new material. *Id.* If given too much material at once, particularly if the material is new, the Student becomes mentally paralyzed and unable to process what is being presented. *Id.*

9. As part of the evaluation process, Dr. Hirsch requested teacher feedback/input forms assessing the Student's performance from each of his teachers. (See generally Exhibit D2 p.17-p. 24.) Dr. Hirsch received written responses from: Linda Bow (social skills teacher and IEP case manager); Brett Vlahovich (world history); and Sharon Moser (math skills). *Id.* The Student's science teacher did not provide a written response but did provide verbal feedback during the December 17, 2014 evaluation meeting. (Exhibit D2 p. 8; see also Exhibit P1 p.8.) The teacher's responses cited common weaknesses of the Student: difficulty completing assignments timely (including ongoing problems with missing assignments); lack of organization and study skills; and difficulty focusing. *Id.* Several teachers made note of the student's low frustration level and ability to become overwhelmed by larger projects, e.g. papers or long term projects. (*Id.*; see also Testimony of Hirsch.) However, Linda Bow and the Student's science teacher noted the Student appeared to be more aware of missing assignments than in the past. (Exhibit D2 p. 8; see also Exhibit P1 p.8.) Both commented that although he remained resistant to using a planner for organization, he was doing a better job of working with his teachers to complete missing assignments. (Exhibit D2 p. 18 and p. 23.)

10. According to his IEP manager, the Student was making progress towards his IEP goals. (Testimony of Hirsch.) The Student is on track to graduate, having earned full credits in all Fall and Spring Semester classes, in both ninth and tenth grades. *Id.* He has shown the ability to put in work when needed to bring grades up to passing scores. Over the past three years, his

behavior problems have vastly improved. (Testimony of Hirsch.) As an example of the Student's behavior progress, Dr. Hirsch cited the Student's ability to seek help from Ms. Bow, his IEP manager, when needed. *Id.* He cited several instances when the Student sought seek refuge in Ms. Bow's classroom when he found himself overwhelmed. *Id.* During those times the Student acknowledged needing assistance because, in his words, "[he] was about to blow." *Id.* Talking through his feelings with Ms. Bow enabled the Student to work through his feelings and respond appropriately to the situation. *Id.*

11. *Cognitive:* Dr. Hirsch administered the Kaufman Assessment Battery for Children (KABC-II) to the Student. According to Dr. Hirsch, the KABC is "well received by high school students; thus provides more valid results." *Id.* The Student's full-scale composite score of 91 fell within the average range of cognitive functioning, exceeding 27% of his peers. (Exhibit D2 p.9.; see also Exhibit P1 p.9.) However, Dr. Hirsch opined this score "is quite misleading and does not represent [the Student's] overall cognitive functioning level." Dr. Hirsch noted the Student's strength lies in his ability to test well if questioned on information with which he was familiar. (Testimony of Hirsch.) When tested on general knowledge or items with which he had some association, the Student's scores were well above average. (Exhibit D2 p.9.; see also Exhibit P1 p.9.) However, when faced with random facts or isolated sequences, the Student struggled with ways to problem-solve and became overwhelmed, resulting in scores which were low or below average. *Id.*

12. *General Education:* Consistent with Dr. Hirsch's review of the Student's classroom data, the Student's state assessment scores in reading and math showed an ongoing need for specially designed instruction in math, but not reading. (Exhibit D2 p.11.; see also Exhibit P1 p. 11.)

13. *Medical-Physical:* The prior 2012 triennial evaluation included a psychological evaluation because of a self-report of hallucinations. Neither the Student nor the Parent reported concerns of ongoing hallucinations or other possible mental problems. Thus, the District did not include nor did the Parent request a psychological evaluation as part of this assessment. However, because the Student's emotional disability is long-standing and includes "an element of OCD, an oppositional element, and heightened anxiety," he continues to qualify for special education services under the Emotional Behavioral Disability category. (Exhibit D2 p.12.; see also Exhibit P1 p.12.)

14. *Study Skills/Organization:* The Student's Study Connection teacher and one of his General Education teachers completed the Study Skills Assessment Survey for Youth (SSASY). (Exhibit D2 p.13.; see also Exhibit P1 p.13.) The Parent was not formally interviewed as part of the evaluation. (Testimony of Hirsch.) Instead, the Parent and the Student's IEP Manger, Ms. Bow, completed the Behavior Rating Inventory of Executive Functioning (BRIEF). *Id.* The BRIEF assesses a Student's development in eight different domains and three main indexes. (Exhibit D2 p. 13.; see also Exhibit P1 p.13.) Although the Parent's scores presented as "elevated with extreme negativity" her scores⁴ as well as the IEP Manager's agreed the Student has challenges in five of the eight domains and two of the three main indexes as follows:

⁴ The Parent's scores presented the Student as having significant deficits in all areas.

<u>TASK (Domain)</u>	<u>Percentile/T Score⁵</u>	<u>Rating</u>
Trouble shifting task	96 th / 75	Significant
Planning/Organizing	97 th / 75	Significant
Ability to Organize Materials	93 rd / 70	Significant
Working Memory	84 th / 60	At Risk
Ability to Initiate Tasks/Activities	91 st / 68	At Risk
<u>INDEX</u>		
Overall Global Executive	89 th / 65	At Risk
Metacognition Index	91 st / 67	At Risk

(Exhibit D2 p.13; see also Exhibit P1 p.13.) The above listed results require continuing the Student's specially designed instruction in study skills/organization. *Id.*

15. *Social/Emotional:* Both the Student and his IEP Manager completed the Behavior Assessment System for Children (BASC-II). (Exhibit D2 p. 15.; see also Exhibit P1 p.15.) The Student expressed wanting assurance that he would give his full attention to each question. (Testimony of Hirsch.) To insure this occurred, the Student requested Dr. Hirsch read each of the 150 questions out loud and record the Student's answers. Dr. Hirsch opined this request displayed a great deal of "self-awareness" from the Student. *Id.* Interestingly, the student's self-reported responses indicated he views himself as "quite average without significant concerns in any area" but admits he worries "a lot." *Id.*

16. The Student's eligibility category is Emotionally-Behaviorally Disabled. *Id.* According to Dr. Hirsch, an elevated or extreme behavior rating is expected if a student falls into this eligibility category. *Id.* However, in this case, the teacher's rating did not score the Student in extreme or clinically significant ranges: his high anxiety and depression were judged as borderline significant. Because of these ratings and in conjunction with the Student's greatly improved behavioral issues, Dr. Hirsch recommended removing the separate goal area for social-emotional development from the Student's IEP. Instead, Dr. Hirsch suggested addressing the Student's emotional development under a consolidated section titled "self-advocacy goal." *Id.* In making this recommendation, Dr. Hirsch noted the Student is no longer displaying outbursts or other uncontrolled behaviors in the school environment but self-reported as allowing anger to "build-up within." (Testimony of Hirsch.) In Dr. Hirsch's opinion, this is best managed through teaching the Student coping skills designed to assist him with better anger management techniques and self-advocacy strategies. *Id.*

17. The Parent asserts despite implementation of a number of intervention strategies, the Student continues displaying emotional outbursts at home and has ongoing problems with organization skills. (Testimony of Parent.) She credibly testified she is the one who continually monitors the Student's missing assignments and insures he makes arrangements with his

⁵ T Scores falling between the 50-60 ranges are considered the mean (average) in comparison to peers. Each 10-point difference from the mean is equal to one standard deviation. T scores between the 60-70 ranges are considered an "at risk" deviation from the mean. T scores above 70 are considered a "significant" deviation from the mean.

teachers to complete the missing work. *Id.* Indeed, during the evaluation the Student admitted to Ms. Bow “he gets constant nagging about school work from [the Parent].” (Exhibit D2 p.18; see also Exhibit P2 p.18.) The Parent asserts that because the Student continues struggling in these areas the District should have tested the Student for autism. (Testimony of Parent.)

18. Dr. Hirsh admitted neither he nor any other professional evaluated the Student for autism. Dr. Hirsch acknowledged he is not qualified to conduct an autism evaluation. *Id.* But, based upon his experience, the Student’s test results, teachers’ observations, and comments from the Parent prior to her IEE request, he saw no reason to refer the Student for such an evaluation. (Testimony of Hirsch.) Furthermore, he stated, even if the Student were identified as being autistic, it would in no way impact Dr. Hirsch’s recommendations. *Id.* He explained the purpose of evaluation is two-fold: (1) to determine educational areas which are impacted by the Student’s disabilities and (2) to develop strategies to address the impacted educational areas. *Id.* For this Student, Dr. Hirsch credibly opined the evaluation correctly identified the Student’s challenges as presented in the academic setting. *Id.* Thus, an “official diagnosis” of autism is not needed to provide the Student with an appropriate educational plan or related services. *Id.*

19. Dr. Hirsch presented his findings and report during a December 17, 2014 evaluation meeting. (Exhibit D2.; See also Exhibit P1.) Based upon the evaluation results, Dr. Hirsch recommended continuing the Student’s special education services including specially designed instruction in math, study skills/organization, and self-advocacy. (Exhibit D2 p.2.; see also Exhibit P1 p.2.) Specifically, Dr. Hirsch’s written recommendations state:

<u>SDI</u>	<u>Area Assessed</u>	<u>Description</u>
Math	Academic	[F]ocus [on] assisting [the Student] to decide upon a strategy and work it through using that strategy.
Study Skills/Organization	Study Skills/Organization	Focus...on 1. [Student’s] use of a planner to track and monitor progress on assignments, tests especially long term assignments and 2. assignment completion.
Self-Advocacy	Social/Emotional	[The Student] has trouble initiating tasks, asking for help and advocating for his accommodations on the IEP. Additionally, to be served under this goal area, is [the Student’s] inability to regulate his emotions and advocate for the opportunity to deal with emotional highs and lows.

Id. Present at the evaluation meeting were: the Parent; Wendy Friedman, School Counselor; Ivan Winkler, General Education Teacher; Alicia Arnold, General Education Teacher; Dr. Hirsch; and Sharon Moser, Special Education Teacher. (Exhibit D2 p. 4.; see also Exhibit P1 p.4.) The

evaluation team adopted the recommendations and later implemented them into the current IEP. *Id.* The evaluation report contains signatures of the evaluation team members, including the Parent. *Id.* No one on the team checked a box indicating he or she had a dissenting opinion. It also contains written comments from several of the Student's teachers and his then current class schedule. *Id.*

Issuance of Prior Written Notice

20. Following the December 17, 2014 meeting, the District provided the Parent with a Prior Written Notice (PWN) proposing to change the Student's IEP. The proposed changes included removing services in the areas of behavior and social skills but continuing services in the areas of "math, study/organization and self-advocacy." (Exhibit D2 p.25.; see also Exhibit P1 p.25.) Based upon the evaluation results, Dr. Hirsch concluded the student's "behavior is no longer viewed as a major factor in his progress towards his diploma. *Id.* His outbursts have been very rare. *Id.* His social skills are appropriate for the high school [setting]." *Id.* Hence it is appropriate to revise his current IEP. *Id.* Dr. Hirsch notes the Student has a "good and stable group of friends and interacts very appropriate with peers in and out of the classroom." *Id.* However, because the Student has continued challenges with completing work, becoming overwhelmed and advocating for himself, the recommendation for specially designed instruction continues as well. *Id.*

Parent's Request

21. On March 25, 2015 via email, the Parent requested an Independent Educational Evaluation (IEE). (Exhibit P5 p.1.) The mother alleges the evaluation is not appropriate because Dr. Hirsch: (1) failed to give serious consideration to Dr. Kwon's prior diagnosis of "psychotic disorder not otherwise specified" and the Student's past experiences of having hallucinations; (2) discounted her responses to the BRIEF as being "too negative" without personally interviewing her for further explanation; and (3) failed to conduct additional testing to rule out an autism diagnosis. (Testimony of Parent.) Having carefully considered the evidence presented, the undersigned found the Parent's arguments unsupported by the evidence.

22. In making these Findings of Fact, the logical consistency, persuasiveness and plausibility of the evidence was considered and weighed. If a Finding of Fact adopts one version of a matter on which the evidence was in conflict, the evidence adopted was determined more credible than the conflicting evidence. To the extent the Parent's concerns conflicted with the information presented by the District, the undersigned took into consideration the cumulative evidence presented by the District and the expertise of Dr. Hirsch. This was not intended to discount the Parent's input or observations but was rather a reflection of having found that the observations of the District staff were more persuasive.

CONCLUSIONS OF LAW

The IDEA

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12

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

2. 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 *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

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

Rowley, supra, 458 U.S. at 206-207 (footnotes omitted).

3. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief, in this case the District. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

IEEs and Evaluations under the IDEA Regulations⁶

4. If the parent of a student eligible for special education disagrees with a school district's evaluation, the parent has the right to obtain an IEE, which is an evaluation conducted by a qualified examiner not employed by the school district. If a parent requests an IEE at public expense, the district must either initiate a due process hearing within 15 days to defend the appropriateness of its evaluation, or else ensure that a publicly funded IEE is provided without unnecessary delay. If the district initiates a hearing, and the final decision is that the district's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. WAC 392-172A-05005; see also 34 CFR §300.502. The District met this burden by timely requesting a due process hearing on April 8, 2015; fourteen days after receipt of the Parent's request for an IEE.

5. When a school district conducts a special education evaluation, a "group of qualified professionals selected by the school district" must use a "variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent . . ." The group must not use "any single measure or assessment as the sole criterion" for determining eligibility or educational programming. The group must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical, and developmental factors. WAC 392-172A-03020; see also 34 CFR §300.304.

⁶ The Washington regulations on IEEs and evaluations are lengthy. The most pertinent provisions of the regulations at issue in this case are summarized here. The full text of the cited Washington regulations is attached as an Addendum to the decision.

6. School districts must also ensure that assessments are selected and administered to avoid discrimination based on race or culture, and are administered in the student's native language or mode of communication. 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 services needs, whether or not commonly linked to the disability category in which the student has been classified." *Id.*

7. The District has established that its evaluation met the requirements of WAC 392-172A-03020. Most importantly, a group of qualified professionals used a variety of assessment tools and strategies to gather relevant information, including input from the Parent, and did not use a single measure as the sole criterion to determine eligibility. Qualified personnel (school psychologist and IEP manager) selected and administered technical instruments that assessed the relative contribution of many factors. The evaluation was comprehensive and assessed the Student in all areas of suspected disability, including the area of executive functioning which was the only area of testing requested by the Mother. There was insufficient evidence to render autism an area of suspected disability for this Student. The evaluation was sufficiently comprehensive to identify all of the Student's special education needs.

8. WAC 392-172A-03025 concerns the review of existing data for evaluations. It provides that evaluations must review existing assessment data and identify what additional data is needed to determine whether the student meets eligibility criteria. *Id.*; *see also* 34 CFR §300.305. WAC 392-172A-03040 concerns eligibility determinations, and provides in pertinent part as follows. Upon completing the evaluation assessments, a group of qualified professions and the parent must determine whether the student is eligible for special education. A student must not be determined eligible "[i]f the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction." In interpreting evaluation data to determine eligibility, the district must draw upon information from a variety of sources, including parent and teacher input. The district must also ensure that information obtained from all of these sources is documented and carefully considered. *Id.*; *see also* 34 CFR §300.306.

9. The mother alleges the evaluation is not appropriate. However, as previously mentioned, the consent form for the evaluation asked the Parent to list any other areas in which the Student should be assessed. The Parent did not list concerns regarding ongoing psychological disorders, *e.g.* hallucinations. During the evaluation process, no one, including the Parent, the Student or any of the Student's teachers, expressed concerns about the possibility of ongoing psychological problems. Dr. Hirsch noted that although the Parent's BRIEF responses were viewed as overly negative, other assessment tools verified her concerns in five of the eight domains, thus making the Student eligible for specially designed instruction under the EBD category. Additionally, although the Parent reported ongoing behavior problems in the home setting, the Student's behavior problems in the school environment were not significant. Additionally, Dr. Hirsch credibly testified he did review and take into consideration Dr. Kwon's report but in light of the Student's progress and lack of evidence of ongoing psychological concerns, no additional psychological testing was needed. For these reasons, the Parent's argument that the District failed to comply with WAC 392-172A-03025 is not accepted.

10. Indeed, the District has established that it complied with WAC 392-172A-03025 and -

03040. Dr. Hirsch reviewed existing data about the Student and obtained additional data from numerous assessment instruments. A group of qualified professionals including the Parent met to determine the Student's eligibility for special education. The record does not support the Parent's argument that the District failed to evaluate the Student in an area of suspected disability. The evaluation sufficiently identified all the areas of the Student's special education needs, including math, study skills/organization, and self-advocacy.

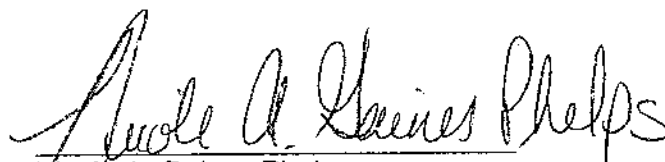
11. Finally, WAC 392-172A-03035 concerns evaluation reports. It requires that they include a statement of whether the student has a disability that meets eligibility criteria; a discussion of the assessments and review of data that supports the eligibility conclusion; a discussion of how the disability affects the student's progress in the general education curriculum; and the recommended special education and related services the student needs. *Id.*; see also 34 CFR §300.304-.306. The District's evaluation report met each of these requirements. It was thorough, detailed, and well supported. The evaluation presents specific and well reasoned recommendations to assist the Student in making educational progress.

12. For all of the foregoing reasons, the District has established that its December 2014 evaluation of the student was appropriate. All arguments made by the parties have been considered. Arguments not specifically addressed herein have been considered but are found not to be persuasive or not to substantially affect a party's rights

ORDER

The Shoreline School District's December 17, 2014 re-evaluation of the Student was appropriate. The Parent is therefore not entitled to an independent educational evaluation at public expense.

Signed at Seattle, Washington on July 17, 2015.



Nicole A. Gaines Phelps
Administrative Law Judge
Office of Administrative Hearings


Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, 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. *van*

Parent


Shoreline, WA 98155

Amy Vujovich, Director of Student Services
Shoreline School District
18560 - 1st Avenue NE
Shoreline, WA 98155-2148

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Addendum

392-172A-03020 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.

392-172A-03035 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.

392-172A-03040 Determination of eligibility.

(1) Upon completion of the administration of assessments and other evaluation measures:

(a) A group of qualified professionals and the parent of the student determine whether the student is eligible for special education and the educational needs of the student; and

(b) The school district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(2)(a) A student must not be determined to be eligible for special education services if the determinant factor is:

- (i) Lack of appropriate instruction in reading, based upon the state's grade level standards;
- (ii) Lack of appropriate instruction in math; or
- (iii) Limited English proficiency; and

(b) If the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.

(3) In interpreting evaluation data for the purpose of determining eligibility for special education services, each school district must:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

(b) Ensure that information obtained from all of these sources is documented and carefully considered.

(4) If a determination is made that a student is eligible for special education, an IEP must be developed for the student in accordance with WAC 392-172A-03090 through 392-172A-03135.

392-172A-05005 Independent educational evaluation.

(1)(a) Parents of a student eligible for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the school district's evaluation subject to subsections (2) through (7) of this section.

(b) Each school district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsection (7) of this section.

(c) For the purposes of this section:

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student in question; and

(ii) Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

392-172A-03025 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 (2) of this section.

(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.

392-172A-03030 Evaluations before change in eligibility.

(1) Except as provided in subsection (2) of this section, school districts must evaluate a student eligible for special education in accordance with WAC 392-172A-03020 through 392-172A-03080 before determining that the student is no longer eligible for special education services.

(2) A reevaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under WAC 392-172A-02000 (2)(c).

(3) For a student whose eligibility terminates under circumstances described in subsection (2) of this section, a public agency must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

(2)(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the school district.

(b) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

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

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

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

(3) If the school district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the school district may ask for the parent's reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.

(5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in (a) of this subsection, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.
