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MAILED
JUN 20 2018
SEATTLE-OAH

June 20, 2018

Parents


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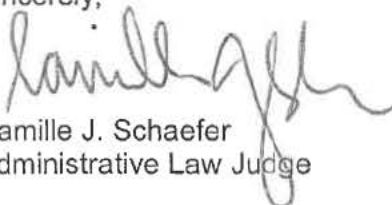
In re: North Kitsap School District
OSPI Cause No. 2018-SE-0037
OAH Docket No. 03-2018-OSPI-00499

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,



Camille J. Schaefer
Administrative Law Judge

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

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JUN 21 2018

Superintendent of Public Instruction
Administrative Resource Services

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Superintendent of Public Instruction
Administrative Resource Services

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

MAILED
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SEATTLE-OAH

IN THE MATTER OF

OSPI CAUSE NO. 2018-SE-0037

NORTH KITSAP SCHOOL DISTRICT

OAH DOCKET NO. 03-2018-OSPI-00499

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Camille J. Schaefer in Poulsbo, Washington on May 23, 2018. The Parents of the Student whose education is at issue¹ appeared and represented themselves, and they were accompanied and advised by Thelma Simon. The North Kitsap School District (District) was represented by Lynette Baisch, attorney at law, who was accompanied by associate attorney Lauren McElroy. Also present for the District was Lori Buijten, assistant special education director.

STATEMENT OF THE CASE

The District filed a Due Process Hearing Request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on March 30, 2018. The Complaint was assigned Cause No. 2018-SE-0037 and forwarded to the Office of Administrative Hearings (OAH) for assignment of an ALJ. A Scheduling Notice was issued April 2, 2018, which assigned the case to ALJ Camille J. Schaefer. The Parents filed their Response to the Complaint on April 18, 2018. Prehearing conferences were held on April 17, May 14, and May 21, 2018. Prehearing orders were issued on April 19, May 8, May 16, and May 21, 2018.

The parties agreed that closing arguments would be made via post-hearing briefs, which would be filed and exchanged by June 7, 2018; on May 25, 2018, an Order Setting Due Date for Post-Hearing Briefs was issued reflecting the same. The District's post-hearing brief was received on June 6, 2018, and the Parents' post-hearing brief was received on June 7, 2018.

As set forth in the First Prehearing Order, on the District's motion, the due date for a written decision in this matter was continued to thirty (30) calendar days after the close of the record. The record closed on June 7, 2018. Accordingly, the due date for the written decision is July 7, 2018.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Joint Exhibits: J1 – J5
District's Exhibits: D1 – D4

¹ To ensure confidentiality, names of students and parents are not used. Instead, they are referred to herein as Student, Parents, Mother, and Father.

Parents' Exhibits: P2 – P15; P21 – P44; P46 – P49; P56; P62 – P64
Court's Exhibits: C1 – C4

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

Emily Santiago, District School Psychologist
Katherine Dunn, District Occupational Therapist
L. Star Butterton, District Behavior Intervention and Autism Specialist
Lori Dorman, District Special Education Teacher
Lori Buijten, District Assistant Special Education Director
Student's Mother
Student's Father
Mariam Araujo, Ph.D., Student's Therapist

ISSUE

The issue for hearing was whether the District's March 2018 evaluation of the Student was appropriate, and if not, whether the Parents are entitled to an independent educational evaluation (IEE) at public expense. See First Prehearing Order dated April 19, 2018.

FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness, and plausibility of the evidence has been considered and weighed. To the extent a Finding of Fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted has been determined more credible than the conflicting evidence.

Background

1. The Student was 13 years old at the time of the hearing. He is enrolled part-time in the District for seventh grade during the 2017-2018 school year. Testimony of Santiago at T28-29.² The Parents have also enrolled the Student part-time in the Parent Assisted Learning (PAL) program. *Id.* at T29; Mother at T153-154. The PAL program involves the Student doing independent work outside the classroom in the home setting with parent support and having weekly consults with a certificated teacher. Santiago at T29.

The District's 2018 Reevaluation

2. On January 30, 2018, the District issued the Parents a Prior Written Notice (PWN) stating its intent to initiate the required three-year reevaluation of the Student. Santiago at T30; J1.³ The PWN stated that the reevaluation would include the following: review of records; parent, teacher,

² References to the transcript from the due process hearing are by the name of the particular witness (Santiago) and page number where the testimony appears in the transcript (T28-29).

³ References to exhibits from the due process hearing are by the exhibit number (J1), and where appropriate, to page number(s) within the exhibit (e.g., p. 1).

and student input; observations; a Functional Behavioral Assessment (FBA); and standardized assessments in cognitive, math, social-emotional/behavioral, and fine motor. J1, p. 1.

3. On February 11, 2018, the Mother signed the Consent for Evaluation. J2. The District received the signed consent on February 13, 2018. Santiago at T32.

4. Emily Santiago, school psychologist for the District, completed the reevaluation of the Student and issued an evaluation report dated March 6, 2018. *Id.* at T28; J3. Ms. Santiago has a Master of Science degree in Educational and Counseling Psychology, is certified as a Specialist in Education in School Psychology, and has worked as a school psychologist for over fifteen years. D1. She has been employed by the District since August 2016. *Id.*

5. All assessments were completed in English, which is the Student's native language. Santiago at T32; J3, p. 20.

6. The Student was evaluated in the following areas: Math; Cognitive; Health and Development; Social, Emotional and Behavioral; and Motor. J3, pp. 4-19. Although the "Health & Development" box was not checked as an Area of Evaluation (*id.* at p. 4), based upon the section entitled "Health & Development Eval" and subsequent summary set forth in the evaluation report (*id.* at pp. 4-5), it is clear this area was included in the reevaluation. The Student was also observed by Ms. Santiago in the testing environment. *Id.* at p. 7; Santiago at T42.

Records Reviewed

7. Ms. Santiago reviewed a number of records as part of the reevaluation including the Student's report cards and attendance data from 2011 to the present, prior assessment results, and information as of February 27, 2018 from teacher Stephanie Frisch regarding the Student's progress in the PAL program. Santiago at T33-35; J3, pp. 1-4.

Health and Development Assessment

8. To assess the Student's Health and Development, Ms. Santiago reviewed records, including from the Student's initial evaluation completed March 6, 2015, which incorporated information from a December 2013 evaluation by Mariam Araujo, PhD. J3, p. 4-5. Dr. Araujo is the Student's private therapist and has seen him every other week for the past four (4) years. Mother at T159-160; *see* P2. Dr. Araujo diagnosed the Student with Generalized Anxiety Disorder, Autism Spectrum Disorder without intellectual impairment, with a history of language impairment, and Unspecified Tic Disorder. J3, p. 5. The Mother completed a developmental history questionnaire for that initial evaluation, and Ms. Santiago found that much of the information the Mother reported was similar to Dr. Araujo's report. *Id.*

9. Documents reviewed also included letters from Dr. Araujo dated March 31, 2017 and October 25, 2017 (*see* P38 and P28, respectively) as well as an email from Dr. Araujo dated April 21, 2017 (*see* P41): Santiago at T90. The October 25 letter listed the Student's diagnoses and described the Student's report of interactions with and treatment by another student. P28. Dr. Araujo emphasized how, given the Student's struggles with navigating social situations due to Autism Spectrum Disorder, what might appear as simple teasing can lead to a bullying situation. *Id.* The information in these letters was considered in the reevaluation. Santiago at T90-91.

10. Dr. Araujo participated by phone in the Student's Individualized Education Program (IEP) meetings in May 2017 and January 2018, and her input during those meetings was considered in the reevaluation. *Id.* at T91-92. Ms. Santiago also consulted with Dr. Araujo via a phone conversation regarding the Student in the fall of 2017. *Id.* at T92.

11. For the reevaluation, the Mother reported that the Student continues to carry the diagnoses of Generalized Anxiety Disorder, Autism Spectrum Disorder without intellectual impairment, with a history of language impairment, and Unspecified Tic Disorder, and that he currently takes several medications. J3, p. 4. The Parents were given a health history form as part of the reevaluation, which asks about the Student's health conditions and the Parents' current concerns regarding those conditions. Santiago at T98-99. However, the Mother confirmed she did not return the health history form because nothing had changed. *Id.* at T99.

12. Ms. Santiago reviewed the Student's current health plans, which address diagnoses of a gastrointestinal issue, urological disorder, and Tourette's Syndrome. *Id.* at T37-38; P64. The information obtained from the Mother and from the Student's health plans was consistent with the data from the 2015 evaluation. Santiago at T39.

13. The Student, Parents, and District staff use a variety of terms to refer to the Student's tic-related symptoms including "Tourette's" and "Tourette's Syndrome" (Santiago at T73-74; P64, p. 2; Araujo at T190), "tic spasm" (Santiago at T57; J4; P64, p. 2), "Tic Disorder" (P38; Araujo at T190), and "unspecified tic disorder" (Santiago at T38, T74). The Mother was unsure whether an unspecified tic disorder and Tourette's referred to the same or different diagnoses. Mother at T161-162. From the standpoint of working with the Student at school, documenting the severity and manifestation of the tics is more important than whether the diagnosis is Tourette's syndrome or an unspecified tic disorder. Santiago at T93. The District has plans in place to support the Student when he experiences tic symptoms, and the strategies and interventions are based on input from Dr. Araujo. *Id.* at T94.

14. At no point during the reevaluation did the Parents request that the District gather further information from private providers. *Id.* at T40. The District had no reason to suspect that other medical factors not previously communicated might be affecting the Student at school. *Id.* at T39-40.

Cognitive Assessment

15. Ms. Santiago administered the Wechsler Intelligence Scale for Children, Fifth Edition, (WISC-V) on February 27, 2018. J3, pp. 5-7. The WISC-V is a valid and reliable instrument for assessing intelligence in children of the Student's age, and Ms. Santiago administered it pursuant to the test manufacturer's instructions. Santiago at T40-41. The WISC-V reflected that the Student's overall cognitive ability falls within the Low Average range, noting that his associative memory or associated verbal skills are not as strong as his vocabulary skills. *Id.* at T41. It was also noted that the Student is careful and not necessarily impacted by timing. *Id.* at T41-42.

16. The WISC-V is a valid assessment of the Student's overall cognitive ability. J3, p. 5. The reevaluation noted that the results of the WISC-V were consistent with the Student's previous

cognitive evaluation from February 26, 2015 using the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV). *Id.* at p. 7.⁴

Math Assessment

17. The Student's math skills were assessed on March 2, 2018 using the Woodcock-Johnson Tests of Achievement, Fourth Edition (WJ-IV). *Id.*; Santiago at T42-45. The WJ-IV is a valid and reliable instrument for assessing children of the Student's age, and Ms. Santiago administered the WJ-IV pursuant to the test manufacturer's instructions. Santiago at T43.

18. The Student receives specially designed instruction (SDI) in math, so he was assessed to determine whether SDI continues to be needed. *Id.* at T44. The Student's composite scores and subtest scores in Calculation and Math Facts Fluency were in the Low Average range, and subtests in Applied Problems and Number Matrices were in the Average range. J3, p. 7. This means that the Student's math problem-solving skills are stronger than his math calculation skills. Santiago at T44. The WJ-IV is a valid assessment of the Student's overall abilities in math. J3, p. 7.

19. At the time of the reevaluation, the Student had been absent 55 out of 105 days of math class during the 2017-2018 school year. *Id.* at p. 8; Santiago at T44-45. It was not possible to rule out lack of instruction as a reason for the Student's low progress in mathematics. J3, p. 8. However, given the Student's social-emotional needs and how those difficulties were impacting his attendance, it was determined that the Student continued to need SDI in math to improve number sense and calculations. *Id.*

Social, Emotional, and Behavioral Assessment

20. The Student's social, emotional, and behavioral profile was measured by the Behavioral Assessment System for Children, Third Edition (BASC-3). *Id.* The BASC-3 provides a broad measure of the Student's social and emotional skills and is a valid and reliable instrument for assessing children of the Student's age. Santiago at T45-46. Ms. Santiago administered the BASC-3 pursuant to the test manufacturer's instructions. *Id.* at T46.

21. The BASC-3 included rating scales, which were completed by two of the Student's teachers (J3, pp. 8-9), the Parents (*id.* at pp. 10-11), and the Student (*id.* at pp. 11-12). The BASC-3 also included an interview with the Student. *Id.* at p. 13. The teacher rating scales indicated concern with internalizing behavior; anxiety and depression were noted as either clinically significant or at risk. Santiago at T47. In addition, the teachers noted difficulty with adaptability, meaning that changes in routine can be hard for the Student. *Id.* The Parent rating scales also indicated at-risk concerns with issues of depression, somatization, attention, withdrawal, and leadership. *Id.* Critical items noted in the Student's self-report included comments about not feeling safe at school, which Ms. Santiago indicated was a concern. *Id.* at T48.

⁴ The reevaluation identifies the WISC-V summary as "WISC-IV Summary." J3, p. 6. It is assumed that the reference to WISC-IV in the section heading and first sentence at the top of page six are typographical errors since the summary is then compared to the prior WISC-IV results on page seven. This does not impact the undersigned's findings regarding the assessment conducted by the District.

22. As a result of information gathered from the BASC-3, Ms. Santiago determined that the Student continues to demonstrate a need for SDI in the area of Social-Emotional/Behavioral skills. Santiago at T63-64; J3, p. 18. Ms. Santiago recommended that the Student receive services that address improving skills to increase engagement with academics and support positive inter- and/or intrapersonal relationships with a focus on coping skills, use of calming strategies, and perspective-taking skills. J3, p. 18.

Social Skills Improvement System

23. The Social Skills Improvement System (SSIS) is designed to measure how often a student exhibits certain social skills and problem behaviors. J3, p. 13. The SSIS was completed by the Parents and two of the Student's teachers, and it was scored and interpreted by Ms. Santiago. *Id.* at pp. 13-16. The SSIS is a valid and reliable instrument for assessing children of the Student's age and was administered by Ms. Santiago pursuant to the test manufacturer's instructions. Santiago at T49. The science teacher indicated some concern in completing the SSIS rating scales because he does not see the Student enough due to the Student's frequent absences, and the lack of a "not applicable" option made him uncomfortable providing feedback. *Id.* at T50. While this limitation was noted, there was no indication this impacted the reliability of the SSIS.

24. Overall, the SSIS revealed that the Student's social skills fell within the Average range in the school setting as compared to other same-age peers. *Id.* at T49-50; J3, p. 15. Based on the Parents' ratings, the Student's overall social skills fell within the Average range for his age. J3, p. 15. Neither teachers nor the Parents reported significant concerns with social skills, although the Mother noted concerns with the Student being able to assert himself in social situations. Santiago at T50. This is in contrast to Dr. Araujo's letter, referenced above, stating that the Student struggles in social situations; however, as Dr. Araujo admitted during the hearing, she has never observed the Student at school. Araujo at T191.

25. A scale on the SSIS assessment looks at behaviors that commonly occur with students who fall on the autism spectrum. Santiago at T50-51. Both of the Student's teachers and his Parents indicated Above Average scores with regard to attention or autism spectrum disorder. *Id.* at T51. Additional behaviors associated with autism were rated in the Above Average range by the teachers and Parents as well, meaning these are seen as concerns in both the home and school settings. *Id.*; *see also* J3, p. 16. While this should not be interpreted as the presence of autism, the results suggest that the Student demonstrates some behaviors often seen among children on the autism spectrum. J3, p. 16.

Behavior Rating Inventory of Executive Functioning

26. The Behavior Rating Inventory of Executive Functioning, Second Edition (BRIEF2) is a questionnaire designed to assess executive functioning abilities in students ages 5-18. Santiago at T51-52. The BRIEF2 is a valid and reliable instrument to assess executive functioning in a student of the Student's age and was administered by Ms. Santiago pursuant to the test manufacturer's instructions. *Id.*

27. The BRIEF2 rating scales were completed in February 2018 by the Student's special education teacher, Parents, and the Student. J3, p. 16. Overall, the Student appears to struggle

to adjust to change in routine or task demands, and at times struggles to modulate emotions, more so in the school setting than home setting. *Id.* at p. 17. The Student's self-report scores indicated mild concerns in his ability to modulate his emotions. *Id.*

Functional Behavioral Assessment

28. Ms. Santiago determined that more information regarding factors impacting the Student's school attendance would be useful, and a Functional Behavioral Assessment (FBA) was completed as part of the reevaluation. Santiago at T36; J4. The FBA addressed the behavior of school refusal. Santiago at T36. Ms. Santiago and Laurel Star Butterton, the District's behavior specialist, collaborated on the FBA. *Id.* at T54; Testimony of Butterton at T114-115.

29. Ms. Butterton has a Master of Arts degree in Teaching - Behavioral Disorders, is a Board Certified Behavior Analyst, and has worked as a Behavior Intervention and Autism Specialist for the District for over ten years. D2. In this role, Ms. Butterton's primary responsibility is to analyze the behavior of secondary students with behavioral challenges. Butterton at T114.

30. The FBA included interviews with and observations of the Student, Parent information, input from school and PAL program staff, and a review of attendance data. Santiago at T54-59; Butterton at T115. The FBA also considered whether the school-refusal behaviors of the Student's sister impact the Student. J4, p. 4. Although the Parents objected to the Student's sister being referred to in the FBA, Ms. Butterton explained it is significant that another child in the same household has similar behaviors, and thus it was considered among all the contributing factors. Butterton at T118-119.

31. The FBA also included input from Dr. Araujo that was provided during a phone conference with Ms. Butterton, and information about interventions and contributing factors was provided by Dr. Araujo during the January 3, 2018 IEP meeting. Butterton at T115; Santiago at T54-59; Testimony of Buijten at T148. A letter dated March 31, 2017 from Dr. Araujo was reviewed as well. J4, p. 3; see P38. Ms. Butterton did not call Dr. Araujo during the evaluation because she felt they had an ongoing relationship, and there had not been changes regarding the Student between the January 2018 IEP meeting and the March 2018 evaluation. Butterton at T117, 123-124. The FBA incorporated recommendations and strategies that came directly from Dr. Araujo. *Id.* at T123.

32. In addition, the FBA looked at the School Refusal Assessment Scale-Revised, designed to evaluate school-refusal disorder symptoms in children and identify their reasons for avoiding school. J4, p. 4. The Student's input on this scale was consistent with other rating scales completed as part of the reevaluation, parent and teacher input, and observations. *Id.*; Santiago at T61-63.

33. Through the FBA, it was determined that the primary function of the Student's behavior is avoidance of stimuli provoking negative affectivity, which means the Student avoids coming to school or refuses to go to different classes in order to avoid the anxiety he feels related to school attendance. J4, p. 4. Although the Parents disagree with this finding and allege that the Student loves school and wants to attend, this is contradicted by the Student's own expressions during the evaluation. The Student reported that he doesn't like to be at school, he would like to quit

school and not come to school, school is boring, and "I ALMOST ALWAYS HATE SCHOOL." Santiago at T62; J3, p. 13 (emphasis in original).

34. The Student identified social stressors related to interactions with peers as the primary cause of his anxiety. J4, p. 4. Under the section titled "Interventions," the FBA discussed concerns regarding the Student's interactions with peers and teachers during passing periods, and the Student is given the opportunity to leave class a few minutes early to avoid these possible stressful situations. *Id.* at p. 3. Under the "Contributing Factors" section, the FBA discussed the Student's difficulty interpreting social interactions, which can lead to feelings of being bullied or harassed. *Id.* at pp. 3-4. It was noted that the Student is very sensitive to touch, and friendly pats or touches from friends are bothersome and hurtful; these feelings can lead to severe anxiety. *Id.* at p. 4. The setting and triggers that precede the target behavior were identified as unstructured times and transitions in the school setting when social interactions, verbal taunting, or horseplay with peers are more likely to occur. *Id.* A plan is in place to allow the Student to go to the main office and/or counseling office to work through coping and calming strategies when he reports feeling bullied or harassed by peers. *Id.* However, when presented with prompts to encourage him to use these strategies, the Student instead calls his mother who then picks him up. *Id.*

35. The FBA revealed a second function of the Student's behavior as access to a "tangible," which in the Student's case means not having to leave home or returning home when at school in order to gain access to his parents, electronics, and a quiet place away from others. *Id.* A third function of the Student's behavior is attention seeking, particularly from his parents. *Id.* The FBA concluded that a behavior intervention plan (BIP) is required for the Student. *Id.* at p. 5.

Motor Assessment

36. The Student has received occupational therapy as a related service to support math goals, primarily due to difficulty with generating text in a neat and timely manner for completing math word problems. Testimony of Dunn at T102-103; J3, p. 18.

37. As part of the reevaluation, the Student was assessed by Katherine Dunn. Ms. Dunn has been an occupational therapist with the District since 2001.⁵ Dunn at T101-102. Ms. Dunn holds Bachelor's degrees in consumer science and occupational therapy and is a national board certified, licensed, and registered occupational therapist. *Id.* at T102. She also holds an educational staff associate's certificate, which allows her to work with students in the public schools. *Id.* Following her assessment of the Student, Ms. Dunn prepared the Motor section of the evaluation report. Dunn at T102; see J3, pp. 18-19.

38. Ms. Dunn assessed the Student's handwriting via teacher input, review of records and therapy data, work samples, and a functional assessment of current skills. J3, p. 18. Input was received from Ms. Dorman, the Student's math teacher, who reported that the Student no longer had difficulties in her classroom aligning letters, words, and numbers that are needed on class worksheets. Dunn at T103. Ms. Dunn reviewed writing samples by examining work papers in the Student's backpack, and had the Student do timed writings for her. *Id.* at T104.

⁵ Ms. Dunn left the District for the 2006-2007 school year.

39. Ms. Dunn concluded that any further improvements with neatness, legibility, and speed are now best being met and challenged via everyday writing practice across the Student's academic environments at school. J3, p. 19. The Student is able to approximate touch typing, and this is a good alternative, though it should not be his only means of generating text. Dunn at T108-109. Ms. Dunn did not feel that any additional data was necessary to complete this portion of the reevaluation, and the Parents did not request that she gather any further data. *Id.* at T106.

Eligibility Determination and Recommendations

40. A team of District staff and the Mother met on March 6, 2018 to discuss the reevaluation and FBA. Santiago at T64. The members of the reevaluation team, including the Mother, signed and dated the evaluation report. *Id.* at T66; J3, p. 21; J4, p. 6. The team discussed whether the Student continued to need occupational therapy services due to a concern noted by his PAL program teacher. Santiago at T68. The team concluded that when the Student slows down and takes his time, he is able to write in a legible way. *Id.*

41. During the March 6, 2018 meeting, the Mother did not ask the District to gather additional data, perform additional testing, or obtain additional information from outside providers or the PAL staff. *Id.* at T64. The team did not feel any additional data was necessary to complete the reevaluation because they had utilized a variety of strategies, assessment instruments, and observations, and they had enough data to determine the Student's continued eligibility for special education and SDI. *Id.* at T64-65.

42. The reevaluation was completed within thirty-five days of the District receiving the Mother's signed consent. *Id.* at T65-66.

43. On March 12, 2018, the District provided a PWN to the Parents regarding the results of the reevaluation and FBA. J5. This PWN addressed the Student's continuing qualification for special education services under the Autism eligibility category and need for SDI in the areas of social-emotional/behavioral and math. *Id.* The PWN also referenced the Student's extensive absence history and the need to create a Behavior Intervention Plan (BIP) from information gained through the FBA. *Id.*

Parents' Criticism of the District's 2018 Reevaluation

44. On March 23, 2018, the Parents requested an IEE with a FBA at public expense. P3. On March 30, 2018, the District filed the due process hearing request to defend its evaluation. P5.

45. In written statements and testimony, the Parents asserted that the District's evaluation was inadequate because it should have included input from Dr. Araujo, Dr. Soo-Jeong Kim at the Children's Autism Center, and Stephanie Frisch with the PAL program. Testimony of Mother at T159-160; P3; P56.

46. The January 30, 2018 PWN advised the Parents as follows: "If you have additional evaluations or reports not yet provided the district please send them to the school psychologist at [the Student's] Middle School." J1. This statement is included in the PWN because the District requests additional input from outside providers that may be beneficial in determining continued eligibility. Santiago at T31. It is helpful to the District to review additional standardized

assessments if they have been completed rather than to re-administer them. *Id.* The District did not receive additional evaluations or reports from the Parents for the reevaluation. *Id.*

47. The Parents did not talk with Dr. Araujo about providing information for the reevaluation. Mother at T159. Nevertheless, as referenced above, the District reviewed input from Dr. Araujo received since the last evaluation through her communications with District staff. Dr. Araujo participated in the January 2018 IEP meeting, and the Student's diagnoses and symptoms did not change over the next two months. Mother at T160-161. Information and recommended interventions from Dr. Araujo were incorporated into the FBA. Santiago at T24, 57-58. The evidence supports finding that current information from Dr. Araujo was considered as part of the reevaluation.

48. The Parents did not provide information or records from Dr. Kim for the reevaluation. However, Dr. Araujo communicates with Dr. Kim regarding the Student. Araujo at T188. Dr. Araujo was aware that Dr. Kim provided the Student with a diagnosis of Tourette's syndrome in October 2017, which was an updated diagnosis following Dr. Araujo's initial 2013 diagnosis of tic disorder. *Id.* at T189-190. For purposes of Dr. Araujo's treatment of the Student, the updated Tourette's diagnosis was not relevant because tics and Tourette's syndrome are very closely aligned with one another. *Id.* at T191. Dr. Araujo treats tic disorder the same as she treats Tourette's. *Id.* The Parents did not identify what specific information, other than this updated diagnosis, would have been provided by Dr. Kim for the reevaluation had they requested it.

49. The Parents did not provide information or records from Ms. Frisch at the PAL program for the reevaluation. However, as referenced above, both the reevaluation and the FBA included a review of notes from Ms. Frisch. The Parents did not identify what additional information would have been provided by Ms. Frisch for the reevaluation had they requested it.

50. The Parents also assert that the reevaluation should have considered bullying alleged by the Student, and they refer briefly to prior requests for the Student to receive "Home Hospital/Homebound assistance." P3. Dr. Araujo asked the Mother to request an IEE because Dr. Araujo believed the BIP, which was developed after the reevaluation and FBA, needed to address the stresses of the Student's school environment. Testimony of Araujo at T177-178. As referenced above, the issues of bullying and the Student's tic spasms, social-emotional needs, and social skills were addressed in the reevaluation and FBA. The provision of home hospital or homebound assistance is not within the scope of this proceeding and thus is not addressed here.

CONCLUSIONS OF LAW

Jurisdiction

1. OAH has jurisdiction over the parties and subject matter of this action for OSPI 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).

Burden of Proof

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, 126 S. Ct. 528 (2005). The District is the party seeking relief in this case, so the District has the burden of proof.

The IDEA

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 *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982), the Supreme Court established both a procedural and 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.

Id. at 206-207 (footnotes omitted).

4. A "free appropriate public education" consists of both the procedural and substantive requirements of the IDEA. The *Rowley* court articulated the following standard for determining the appropriateness of special education services:

[A] 'free appropriate public education' consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child 'to benefit' from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a 'free appropriate public education' [FAPE] as defined by the Act.

Id. at 188-189.

5. The Supreme Court recently clarified the substantive portion of the *Rowley* test quoted above: "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...[H]is educational program must be appropriately ambitious in light of his circumstances..." *Endrew F. v. Douglas County Sch. Dist. RE-1*, ___ U.S. ___, 137 S. Ct. 988, 999-1000 (2017).

6. The Ninth Circuit has explained the *Endrew F.* standard as follows:

In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can "make progress in the general education curriculum," 137 S. Ct. at 994 (citation omitted), taking into account the progress of his non-disabled peers, and the child's potential.

M.C. v. Antelope Valley Union High Sch. Dist., 858 F.3d 1189,, 1201 (9th Cir.), *cert. denied*, ___ U.S. ___, 138 S. Ct. 556 (2017).

IEEs and Evaluations under the IDEA⁶

7. Parents of a student eligible for special education have the right to obtain an IEE at public expense if they disagree with a school district's evaluation under certain circumstances. WAC 392-172A-05005(1); 34 CFR 300.502(a)(1). An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district. WAC 392-172A-05005(1)(c)(i); 34 CFR 300.502(a)(3)(i). Public expense means that the district either pays the full cost of the evaluation or ensures the evaluation is otherwise provided at no cost to the parent. WAC 392-172A-05005(1)(c)(ii); 34 CFR 300.502(a)(3)(ii).

8. If a parent requests that a district provide an IEE, the district must either ensure that an IEE is provided at public expense without unnecessary delay or initiate a due process hearing within 15 days to show that its evaluation is appropriate. WAC 392-172A-05005(2)(c); 34 CFR 300.502(b)(2). In this case, the Parents notified the District of their disagreement with the Student's reevaluation and requested an IEE. In response, the District timely initiated a due process hearing.

9. A reevaluation must be conducted at least every three years unless the parent and the district agree that a reevaluation is unnecessary. WAC 392-172A-03015(2)(b); 34 CFR §300.303(b)(2). Reevaluations must also be conducted when a school district determines that a student's educational or related services needs warrant a reevaluation or when a student's parent or teacher requests a reevaluation. WAC 392-172A-03015(1). A reevaluation may not occur more than once a year unless the student's parent and the district agree otherwise. WAC 392-172A-03015(2)(a). The Student was last evaluated in 2015; therefore, re-evaluating the Student in March 2018 was appropriate. The Parents were provided with prior written notice of the reevaluation.

10. WAC 392-172A-03000(3)(a) requires a school district to obtain informed parental consent prior to conducting any reevaluation of a student eligible for special education services. The District obtained informed consent because the Mother signed the Consent for Evaluation. The reevaluation was timely because it was completed within thirty-five school days of the date the Mother consented to the reevaluation.

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 this decision.

11. When a district conducts a special education evaluation, a “group of qualified professionals selected by the 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. If necessary, the district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student’s educational performance. WAC 392-172A-03020(3)(d).

12. In this case, the reevaluation team was composed of qualified professionals, including the District’s school psychologist and behavior specialist, who conducted the assessments. The team used a variety of assessment tools and strategies to gather relevant information about the Student, including multiple standardized assessment tools appropriate to the areas evaluated as well as reviewing records, and obtained information from the Student’s teachers, Parents, and the Student. Accordingly, the team did not use any one measure to as the sole criterion to determine the Student’s eligibility. The team used technically sound instruments or measures to evaluate the Student that were valid and reliable. Nothing in the Student’s health history had changed, and the District had no reason to think a medical statement or assessment would be necessary as part of the reevaluation.

13. Districts must also ensure that assessments are selected and administered to avoid discrimination based on race or culture and administered in the student’s native language or mode of communication. The assessments in this case were administered in the Student’s native language. Assessments must be administered by “trained and knowledgeable personnel” and “in accordance with any instructions provided by the producer of the assessments.” *Id.* The assessments of the Student were administered by Ms. Santiago, who is trained and knowledgeable in the administration of said instruments, and were administered in accordance with the instructions provided by the producers of the evaluation materials.

14. 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.* The reevaluation examined all of the areas of suspected disability including math, cognition, health and development, social/emotional and behavioral, and motor, and the team was not aware of any other areas of suspected disability. Although the Parents contend that the District did not address allegations of bullying, this issue was addressed throughout the FBA. It is concluded that the District’s reevaluation was sufficiently comprehensive to identify all of the special education and related services needed by the Student.

15. The Parents’ claim that the District failed to evaluate the Student’s health and development is not persuasive. Although the “Health & Development” box was not checked as an Area of Evaluation, this was likely an oversight and, at most, a harmless error. The evaluation report includes a section addressing the Student’s health and development based on Ms. Santiago’s review of historical records and updated information from the Mother. Moreover, the Parents declined to complete an updated health history form because, as the Mother confirmed, the Student’s health and diagnoses had not changed. Even if Dr. Kim had updated the Student’s

diagnosis from a tic disorder to Tourette's syndrome, the strategies for working with the Student's symptoms would be the same. The District had no reason to believe further inquiry was needed.

16. WAC 392-172A-03025 concerns the review of existing data for evaluations. It provides that evaluations must review existing evaluation data on the student and identify what additional data is needed to determine whether the student meets eligibility criteria. *Id.*; see also 34 CFR §300.305. The team reviewed the Student's current and past report cards, attendance data, prior assessment results, and information from teacher Stephanie Frisch regarding the Student's progress in the PAL program. The Student's initial 2015 evaluation was also reviewed, which included information from a December 2013 evaluation by Mariam Araujo, PhD. The Student was found to still be eligible for special education, and no additional data was needed to determine whether the Student continued to meet eligibility criteria.

17. The Parents did not provide the District with any additional information from Dr. Araujo, Dr. Kim, or Ms. Frisch, and all indications are that the Student's diagnoses and behaviors have not substantively changed. Information was received from Dr. Araujo on multiple occasions over the course of her involvement with District staff and was considered as part of the reevaluation, as was information from Ms. Frisch. For these and the reasons discussed above, the Parents' claims that the District failed to consider information from Dr. Araujo, Dr. Kim, and Ms. Frisch are unpersuasive.

18. WAC 392-172A-03040 concerns eligibility determinations, and provides in pertinent part as follows: Upon completing the evaluation assessments, a group of qualified professionals 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. Following completion of the assessments, the District professionals and the Mother met to determine the Student's ongoing eligibility for special education. A variety of documented sources were carefully considered and drawn upon, including input from the Parents, Student, teachers and PAL program staff, other District professionals who work with the Student, input received from Dr. Araujo's participation in multiple IEP meetings, phone conferences, and through correspondence, and a number of assessments.

19. Finally, WAC 392-172A-03035 concerns evaluation reports. It requires that evaluation reports 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, the recommended special education and related services the student needs, and other information, as determined through the evaluation process and parental input, needed to develop the IEP. The report must document the results of the individual assessments or observation by each professional member of the group and include the date and signature of each, certifying that the evaluation report represents his or her conclusion. *Id.*; see also 34 CFR §300.304-.306. In this case, the evaluation report contains an eligibility statement along with discussion of the assessments conducted and data reviewed that were sufficient to support the eligibility conclusion. The evaluation report discusses the impact of the Student's disability on his academic

performance and includes recommendations for special education and related services to support the Student's needs in light of his disabilities. The report documents the individual assessments or observations and is dated and signed by each professional member of the evaluation group. Therefore, the District's reevaluation report complies with WAC 392-172A-03035 as it includes each of the minimum requirements.

20. 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. The Parents raised issues that are not relevant to this proceeding, which only involves the appropriateness of the District's evaluation for purposes of determining whether the Parents are entitled to an IEE. Those other issues, including the Parents' disagreements about the reason(s) for the Student's attendance issues, the origins of the Student's participation in the PAL program, and some of the conclusions reached by the IEP team as a result of the reevaluation including changes to occupational therapy and the Parents' request for "Home Hospital/Homebound, or tutoring," are beyond the scope of this proceeding and thus not considered or addressed herein.

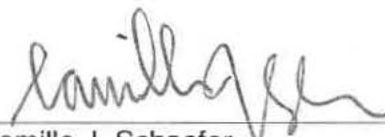
21. Based on the evidence in the record, it is concluded that the District's March 2018 reevaluation of the Student meets the criteria set forth in WAC 392-172A-03020, WAC 392-172A-03025, WAC 392-172A-03040, and WAC 392-172A-03035. It is concluded that the District has shown that its reevaluation of the Student is appropriate. Accordingly, the Parents are not entitled to an IEE at public expense.

22. If a 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(3); 34 CFR 300.502(b)(3).

ORDER

The North Kitsap School District's March 2018 reevaluation of the Student was appropriate. The Parents are not entitled to an independent educational evaluation at public expense.

Signed at Seattle, Washington on June 20, 2018.



Camille J. Schaefer
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. *Law*

Parents



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

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-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.

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.

(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.
