



STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
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MAILED
Dec 02, 2019
OAH – SEATTLE

December 2, 2019

Parent

[REDACTED]

Scott Irwin, Director of Secondary Student Services
Shoreline School District
18560 - 1st Avenue NE
Shoreline, WA 98155-2148

Adult Student

[REDACTED]

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601 Union Street, Suite 800
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In re: Shoreline School District
OSPI Cause No. 2019-SE-0157
OAH Docket No.10-2019-OSPI-00917

Dear Parties:

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

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

Sincerely,

A handwritten signature in black ink that reads "Anne Senter".

Anne Senter
Administrative Law Judge

cc: Administrative Resource Services, OSPI

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

MAILED
Dec 02, 2019
OAH – SEATTLE

IN THE MATTER OF

OSPI CAUSE NO. 2019-SE-0157

SHORELINE SCHOOL DISTRICT

OAH DOCKET NO. 10-2019-OSPI-00917

**ORDER ON CROSS MOTIONS
FOR SUMMARY JUDGMENT**

Pursuant to the schedule set forth in the first prehearing order, Shoreline School District (District) and the Parent of the Adult Student (Student) whose education is at issue¹ both filed motions for summary judgment. No oral argument was requested. The Parent is representing herself. The District is represented by Lynette M. Baisch, attorney at law.

The following pleadings and declarations were considered in ruling on the motion:

1. Parent's Motion for Summary Judgment;
2. Parent Declaration and Exhibits 1 through 17 thereto;
3. District's Motion for Summary Judgment;
4. Declaration of Amy Vujovich in Support of District's Motion for Summary Judgment and Exhibits A through D thereto;
5. Declaration of Karena Valiquette in Support of District's Motion for Summary Judgment; and
6. Parent's Response to District's Motion; Declaration of Parent and Exhibits A through F thereto.

Based upon the statements of the parties and the pleadings and documents on file herein, the following Order is entered:

Prior orders remain in effect unless otherwise specifically stated.

FINDINGS OF FACT

1. The Student is over 18 years of age. See Parent Decl, Ex. 1. The Student received special education and related services from the District. His most-recent individualized education program (IEP) was developed in January 2019. See *id.* The IEP covered two time periods. The first covered the Student's placement for the remainder of the 2018-2019 school year. *Id.* at 19. The second stage covered the Student's placement for the fall of 2019 when the Student would be receiving services through a community-based program. *Id.* at 20.

¹ The Parent is also the Student's legal guardian. To ensure confidentiality, names of parents and students are not used.

2. In February 2019, the Parent notified the District she intended to homeschool the Student effective February 4, 2019, and that the Student would continue to attend school for the first three periods of the school day, which were his essential reading, essential English, and adaptive living classes, and for "Highlander Home." Parent Decl., Ex. 2. The Parent expressly noted that she was revoking the Student's placement in a transition program. *Id.* The District issued a prior written notice (PWN), stating that the District would implement the part-time schedule requested by the Parent. *Id.* The PWN did not reflect any changes to the January 2019 IEP, and expressly stated that the IEP continued to be available to him. *Id.*

3. The Parent also submitted to the District a proposed amendment to the Student's IEP, stating that the Student would enroll at Shorecrest High School in the fall of 2019 for specially designed instruction in reading, writing, and math, and that she was revoking all transition program services. Parent Decl., Ex. 4.

4. On June 20, 2019, the Parent revoked in writing her consent for the Student to receive special education services. Parent Decl., Ex. 5. The Parent's notice acknowledged that this would return the student to his prior status as a general education student. *Id.*

5. In response, the District issued a PWN dated June 26, 2019, acknowledging receipt of the Parent's revocation of consent, and discontinuing the Student's special education services. Parent Decl., Ex. 6. The PWN informed the Parent that, once her revocation was effective, the Student would no longer be considered a child with a disability for educational purposes and would no longer be entitled to receive a free appropriate public education (FAPE) or other protections available to students eligible for special education. *Id.* Further, the PWN stated that the Parent may refer the Student for an initial special education evaluation if she later wished the Student to again receive special education services. *Id.*

6. On July 11, 2019, the Parent notified the District that she would like the Student to be evaluated for special education services. Parent Decl., Ex. 7. A District student study team met on September 11, 2019, and created an initial evaluation plan with the Parent's participation. Valiquette Decl.; Parent Decl., Ex. 10. After the meeting, the District provided the Parent with a PWN identifying the proposed evaluation areas and requesting her signed written consent for the evaluation. Parent Decl., Ex. 12. The PWN noted that the team considered evaluating the Student only in the specific areas for which the parent wishes to access special education services but rejected that option because the District is required by law to conduct a comprehensive evaluation in all areas of suspected disability. *Id.*

7. The Parent signed the District's consent form on September 12, 2019, but made a number of handwritten changes, limiting the scope of the consent requested by the District. Parent Decl., Ex. 13. The District revised the scope of the evaluation to limit academic testing to the areas specified by the Parent and to review existing classroom data and math data submitted by the Parent. Parent Decl., Ex. 14. The District presented these changes in a PWN dated September 18, 2019. *Id.* The Parent signed another consent form on September 18, 2019, and again included handwritten modifications to the scope. Parent Decl., Ex. 14. Specifically, she objected to the age-appropriate transition assessment and interview of the Student. *Id.*

8. The District filed a due process hearing request, seeking an order overriding the Parent's refusal to consent to the District's initial evaluation of the Student and authorizing the District to proceed with the initial evaluation as proposed. Complaint.

9. Both parties filed for summary judgment. The District seeks an order on summary judgment that the proposed initial evaluation be conducted over the Parent's refusal of consent. The Parent requests that the District be ordered to evaluate the Student only in the areas for which the Parent has provided consent.

CONCLUSIONS OF LAW

Summary Judgement Standard

1. A motion for summary judgment may be granted and an order issued only if the written record shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. WAC 10-08-135. A material fact for summary judgment purposes is one upon which all or part of the litigation depends. *Hill v. Cox*, 110 Wn. App. 394, 402, 41 P.3d 495, rev. denied, 147 Wn.2d 1024, 60 P.3d 92 (2002).

2. The burden of showing that there is no genuine issue of material fact falls upon the party moving for summary judgment. *Hash v. Children's Orthopedic Hospital and Medical Center*, 110 Wn.2d 912, 915, 757 P.2d 507 (1988). As both parties are seeking summary judgment in this case, they both bear the burden of showing there is no genuine issue of material fact with respect to their own motions. Only after the moving party has met its burden of producing evidence establishing it is entitled to judgment as a matter of law, does the burden shift to the nonmoving party to set forth facts showing that there is a genuine issue of material fact. *Graves v. P.J. Taggares Co.*, 94 Wn.2d 298, 302, 616 P.2d 1223 (1980).

3. The evidence must be considered in the light most favorable to the nonmoving party, and the motion should be granted only if reasonable minds could reach but one conclusion. *Nationwide Mutual Fire Insurance Co. v. Watson*, 120 Wn.2d 178, 186, 840 P.2d 851 (1992).

The Requirement for Consent

4. When a parent revokes her consent for a student to continue to receive special education services, the district may not continue to provide the student special education services after providing a prior written notice. Washington Administrative Code (WAC) 392-172A-03000(2)(e). If the parent later requests that the student receive special education services again, the district must treat the request as an initial evaluation. Department of Education, Analysis of Comments and Changes to IDEA Regulations, 73 Federal Register (Fed. Reg.) 73,015 (2008); *Letter to Cox*, 54 IDELR 60 (OSEP 2009). Accordingly, if the Parent wishes the Student to resume special education services in the District, the District must conduct an initial evaluation before providing services.

5. When conducting special education evaluations, districts must ensure that a child is assessed in "all areas of suspected disability." WAC 392-172A-03020 (3)(d) (emphasis added). But a district need not evaluate in areas in which it does not suspect a disability. See, e.g., *Razzaghi v. Dist. of Columbia*, 44 IDELR 271 (D.D.C 2005); *Moses Lake Sch. Dist.*, 109 LRP

26490 (2008). An evaluation must be “sufficiently comprehensive to identify all of the student’s special education and related services needs.” WAC 392-172A-03020(3)(g).

6. The IEPs of students who are 16 or older must contain “[a]ppropriate measurable postsecondary goals based upon *age appropriate transition assessments* related to training, education, employment, and where appropriate, independent living skills.” WAC 392-172A-03090(1)(k)(i)(emphasis added). Accordingly, in order to be sufficiently comprehensive to identify all of the needs of a student 16 or over, an initial evaluation must include age appropriate transition assessments.

7. If a parent does not provide consent for an initial evaluation requested by a school district, the school district may, but is not required to, pursue the initial evaluation of the student by using due process procedures. WAC 392-172A-03000(1)(e). If the district does not pursue due process to override a parent’s lack of consent, the district does not violate its child find or evaluation obligations. WAC 392-172A-03000(1)(f).

8. When a parent imposes sufficient conditions to a consent for evaluation, the parent is determined to have refused consent. In *G.J. v Muscogee County School District*, for example, parents attached an addendum to their consent with a number of conditions including that the parents would choose the evaluator, the parents would have the right to discuss the assessment with the evaluator prior to it being provided to the district, and the evaluation would be confidential and could not be used in litigation. 668 F.3d 1258 (11th Cir. 2012). Accordingly, “due to the extensive nature of the conditions demanded by the parents, the parents had refused to provide consent to the school district for the reevaluation.” *Id.* See also *Federal Way Sch. Dist.*, 107 LRP 11238 (SEA WA 2007) (parent’s insistence on being present for evaluation constituted a refusal to consent). Other cases consider a parent’s conditions to a district’s proposed evaluation as a counter-offer, rather than a refusal to consent, but still determine that it does not supply consent for an evaluation. See *San Juan Bd. of Coop. Ed. Servs.*, 56 IDELR 29 (SEA CO 2010) (parents’ insistence that the district conduct numerous specific tests as part of evaluation constituted counter offer and was not consent for the evaluation).

9. Because of a district’s obligation to comprehensively evaluate students, parents cannot selectively consent to only portions of an evaluation.² See, e.g., *Dublin City Schools*, 117 LRP 21604 (Ohio SEA 2017)(Parent consented to evaluation related to speech and language needs but not autism).

10. Because the Student’s evaluation requires an age-appropriate transition assessment and interview of the Student to be sufficiently comprehensive, especially considering that his needs in that area are in dispute, the District’s proposed initial evaluation is reasonable and the Parent’s

² For this reason, a district’s failure to evaluate a student in only the areas for which a parent consents when that evaluation would not be sufficiently comprehensive does not violate 34 Code of Federal Regulation (CFR) 300.300(d)(3), which states that a district may not use a parent’s refusal to consent to one service or activity to deny the parent or child another service, benefit, or activity, except as required by the IDEA. A district’s obligation to evaluate in all areas of suspected disability meets the “required by the IDEA” exception to the rule. *Dublin City Schools*, 117 LRP 21604 (Ohio SEA 2017). Accordingly, the District has not in this case violated WAC 392-172A-03000(4)(b), which is substantially similar to 34 CFR 300.300(d)(3).

failure to consent to those portions of the evaluation constitute a refusal of consent to the initial evaluation in its entirety.

The Effect of the Student's Dual Enrollment Status

11. Parents may elect to have their children receive home-based instruction. Revised Code of Washington (RCW) 28A.225.010(4). The state recognizes that such parents shall be subject only to those minimum state laws and regulations that are necessary to insure that a sufficient basic educational opportunity is provided. RCW 28A.200.020. "Therefore, all decisions relating to philosophy or doctrine, selection of books, teaching materials and curriculum, and methods, timing, and place in the provision or evaluation of *home-based instruction* shall be the responsibility of the parent except for matters specifically referred to in [Chapter 28A.200 RCW]." *Id.* (emphasis added) These homeschool rules apply to all students, not just those eligible for special education. See RCW 28A.225.010(4).

12. Students who participate in home-based instruction can attend public school as part-time students. RCW 28A.150.350; chapter 392-134 WAC. This is commonly referred to as dual enrollment. Such students are "entitled to take any course, receive any ancillary service, and take or receive any combination of courses and ancillary services which is made available by a public school to full-time students." WAC 392-134-010. These part-time attendance rules also apply to all students, not just those eligible for special education. See WAC 392-134-005.

13. Under special education rules, "part-time enrollment" includes a student who is homeschooled and whose parent chooses to enroll the student in his resident school district for special education or related services pursuant to the part-time attendance rules discussed above. WAC 392-172A-01135. Parents who elect to enroll part-time in their resident district to receive special education and/or related services are served through an IEP. WAC 392-172A-04010. An IEP is a written statement of an educational program that is developed, reviewed, and revised in accordance with WAC 392-172A-03090 through 392-172A-03135. WAC 392-172A-01100. Those rules include the requirements for what an IEP must contain and the process under which an IEP team, which must include certain school district representatives, develops an IEP. See WAC 392-172A-03090 through 392-172A-03135.

14. The Parent argues generally that the part-time attendance and homeschool rules allow her, rather than the District or an IEP team, to dictate the Student's special education program. She wishes the Student to receive special education classes in academic areas at the high school rather than the transition program set forth in his prior IEP. Accordingly, she argues that she can also unilaterally determine in what areas the Student will be evaluated and effectively prevent assessment in the areas in which she does not want him to receive special education services.

15. The Parent is correct that the homeschool laws allow her significant discretion in how she implements the Student's homeschool program. Similarly, the part-time attendance laws give her discretion in selecting courses at the public school. However, these laws do not allow her to independently make decisions about the Student's special education. The special education rules regarding part-time students specifically state that such students are served through an IEP. By definition, this incorporates the IDEA's procedures for developing and implementing IEPs, which do not allow for parents to make unilateral decisions about services. See *Ms. S. v. Vashon Island*

Sch. Dist., 337 F.3d 1114, 1131 (9th Cir. 2003)(parents do not have the right to dictate any particular special education program).

16. For the same reason, WAC 392-172A-03000(3)(c), which states that a district may not use the consent override procedures for a homeschooled student, does not apply. The policy reasons behind this rule are based on limiting the consent override procedures to students who are enrolled or seeking to enroll in a public school because a district's ongoing obligation to educate a public school child does not apply when parents opt out of the public school system. See Department of Education, Analysis of Comments and Changes to IDEA Regulations, 71 Federal Register (Fed. Reg.) 46667 (2006); *In re Student with a Disability*, 113 LRP 42328, n.6 (NY SEA 2013). Accordingly, when a student is dual enrolled, the policy does not apply. Indeed, the consent override provisions affirmatively apply to students enrolled or seeking to be enrolled in public school. WAC 392-172A-03000(1)(e).

17. Moreover, because the special education laws apply more specifically to special education students than the homeschool and part-time attendance laws, which apply to all students, the more specific special education laws govern over the more general laws relating to all students. *Lake Washington Sch. Dist.*, Cause No. 2013-SE-0004, Order Granting District's Motion for Partial Summary Judgment and Denying Parents' Stay-Put Motion (SEA WA 2013).³ Considered a different way, the ALJ does not have authority to address laws other than special education laws. Thus, to the extent the Parent is claiming violations of the homeschool or part-time attendance laws, the ALJ cannot hear them.

18. The Student's dual enrollment does not allow the Parent to unilaterally select the Student's special education services or to dictate the areas of evaluation.

Conclusion

19. Because the District is obligated to comprehensively evaluate the Student and specifically obligated to conduct an age appropriate transition assessment, the District's proposed initial evaluation of the Student is reasonable. The age-appropriate transition assessment and interview of the Student will allow the District to sufficiently determine the Student's needs and to comply with the law regarding transition programming. Additionally, it will provide information relevant to the main area of dispute between the Parent and the District members of the IEP team, which is the Student's needs with respect to transition services.

20. The District has established that the Parent's refusal to consent to the initial evaluation of the Student should be overridden. The District may conduct an initial evaluation of the Student as set forth in the PWN dated September 18, 2019, and the corresponding initial evaluation consent form.

³ A copy of this order can be obtained from OSPI's public records officer. The Parent argues that this case was dismissed without a final decision. The dismissal of a case after an order granting a partial summary judgment motion does not negate that order.

ORDER

The District's motion for summary judgment is **GRANTED** and the Parent's motion for summary judgment is **DENIED**.

The Parent's refusal to consent to an initial evaluation is overridden. The District may conduct an initial evaluation of the Student as set forth in the PWN dated September 18, 2019, and the corresponding initial evaluation consent form.

DATED at Seattle, Washington on December 2, 2019.



Anne Senter
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 (90) 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.

RB

Parent



Scott Irwin, Director of Secondary Student Services
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Adult Student



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