

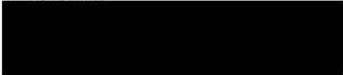


STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
One Union Square • 600 University Street • Suite 1500 • Seattle, Washington 98101
(206) 389-3400 • (800) 845-8830 • FAX (206) 587-5135 • www.oah.wa.gov

MAILED
MAR 07 2019
SEATTLE-OAH

March 7, 2019

Parents



Miriam Tencate, Executive Director of Special Services
Lake Stevens School District
12309 - 22nd St NE
Lake Stevens, WA 98258-9149

Mary V. Griffin, Attorney at Law
PO Box 31626
Seattle, WA 98103-1626

Carlos Chavez, Attorney at Law
Pacifica Law Group LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101

In re: Lake Stevens School District
OSPI Cause No. 2018-SE-0108
OAH Docket No. 10-2018-OSPI-00613

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,

Jacqueline Becker
Administrative Law Judge

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

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

MAILED
MAR 07 2019
SEATTLE-OAH

IN THE MATTER OF:

LAKE STEVENS SCHOOL DISTRICT

OSPI CAUSE NO. 2018-SE-0108

OAH DOCKET NO. 10-2018-OSPI-00613

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

A due process hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Jacqueline Becker in Lake Stevens, Washington, on January 9 and 10, 2019. The Adult Student (Student) whose education is at issue¹ did not attend the due process hearing but was represented by Mary Griffin, attorney at law. The Parents of the Student attended the hearing. The Lake Stevens School District (the District) was represented by Carlos Chavez, attorney at law. Miriam Tencate, Executive Director of Special Services, also appeared for the District.

STATEMENT OF THE CASE

The District filed a Due Process Hearing Request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on October 17, 2018. The Complaint was assigned Cause No. 2018-SE-0108 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered on October 18, 2018. The Parents filed their Response to the Complaint on October 29, 2018.

A prehearing conference was held on November 9, 2018; a prehearing order was issued on November 14, 2018, setting hearing dates for January 9 and 10, 2019.

Evidence Relied Upon

Exhibits Admitted:

District's Exhibits: D1 – D5

Student's Exhibits: P1 – P7, and C-1²

¹ In the interests of preserving the family's privacy, this decision does not name the adult student or the parents. Rather, they are identified as "Parent(s)," "Mother," "Father," and "Student."

² Exhibit C-1 was introduced at the hearing by the Student but had not been exchanged ahead of time. It was marked as C-1 and admitted as such without objection.

Witnesses Heard (in order of appearance):

The Father (called by both the District and the Student);
Allison Brooks, Ph.D., psychologist at the Brooks Powers Group;
Katrina Carlson, online school psychologist for the District;
Darlene Flanagan, District speech-language pathologist;
Keri Joseph, District Director of Special Services; and
The Mother.

Post-Hearing Briefs

The parties agreed that post-hearing briefs would be filed and exchanged by February 8, 2019. Receipt-date stamping of the post-hearing briefs was delayed within OAH due to inclement weather. The undersigned finds that the post-hearing briefs were timely filed.

Due Date for Written Decision

As set forth in the Prehearing Order of November 14, 2018, the due date for a written decision in this case was continued to thirty (30) calendar days after the close of record on the District's motion. The record closed with the receipt of the post-hearing briefs on February 8, 2019, so the due date for the written decision is **March 10, 2019**.

ISSUE

The issue addressed in the due process hearing was whether the District's reevaluation of the Student, dated May 22, 2018, is appropriate and, if not, whether the District should pay for an independent educational evaluation of the Student.

FINDINGS OF FACT

Background

1. The Student at issue turned eighteen years old between the filing of the Complaint and the due process hearing, and was eighteen years old (and therefore an adult student) at the time of the due process hearing.
2. The Student has attended school in the District since 2010, and is currently enrolled in high school.
3. The Student was diagnosed with autism at age five and with attention deficit hyperactivity disorder, combined type (ADHD) at age eight. The Student's additional diagnoses include unspecified anxiety disorder, unspecified depressive disorder, and specific learning disorder with impairments in written language. D1, p.11.³

³ "D", "P" and "C" refer to the specified exhibit, and "Tr." refers to the transcript of proceedings.

4. The Student is eligible for special education and related services under the category of autism. D1, p.7.
5. The Student has experienced multiple health problems over the past several years. He continues to experience vasovagal syncope, a condition that causes him to sometimes lose consciousness during periods of stress. Tr. p.173 (Father). He experienced severe abdominal pain, "abdominal migraines," and rectal bleeding, which necessitated assessment via a colonoscopy and endoscopy. *Id.* He also suffered from severe headaches and migraines. *Id.* The Student lost a significant amount of weight and at one point, the Student, who is six feet tall, weighed approximately 130 pounds. *Id.* at 174. The Student's health care professionals were not able identify a physical cause of these multiple symptoms, and concluded that the Student's health issues are being caused by stress and mental health challenges. *Id.* at 174 and 193; D1, p.11.
6. On November 29, 2017, at the Student's annual Individualized Education Program (IEP) meeting, the District proposed to initiate an early reevaluation of the Student in order to gather information regarding his inconsistent attendance and increased anxiety around attending school. C1, p.2. The Student attended school very sporadically after November 9, 2017, when he received a disciplinary write-up for refusing to obey a teacher. Tr. pp.176-77 (Father); D1, p.20. He stopped attending school altogether on February 13, 2018. D1, p.20.
7. On March 11, 2018, the Father gave consent for the early reevaluation of the Student. The Father identified "sensory processing" as an area of need to be considered in the assessment. D1, p.4. The reevaluation Notification/Consent provided that the reevaluation was to address multiple areas, including Medical-Physical and Age Appropriate Transition Assessment. D1, p.3.
8. The District first proposed use of an online, remote school psychologist to conduct the reevaluation. Tr. p.106 (Carlson). The Parents did not think this would be a good choice for the Student, in part because the Student no longer trusted the District. Consequently, an outside evaluator, the Brooks Powers Group (Brooks Powers), was selected by the District to perform part of the reevaluation. Tr. pp.106 (Carlson), 171 (Father). The remainder of the reevaluation, including the sensory processing and communication assessments, were conducted by the District. D1, p.5.
9. The Student signed releases permitting Brooks Powers to obtain information from the following individuals: nurse practitioner Jennifer Mannheim of the Seattle Children's Autism Center, who has provided care for the Student since 2011; Sarah Humberstone, the Student's eighth grade teacher; and Brandy George, the Student's mental health counselor. Tr. pp.198-99 (Mother). The evaluators at Brooks Powers informed the Mother and the Student that, if the evaluators wished to obtain information directly from Dr. Ruth Parish, the Student's pediatrician, they would so inform the Student and Mother and would request a release. Tr. p.201 (Mother).
10. The Student and Parents electronically provided the evaluators with a large amount of written information (3.4 gigabytes) regarding the Student, including medical reports, attendance records, and daily report sheets. Tr. pp.53, 56-57 (Father).
11. The Student was evaluated by Brooks Powers on the following dates: March 27, April 3, April 5, and April 10 of 2018. The evaluation was performed by clinicians Rachel Montague, Ph.D.,

and Allison Brooks, Ph.D. D1, p.56. Dr. Brooks⁴ is the director of the clinical services team at Brooks Powers. Tr. p.64 (Brooks). Dr. Montague⁵ is a licensed clinical psychologist at Brooks Powers. *Id.* The Observation Report and Recommendations section of the evaluation was completed by Ashley Hales, a board certified behavior analyst (BCBA) at Brooks Powers. *Id.* at 67-68.

12. Brooks Powers produced a 48-page evaluation report of the Student, as well as a 27-page "Observation Report & Recommendations" pertaining to the Student (collectively the Brooks Powers Report). D1, pp.56-130. This is somewhat longer than typical evaluation reports prepared by Brooks Powers. Tr. p.66 (Brooks).

13. The evaluators at Brooks Powers did not speak to any of the Student's physicians. Tr. p.72 (Brooks).

The May 22, 2018 Reevaluation

14. The Brooks Powers Report was incorporated into the District's May 22, 2018 reevaluation (the "May 2018 reevaluation" or "the reevaluation") of the Student by use of "IEP Online" software. Katrina Carlson,⁶ an online school psychologist hired by the District, performed the incorporation. Tr. pp.102-103 (Carlson), 131(Joseph).⁷ The May 2018 reevaluation consists of 55 pages created by the District, and a 75-page addendum consisting of the Brooks Powers Report. D1, pp.1-130.

15. The reevaluation begins with a review of existing data and a summary. It sets forth recommendations to the IEP team. Those recommendations state that the Student now requires specially designed instruction in the area of written expression, continues to qualify for specially designed instruction in behavior/social-emotional, and qualifies for specially designed instruction

⁴ Dr. Brooks holds a bachelor of arts degree in psychology from Carleton College, a master of education in school psychology degree from the University of Washington, and a Ph.D. in school psychology from the University of Washington. She is a licensed psychologist. She currently holds positions as co-director and psychologist at Brooks Powers, and as lead psychologist at the Interdisciplinary Diagnostic Clinic of the Fetal Alcohol Syndrome Diagnostic and Prevention Network of the University of Washington. D4.

⁵ Dr. Montague holds a Ph.D. in clinical psychology from Seattle Pacific University. She completed a postdoctoral fellowship through Seattle Children's Autism Center and Seattle Children's Research Institute. D3, p.6.

⁶ Ms. Carlson holds a bachelor's degree in psychology from Brigham Young University, a master's degree in educational psychology from Pacific Lutheran University, and a postgraduate master certificate in school psychology from Eastern Washington University. Tr. p.100 (Carlson).

⁷ Keri Joseph is Director of Special Services for the District. She was a member of the reevaluation team. Ms. Joseph holds a bachelor's degree in education from Western Washington University, and a master's degree in education as well as a master's degree in educational leadership, both from the University of Washington. She is credentialed to teach special education in K-12. Tr. p.124 (Griffin).

in organizational skills to support his educational environment. Communication is a related recommended service. D1, p.8.

16. The reevaluation is signed by 10 evaluation team members. Those members include a general education teacher, a special education teacher, the Father, Tom Powers of Brooks Powers, and Rachel Montague of Brooks Powers, among others. D1, p.10.

17. The reevaluation contains a medical–physical evaluation section. This section notes the Student’s history of migraine headaches, dizziness, stomach pain, and vasovagal syncope. The reevaluation references workups completed by Seattle Children’s neurology, gastrointestinal, and cardiology departments, but notes that no significant concerns were raised by those workups. The reevaluation notes that the Student’s stomach pain was determined to be abdominal migraines. It further notes that the Student has been closely followed for several years by nurse practitioner Jennifer Mannheim, ARNP, of the Seattle Children’s Autism Center. The section references the Student’s 28-pound weight loss during the winter of 2017–18, as well as his sensitivity to tastes and textures. It also describes sleep-related issues faced by the Student, as well as his severe anxiety. The report notes obsessive-compulsive behavior including “stutter-step” behavior where the Student repeats his steps when the flooring transitions, and/or walks in a pattern, and/or retreats from a room via the same path from which he entered. D1, p.11.

18. The medical–physical evaluation section also contains an “educational implications” paragraph. It states, in part, “Student’s neurodevelopmental disabilities (autism spectrum disorder, ADHD, writing fluency disability, anxiety and mood) manifest as challenges that interfere with his ability to fully access an educational program. The interplay between each of these disability areas can exacerbate severity of all of them... .” *Id.*

19. The reevaluation contains a general education section. Interviewed for this section were Megan Britton, the Student’s IEP case manager and special education teacher; the Student’s 10th grade English teacher; the Student’s 11th grade math teacher; and the Student’s middle school special education teacher. D1, pp.12-14.

20. The reevaluation contains an adaptive functioning assessment, a behavior/social-emotional assessment, a cognitive assessment, an academic assessment, a fine motor assessment, an evaluation history, and an executive functioning assessment. D1, pp.1-47. A variety of assessment tools and strategies were used to gather relevant information about the Student, including but not limited to: direct observation, interviews, records review, the Wechsler Adult Intelligence Scale-Fifth Edition, the Kaufman Test of Educational Achievement–Third Edition, the Clinical Evaluation of Language Fundamentals–Fifth Edition, and the Beery-Buktenica Developmental Test of Visual-Motor Integration–Sixth Edition.

21. The reevaluation further includes two assessments completed by the District: a sensory processing assessment and a communication assessment. The communication assessment was

conducted by Darlene Flanagan, a speech-language pathologist for the District.⁸ Tr. p.112 (Flanagan). Ms. Flanagan concluded that the Student has very good form and content language skills, but has deficits in his pragmatic language skills.

22. The sensory processing assessment was performed by District occupational therapist Kristy Uddin. D1, p.38. Ms. Uddin concluded that occupational therapy services were not needed. *Id.* at 40.

23. The behavior/social-emotional assessment was conducted by Dr. Montague and specifically addresses the Student's school absences. His history of absenteeism is set forth in detail. D-1, p. 20. Following a disciplinary referral on November 9, 2017, the Student attended his first three periods of class only once. He stopped attending his fifth and sixth period classes entirely. Between November of 2017 and February 13, 2018, the Student attended only his fourth period digital electronics class. Disciplinary referrals were noted to correlate with the Student's decreased attendance. The associate principal of the Student's high school emailed the Student's family on January 31, 2018, regarding a communication from the parents of a female student. Those parents expressed concerns about the Student's behavior toward their daughter and an inappropriate statement he made which caused her to feel uncomfortable. This email greatly exacerbated the Student's anxiety, and he stopped attending school altogether on February 13, 2018. *Id.*

24. The School Refusal Assessment Scale was completed by the Student and his Parents to determine what factors were contributing to his absenteeism. It was noted that the Student wants to go to school, but does not attend primarily due to bad feelings about being at school, worry about interactions with staff, and concern about getting in trouble. D1, p.16. "Avoidance of stimuli provoking negative affectivity" is the most powerful contributor to the Student's absenteeism. *Id.* The Student reported that he always feels worse at school than at home. The reevaluation emphasizes that it will be important to address these issues with ongoing therapeutic services, and to closely monitor the Student's mental health. *Id.*

25. The addendum to the reevaluation provides lengthy social, emotional, and behavior recommendations. The twelve recommendations include a social coach, rapport-building strategies, anxiety-targeting strategies, and a behavior plan, among other things. D1, pp.82-88. The addendum also provides recommendations for data collection, academics, executive functioning, and communication. *Id.* at 88-93.

26. The Student contends that the reevaluation was inappropriate because it lacked a "transition plan" for the Student. Tr. p. 185 (Father); Adult Student's Post-Hearing Brief. There was conflicting testimony at the hearing regarding whether an age-appropriate transition assessment was performed as part of the reevaluation.⁹ Ms. Carlson testified that Brooks Powers was not able

⁸ Ms. Flanagan holds a bachelor of arts degree in communication disorders from Eastern Washington University, and a master of science degree in speech-language pathology from Nova Southeastern University in Florida. Tr. p.112 (Flanagan).

⁹ "Transition" is the process of leaving high school and moving into a job or another educational setting. Tr. p.83 (Brooks).

to do the transition assessment. She stated that such an assessment is usually done by a case manager. Tr. pp. 107-08 (Carlson).

27. In contrast, Dr. Brooks and Ms. Joseph testified that components of the transition assessment are found throughout the reevaluation. Tr. 154-56 (Joseph). Dr. Brooks testified that Brooks Powers completed a comprehensive transition assessment. She acknowledged that the specific title or terminology "transition assessment" is not typically used in Brooks Powers' clinical reports, but that the information relevant to transition is covered in the overall report. Tr. p.87 (Brooks). According to Dr. Brooks, "we consider transition more broadly than simply vocation." *Id.* at 86. An age-appropriate transition assessment includes assessment of a student's needs, preferences, and interests. It also examines vocational skills, independent living ability, educational issues, and other areas. Tr. pp.86-87 (Brooks). A clinical interview is part of a transition assessment. Observations from the school setting, such as chosen course electives, are also part of a transition assessment. Tr. pp. 138-140 (Brooks). Classroom behaviors, adaptive assessments, behavior and social-emotional assessments, as well as communication, sensory processing, and executive function assessments all form part of a transition assessment. Tr. pp. 154-56 (Joseph).

28. Information pertaining to the areas set forth above are contained in the reevaluation in numerous sections, such as social skills, emotional skills and adaptive behavior. *Id.*

29. The actual transition plan, as opposed to the assessment, would be found in the Student's IEP, not in the reevaluation. Tr. pp. 109 (Carlson), 154 -156 (Joseph). The Student's IEP contains a transition plan that was reviewed at the Student's IEP meeting, which occurred on August 30, 2018. Tr. pp. 108 (Carlson); 132, 147-48 (Joseph).

30. Having weighed the conflicting testimony related to the transition assessment, and related to the distinction between a transition assessment and a transition plan, the undersigned concludes that the opinion and testimony of Dr. Brooks and Ms. Joseph outweigh the testimony of Ms. Carlson. An age-appropriate transition assessment is contained within the May 2018 reevaluation. The reevaluation provided adequate information to enable the IEP team to develop a transition plan for the Student. While it may have been more clearly presented if the transition-related information had been summarized under one clear heading, the fact that the information is contained in various sections of the reevaluation does not negate the fact that the information is, in fact, contained in the reevaluation.

31. The Parents and Student were provided with the lengthy Brooks Powers Report one day prior to the May 22, 2018 reevaluation meeting. Tr. p. 181 (Father).

32. The District was not provided with a list of the Student's medical providers or with releases to talk to any of those medical providers. Tr. 53 (Joseph).

33. The Student contends that the reevaluation report was inappropriate because Dr. Ruth Parish (the Student's pediatrician) was not interviewed by the evaluators and hence did not directly provide medical information regarding the Student. Adult Student's Post-Hearing Brief.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 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 pursuant to these statutes, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).
2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. *See Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Since the District is the party seeking relief in this case, it has the burden of proof. Neither the IDEA nor OSPI regulations specify the standard of proof required to meet a party's burden of proof in special education hearings before OAH. Unless otherwise mandated by statute or due process of law, the U.S. Supreme Court and Washington courts have generally held that the burden of proof to resolve a dispute in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 98-102, 101 S. Ct. 999 (1981); *Thompson v. Department of Licensing*, 138 Wn.2d 783, 797, 982 P.2d 601 (1999); *Hardee v. Department of Social & Health Services*, 172 Wn.2d 1, 256 P.3d 339 (2011). Therefore, the District's burden of proof in this matter is preponderance of the evidence.

The IDEA

3. The IDEA and its implementing regulations provide federal funding 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) (*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.

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.

Independent Educational Evaluation (IEE)

5. Parents have a right to obtain an IEE if they disagree with a school district's evaluation of their child, under certain circumstances. WAC 392-172A-05005(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, at district expense. WAC 392-172A-05005(c)(i); 34 CFR 300.502(b). If a parent requests an IEE, a district must either ensure that an IEE is provided at public expense without unnecessary delay or initiate a due process hearing within 15 calendar days to show that its evaluation is appropriate. WAC 392-172A-05005(c).

6. When a student eligible for special education reaches the age of 18, all rights accorded to the parents under Chapter 392-172A WAC transfer to the student. Therefore, in the present matter, the Student has the right to obtain an IEE under certain circumstances, as set forth above. WAC 392-172A-05135.

Evaluations and Reevaluations

7. 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 be completed within 35 school days after the date that written consent for an evaluation has been provided to the district by the parent. WAC 392-172A-03015(3).

8. The District is required to follow the requirements for evaluations set forth in WAC 392-172A-03020, which provides:

Evaluation procedures.

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

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

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

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

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

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

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

(3) Each school district must ensure that:

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

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

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

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

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

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

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

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

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

(e) The student is assessed in all areas related to the suspected disability, including, if

appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

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

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

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

See also 34 CFR 300.304.

9. The District is also required to follow the requirements for evaluations set forth in WAC 392-172A-03025, which provides:

Review of existing data for evaluations and reevaluations.

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

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

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

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

(c) Observations by teachers and related services providers.

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

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

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

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

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

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

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

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

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

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

See also 34 CFR 300.305.

10. Likewise, the District is required to follow the requirements for evaluation reports set forth in WAC 392-172A-03035, which provides:

Evaluation report.

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

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

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

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

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

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

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

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

The May 22, 2018 Reevaluation

11. Whether the May 22, 2018 reevaluation was appropriate is the question properly at issue in this proceeding.
12. The District provided the Parents with prior written notice of the May 22, 2018 reevaluation. The Father signed the reevaluation notification/consent on March 11, 2018.
13. As set forth above, a "group of qualified professionals" must conduct the evaluation, and assessments and other evaluation materials must be administered by "trained and knowledgeable personnel." WAC 392-172A-03020(2) and (3)(iv). The May 2018 reevaluation was conducted by a group of qualified professionals. The education, training, and experience of the individuals who participated in the reevaluation provided the qualifications necessary to conduct the reevaluation. The District has offered more than sufficient evidence to establish those qualifications and the Student has not raised any challenge to that evidence.
14. The District has demonstrated that it used a variety of assessment tools and strategies to gather relevant information about the Student. A multitude of standardized assessments were administered to the Student by a variety of professionals. Information was gathered from the Parents and other sources.
15. No single measure or assessment was the sole criterion for determining the Student's eligibility for special education, and technically sound instruments were used to assess cognitive, behavioral, physical and developmental factors.
16. As set forth above, "if necessary as part of a complete assessment," a school district must ensure that it "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). The Student contends that, because the May 2018 reevaluation does not contain a medical statement by a physician or a nurse practitioner, this requirement has not been met. Adult Student's Post-Hearing Brief at pp. 9-10.
17. The evidence is clear that the Student underwent extensive examinations by health care professionals in order to determine if any of his physical symptoms were caused by a medical condition. The health care professionals identified no medical conditions that would cause the symptoms, and concluded that the Student's health issue were the result of stress and mental health challenges. Findings of Fact ¶5. This is reflected in the medical-physical evaluation section of the reassessment which notes that the Student underwent neurological, gastrointestinal and cardiac workups at Seattle Children's, but no significant medical concerns were raised by those examinations. The Student presented no evidence that the medical-physical portion of the reevaluation contains inaccuracies. In light of the fact that there was no reason to suspect that a medical issue constituted a "factor that may be affecting the Student's educational performance," there was no need for the evaluators to obtain a medical statement or assessment from a health care provider in order to develop an appropriate reevaluation of the Student.¹⁰

¹⁰ Even if the lack of a medical statement or assessment did constitute a procedural violation of the IDEA, it would not render the May 2018 reevaluation inappropriate. The record demonstrates that the evaluators

18. The Student also contends that the District failed to perform an age-appropriate transition assessment, thus rendering the May 2018 reevaluation inappropriate. The evidence does not support this contention. The fact that the information pertaining to the transition assessment is contained in various sections of the reevaluation does not negate the fact that the information is, in fact, contained in the reevaluation. A district's evaluation is held to a standard of "reasonableness." *J.S. and T.S., Parents of C.S v. Shoreline School Dist.*, 220 F.Supp. 1175, 1185 (W.D. Wa. 2002). The transition assessment information contained within the May 2018 reevaluation is both appropriate and reasonable.

19. The record establishes that the Student was assessed in all areas related to his suspected disabilities. The reevaluation therefore complied with the requirements set forth in WAC 392-172A-03020, -03025, and -03035.

20. The District has established by a preponderance of the evidence that it fully complied with the evaluation procedures set forth in WAC 392-172A-03020, -03025, and -03035 when it conducted the May 22, 2018 reevaluation of the Student. The reevaluation was appropriate. The Student is therefore not entitled to an independent educational evaluation at public expense.

ORDER

The District's request for relief is **GRANTED**. The Student is not entitled to an independent educational evaluation at public expense.

Signed at Seattle, Washington on March 7, 2018.



Jacqueline Becker
Administrative Law Judge
Office of Administrative Hearings

reviewed the Student's medical reports and incorporated their contents into the reevaluation. Any arguable violation of WAC 392-172A-03020(3)(d) did not affect the validity of the reassessment. Not all procedural flaws require a finding of the denial of IDEA rights. *Ford v. Long Beach Unified Sch. Dist.*, 291 F.3d 1086, 1089 (9th Cir. 2002)(denying a request for an IEE at public expense based upon minor deficiencies in the district's evaluation).

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.



Parents



Miriam Tencate, Executive Director of Special Services
Lake Stevens School District
12309 - 22nd St NE
Lake Stevens, WA 98258-9149

Mary V. Griffin, Attorney at Law
PO Box 31626
Seattle, WA 98103-1626

Carlos Chavez, Attorney at Law
Pacifica Law Group LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101

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