

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

MAILED  
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OFFICE OF  
ADMINISTRATIVE HEARINGS

IN THE MATTER OF  
  
BELLEVUE SCHOOL DISTRICT

SPECIAL EDUCATION  
CAUSE NO. 2004-SE-0013

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

Andrea Conklin, Administrative Law Judge (ALJ), held a hearing on May 10, 11, 12, 24 and June 8 and 23, 2004, in the above captioned matter. The Bellevue School District (District) was represented by General Counsel Sharon Howard. The Parent of the Student at issue appeared and was assisted by her non-attorney advocate, Sara Avrams.

The District called as witnesses Ruth Peckarsky (assistant director of special education), Joan Spencer (school psychologist), Sharon Newsom (director of speech and language pathology (SLP)), Linda Hawkins (executive director of special education), Siri Berry (assistant director of special education), Lynn Bingsser (school nurse) and Sandy Garcia (literacy director). The Parent called as witnesses Patricia Maroney (SLP), (special education teacher), (special education teacher), Erwin Woehibrandt, (school psychologist), and the Parent.

District's Exhibits 1 through 17 and 19 through 20, 23 and 24 were admitted.<sup>1</sup> Parent's Exhibits A1 through A3, A4 (pgs. 1 and 2), A5, A6, A8 through A12, A14 through A20, A21A (p. 4), A21B through D, A22, A25, A26 (p. 1), B1A, B1B, B1E, B3A (pgs. 2 through 4), B3B through B4, B5B, B5C, C1, C2 through C9, D1 through D4, D6, E1 (pgs. 2 and 3), E2 (pgs. 1, 2 and 5), E3 (pgs. 2 and 3), E4 (pgs. 4, 5 and 6), E7, F, G6 (p. 1), H6A, H6B, H7C, H7D, H8A, H8B, H8C, H10B, H11, and portions of I.<sup>2</sup> Court's Exhibit 1 was admitted.

**STATEMENT OF THE CASE**

On February 6, 2004, the District requested a hearing in response to the Parent's request for two independent education evaluations (IEE). C-1. An initial prehearing conference was scheduled before ALJ Janice E. Shave on February 20, 2004 and a hearing was set for March 2, 2004. The prehearing conference was continued at the request of the District to February 24, 2004.

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<sup>1</sup>Parent's Exhibits shall be referred to as H6A, etc. and District's Exhibits shall be referred to as D-1, etc.

<sup>2</sup>The Parents' Exhibits were numbered in a very confusing way. In an effort to limit the confusion, the documents will remain in the notebooks as filed and the Office of Administrative Hearings, after the decision is issued, will place numbers stickers on the documents to note which ones were admitted.

Prior to the February 24, 2004 prehearing conference, the District filed a motion *in limine* to restrict the role of the Parent's non-attorney advocate. At the February 24, 2004 prehearing conference, ALJ Shave ordered that the District's motion *in limine* would be heard on March 19, 2004. The parties agreed to continue the March 2, 2004 hearing date to await the results of an educational evaluation.

On March 10, 2004, the case was reassigned to ALJ Conklin. As a result of the reassignment, the prehearing conference was continued to March 22, 2004. On March 22, 2004, Ms. Avrams, the Parent's advocate, requested a continuance based on her schedule. The request was granted and the prehearing conference was continued to March 30, 2004.

At the March 30, 2004 prehearing conference, the hearing was set for May 10, 11 and 12, 2004. In addition, the District's motion *in limine* regarding Ms. Avram's role was denied. An order was entered on April 1, 2004, denying the motion. A readiness conference was scheduled for April 26, 2004. At the April 26, 2004 readiness conference, the parties stated they were prepared to proceed to hearing.

During the hearing, the Parent raised three new issues regarding the reevaluation: the District failed to assess the Student for Attention Deficit Disorder (ADD), extended school year (ESY) services and assistive technology needs. The Parent's request to amend her claim to include these issues was denied. The Parent may request a separate hearing regarding these matters.

The parties filed closing argument and responses to closing argument by the close of record date, July 16, 2004. On July 22, 2004, the Parent filed proposed Findings of Fact and Conclusions of Law. The record closed on July 22, 2004. The decision is due 30 days from close of the record or August 21, 2004, a Saturday. Therefore, the decision is due on August 23, 2004.

### ISSUE

As outlined in the April 1, 2004, prehearing order, the issues for hearing are:

1. Whether the District has appropriately evaluated the Student in the suspected areas of disability.
2. Whether the Parent is entitled to her requested remedy, which includes the provision of an independent educational evaluation (IEE) at public expense, or other equitable remedies, as appropriate. The Parent specifically alleges the District failed to provide needed speech and language pathologist's (SLP's) evaluation and neuropsychological evaluation of the Student. The Parent has not identified a specific individual to perform the requested neuropsychological IEE.

The District's position is that the most recent reevaluation, completed May 12, 2003, was inappropriate at the time it was completed, and did not appropriately evaluate the Student in all suspected areas of disability. The District asserts there was no prior indication that an SLP evaluation was needed, and that was not an area of suspected disability. Further, the District asserts no neuropsychological evaluation is needed.

## FINDINGS OF FACT

1. The Student currently resides in the District and her date of birth is 1990. The Student attended the District in kindergarten. The Parent moved to Auburn and the Student attended first grade through a portion of third grade at the Auburn School District. The Student returned to the District in December of her third grade year, during the 1999/2000 school year.

### May 2000 Evaluation

2. The Student was originally referred for special education during third grade while she attended Elementary within the District. The reason for the special education referral was the Student had concept problems with math, problems with decoding, reading and spelling delays. D-1, p. 1. An evaluation of the Student was performed in May of 2000, by Erwin Woehlbrandt, school psychologist. Mr. Woehlbrandt received his Bachelor of Science and Psychology from the University of Illinois. He received his Masters in Psychology from Illinois State University. He is a certified school psychologist. Mr. Woehlbrandt has been working as a school psychologist for more than 20 years.

3. In the May 2000 evaluation, Mr. Woehlbrandt administered the Wechsler Intelligence Scale for Children - 3<sup>rd</sup> Edition (WISC-3), Developmental Test of Visual Motor Integration, Kinetic Family Drawing, and Bellevue Sentence Completion Test. In addition, Mr. Woehlbrandt received information from the Student's Parent, observed the Student in the classroom, reviewed school records and reviewed testing administered by special education teachers. Mr. Woehlbrandt reported the Student was a child "of at least Average intellectual ability who demonstrates mild learning processing problems in the areas of visual perception related to detention to details, revisualization and possible short term visual memory difficulties." D-6, p.1.

4. Based on the WISC-3 administered by Mr. Woehlbrandt, the Student received the following results:

Verbal IQ - 115	84 <sup>th</sup> %ile
Performance IQ - 98	45 <sup>th</sup> %ile
Full Scale IQ - 107	68 <sup>th</sup> %ile

5. Mr. Woehlbrandt noted the Student had high average ability in her verbal functioning. Her skills in the area of information, verbal reasoning, vocabulary and comprehension were all quite good for her age. D-6, p. 2. There were no significant difficulties in verbal processing. On the performance, non-verbal section of the WISC-3, the Student was within the average range for her age, however, subtle difficulties were noted with regard to attention to detail, perceptual awareness, as well as short-term memory. D-6, p. 2. Mr. Woehlbrandt noted the Student reverses letters, omits letters and confuses information in written production. These difficulties continued in spite of numerous interventions and were indicators of mild learning disability problems.

6. The result of testing of the Student's visual perceptual skills by the Developmental Motor Test of Visual Motor Integration (VMI) administered by Mr. Woehlbrandt did not indicate the presence of any significant visual perceptual delays. The Student's score on the VMI was a standard score of 98, which was equated to a child who is 8 years and 9 months. At the time of the test, the Student was 9 years and 5 months. Therefore, the Student had a mild delay with regard to her chronological age. D-6, p. 2. Some indicators were again present during her written production that mild perceptual confusion was present. Based on reviewing the Student's drawings and other visual material, Mr. Woehlbrandt determined the Student had good ability with regard to certain types of visual awareness and an ability to organize visual material. Problems with attention to detail and short-term memory for visual information were again present. D-6, p. 2.

7. In May of 2000, the Student's special education teacher, \_\_\_\_\_, performed the Woodcock-Johnson psycho-educational battery of achievement on the Student. D-7. The results of the test are as follows:

Category	Age Equivalent	Grade Equivalent
Broad reading	8-11	3.6
Reading skills	8-1	2.5
Reading comprehension	8-11	3.4
Broad written language	8-2	2.8
Calculation	8-9	3.3
Applied problems	9-7	4.0

D-7.

8. The results of the Woodcock-Johnson showed a significant difference was present between the Student's ability and her achievement. D-6, p. 2. The grade levels and standard scores qualified the Student for services in special education. D-6, p. 3.

9. The evaluation in May of 2000 determined the Student had average intellectual ability, however, mild learning disability type problems in the visual, perceptual and short-term visual memory areas were present. These difficulties interfered with the development of the Student's reading and written language skills. In spite of support through the District's Title 1 reading program as well as special education help from the Student's teacher and private tutoring, delays continued. Therefore, the May 2000 evaluation recommended the Student should receive special education support in the areas of reading skills as well as written language. D-6, p. 3.

### Three Year Reevaluation

10. In March of 2003, the District determined the Student was due for a three year reevaluation. The issue that the Student, as well as many other students, were due for a three year reevaluation was discussed at a regular monthly meeting with District personnel. No parents were present at this meeting.

11. On March 28, 2003, Joan Spencer, District school psychologist, sent a prior written notice to the Parent indicating that on April 5, 2003, a reevaluation would be initiated. D-10. The notice provides:

A description of each evaluation procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

File review indicates it has been three years since the last reevaluation.

Included in the prior written notice was a parent consent form. On April 11, 2003, the Parent executed the consent to allow the reevaluation. D-11. The prior written notice and the Parent consent form do not outline the exact assessments to be performed.

12. Prior to commencing the reevaluation, Ms. Spencer had a half-hour telephone conference with the Parent. Ms. Spencer asked the Parent how things were going with the Student. Ms. Spencer did not specifically ask the Parent if there were specific areas the Parent would like to have assessed. There was a dispute as to whether the Parent indicated to Ms. Spencer she was concerned about the Student's math skills. Ms. Spencer believes the Parent did not indicate such a concern and the Parent believes she did indicate a concern regarding the Student's math abilities.

13. Ms. Spencer administered the Woodcock-Johnson III to the Student on April 25, 2003. D-13 p. 2. The Woodcock-Johnson III is a comprehensive assessment designed to measure academic achievement in writing and reading. D-13, p. 2. At the time of the administration of the Woodcock-Johnson III, the Student was in the seventh month of her sixth grade (6.7) and was 12 years and 5 months old. The Student's scores on the Woodcock-Johnson III were as follows:

Subtest	Grade Score	Percentile By Age	Standard Score
Letter-Word Identification	3.1	7	78
Word Attack	3.1	23	89
<b>Basic Reading Skills</b>	3.1	12	83
Passage Comprehension	3.4	14	84
Reading Vocabulary	4.9	28	91
<b>Reading Comprehension</b>	4.0	17	86
Writing Fluency	6.1	36	95
Writing Sample	9.9	72	109
<b>Written Expression</b>	6.8	46	99

14. Based on the results, the Student was performing in the low average range in reading skills and reading comprehension and in the average range in written language. However, the Student continued to struggle in her actual classroom performance in written language when lengthy written work was required and when she had to analyze, synthesize materials and sequence ideas. D-13 p. 2. The three year reevaluation did not analyze why the Student's basic reading skills only increased six months in the last three years. The report did not address why the Student had a reading comprehension of 3.4 months in May of 2000 and a 4.0 in May of 2003.

15. Ms. Spencer, the school psychologist, reported in the three year reevaluation the Student was of at least average cognitive abilities but experienced an adverse educational impact from a specific learning disability in the areas of reading and writing. D-13, p. 3. Ms. Spencer reported the Student works hard, was organized and motivated to succeed, but to remove her from services would compromise her educational process. D-13, p. 3.

16. Regarding special education and necessary related services, including specially designed instruction and ESY services, the three year reevaluation notes the Student continues to be eligible and in need of specially-designed instruction in the area of reading and written language. However, her needs can probably be addressed through one period a day of special education rather than two as she is not hesitant to seek out help when needed and utilizes the help when given. Although not noted on the report, the Parent had indicated she did not want the Student to be in two special education classes a day. D-13, p. 3.

17. As recommendation for supplemental aids and services for the Student, the reevaluation report suggests extended time for lengthy written assignments, opportunity to have written assignments proofread before turning them in, grading based on content rather than writing mechanics when there is no opportunity to have writing proofread by someone, being provided with study sheets and summaries to aid in the study for tests and use of scribes for written assignment when requested. D-13, p. 3.

18. In May or June of 2003, the Student's special education teacher administered the Woodcock-Johnson Mini-Battery of Achievement to all his students. Based on this assessment, the Student's reading skills had improved from a 4.9 grade equivalent to 6.7 with a standard score of 99 and a percentile rank of 47. P-A-1, pgs. 3 and 4. However, the writing skills improved from a 3.1 grade equivalent to a 3.3, with a standard score of 77 and a percentile rank of 6. P-A-1, p. 4. Math was estimated to be a 5.2 grade equivalent with a percentile rank of 14. This test was not part of the three year reevaluation in May of 2003 and was not mentioned in the reevaluation.

19. On May 9, 2003, Ms. Spencer contacted the Parent by telephone to inform her a meeting would be held regarding the reevaluation on May 12, 2003. A written notice of the meeting was not sent to the Parent. Ms. Spencer completed a form entitled "Documentation of Invitation to Meeting." D-12. The form notes a phone conference was had with the Parent in which she was informed of the purpose, time and location of the meeting, the persons invited to the meeting, and the fact the Parent may invite others to the meeting. D-12.

20. A reevaluation meeting was held on May 12, 2003, with Ms. Spencer, (the Student's sixth grade special education teacher) and the Parent. A draft report was presented for

the parties to review. (math teacher), Lynn Bingsser (school nurse) and Ruth Peckarsky (assistant director of special education) signed the evaluation summary as agreeing with it either before the May 12, 2003 meeting or after the meeting.

21. The parties have a dispute whether the Parent received an entire copy of the May 2003 reevaluation report. The Parent asserts she did not see page 3 of the report until close to the date of the due process hearing. Ms. Spencer asserts she gave the entire report to the Parent in May of 2003. In reviewing the report, page two ends in mid-sentence. The Parent in this case is an assertive advocate for her child. If she did receive a report which ended mid-sentence, she would have informed the District. Therefore, based on the testimony of the witnesses and the documents, the Parent received the entire reevaluation in May of 2003.

22. After the May 12, 2003 meeting, the Parent expressed her concern regarding the child's difficulty in math. Therefore, on June 13, 2003, the math subtest of Wechsler Individual Achievement Test (WIAT) was administered by Ms. Spencer to the Student. As a result, the Student received the following subtest and grade equivalent scores:

Subtest	Standard Score	Grade Equivalent
Math Reasoning	96	5.1
Numerical Operations	85	4.5

23. When performing the test, Ms. Spencer had the Student's age wrong. Therefore, the Student's percentiles were different than reflected in the evaluation report, which is D-15. However, the grade equivalence remains the same. The results of the test indicate the Student has significant deficiencies in numerical operations. The Student has difficulty with division, fractions and decimals, and occasionally makes errors with regrouping. Therefore, the reevaluation recommends that math goals in the area of computation/numerical operations be added to the Student's IEP. D-15, p. 1.

24. An IEP was prepared on June 6, 2003. D-16. The IEP was subsequently amended on or about June 13, 2003, to include the math IEP goals.

25. Over the summer and fall of 2003, the parties had many discussions about the three year reevaluation and the IEP.

26. On January 27, 2004, Linda Hawkins, director of special education for the District, received a letter from the Parent requesting two IEEs at public expense for the Student. The Parent requested a speech and language IEE to be performed by Ms. Maroney, SLP, and to have a neuropsychological evaluation performed by an unnamed expert. On February 6, 2004, the District requested a hearing to establish its reevaluation was appropriate and in compliance with the regulation. Exhibit C-1.

27. Ms. Hawkins, District director of special education, agreed at the hearing the Student did not make as much progress since May of 2000 as the District would like.

### Maroney Evaluation

28. Patricia Maroney conducted an evaluation of the Student on February 18, 2004 and February 20, 2004. Ms. Maroney received her Bachelor of Science in Speech and Language Pathology from San Diego State University in 1979. She received her Masters from Washington State University in Speech and Hearing Science. Ms. Maroney worked for six years on her Ph.D., but has not yet completed the Ph.D. Since 1979, Ms. Maroney has worked at Group Health, Battle Creek School District and Evergreen School District as an SLP. Ms. Maroney has also worked as a program manager at Children's Hospital. For the past ten years, Ms. Maroney has been in private practice at Northwest Language and Learning Services.

29. To prepare for her evaluation, Ms. Maroney reviewed several of the Student's IEPs, information from Sylvan Learning Center, written work by the Student, the reevaluation and initial evaluation report prepared by the District, as well as the results of the achievement tests performed by the District.

30. After reviewing the May 2003 three year reevaluation, it is Ms. Maroney's opinion the District merely summarized the Student's achievement to date. The reevaluation did not explain the Student's lack of progress or provide enough detail regarding cognitive difficulties to explain the Student's lack of progress. In essence, the three year reevaluation states where the Student is, not what to do about it. The reevaluation did not perform diagnostic reading assessments to determine why the Student has not had much progress in the last three years in her reading abilities. Ms. Maroney agrees a school psychologist could administer diagnostic reading assessments. However, in this case no such tests were performed.

31. Ms. Maroney, in preparing her IEE, administered the Test of Adolescent/Adult Word Finding-2, the Adolescent Word-R Test, Peabody Picture Vocabulary Test-III, Test of Language Competence-Expanded, Level 2, Phonological Awareness Skills Program Test, Comprehensive Test of Phonological Processing, Gray Oral Reading Test-3, Test of Written Language, Oral and Written Language Scales, Wide Range Assessment of Memory and Learning as well as an informal test measure entitled Advanced Auditory Analysis. Ms. Maroney prepared a report dated April 2004 regarding the results of her testing. In addition, Ms. Maroney made several recommendations to the IEP team on how to improve the Student's verbal and written expression and organization, auditory comprehension, and writing skills. P-A1, pgs. 22-29.

32. Ms. Maroney thought a neuropsychological assessment of the Student would confirm a number of her concerns. Ms. Maroney did not indicate a neuropsychological assessment would provide additional information which would add to her findings.

33. Ms. Maroney spent ten hours preparing the report and examining the Student. She charges \$110 an hour. The Parent stated during the hearing she paid \$1,500 for the evaluation. However, Ms. Maroney was certain in her testimony the entire cost of the evaluation was \$1,100.00 (10 hours x \$110 an hour). Therefore, Ms. Maroney's testimony as to the costs associated with the evaluation and preparation of the report is more reliable.

### Sharon Newsom

34. Ms. Newsom has been working as an SLP at the District since 1976. At the time of the hearing, she was the SLP for the District's School and Sammamish High School.

Ms. Newsom received her bachelor's degree from Western Washington University in 1973 and her Master's degree in 1978 from the same university. In 1978, the degree was in either communication or speech and language pathology. Ms. Newsom received the Annie Issett Award with Kim Baima, a special education teacher, for her work in mainstreaming special education students.

35. Ms. Newsom worked in a classroom with the Student during the 2002/2003 school year. She taught a ten-week language art and social studies class with the Student's regular education teacher. Ms. Newsom remembers the Student was an active participant in the role playing and brainstorming portion of the class. Ms. Newsom, who is trained to determine speech and language difficulties, did not detect any speech difficulties with the Student.

36. When Ms. Newsom became aware the Student was asking for an IEE at public expense for SLP services, she contacted Alice Amise at the Student's elementary school, Elementary. Ms. Amise was the SLP at the school when the Student attended. Based on her conversation with Ms. Amise, Ms. Newsom did not believe the Student had speech concerns while at

37. The only revision Ms. Newsom would make to the June 2003 IEP is that the Student should be provided with accommodations for additional time to respond in class. This was based on Ms. Maroney's determination that the Student's response time was 2.56 seconds compared to her peers' average of two seconds in the test of Adolescent/Adult Word Finding. Thus, the Student did have some difficulty in finding words.

38. Based on the May 2003 three year evaluation, Ms. Newsom believes an IEP could be formulated for the Student and one was correctly formulated in this case. The Student's special education teacher for the 2003/2004 school year, reviewed the Student's three year reevaluation. believes the three year reevaluation correctly reflects the Student's difficulties and her abilities. was able to prepare a lesson plan based on the Student's three year reevaluation and the June 2003 IEP.

#### Parent Observation

39. The Parent has observed the Student in classes from first through fifth grade. The Parent observed the Student to be very shy and quiet. The Student tries not to be noticed in class when she does not want to be called upon. If the Student is 100% sure of the answer, she raises her hand and does participate.

40. The Student often refers to herself as a dumb blonde. Friends make fun of her because she does not understand jokes and does not respond quickly to questions or conversations with her peers. The Student has continued to struggle with reading and writing issues her entire career.

41. In the 2003/2004 school year, in the 7th grade, the Student was unwilling to do her homework at home and unwilling to work with her Mother on her homework. The Parent believes the Student went to school and copied somebody else's homework. The Parent believes the Student has not been making progress on her IEP. She has been observing her child and believes the child has not made any progress in the three years she has been at the District. The Student continues to struggle to read and does not read grade level work. The Parent believes the Student's

reading level is at approximately third grade. The Student does not read chapter books. She does not like to read and therefore she does not read for pleasure.

42. The Parent has reviewed the Student's written work. Based on the Parent's observations, the Student has extremely poor spelling and sentence structure. The Parent believes the Student's work is not consistent with other 7th graders based on the Parent's review of the Student's friends' homework when the friends come to the Parent's house.

43. The Student has a 3.0 grade point average. However, the Parent believes the grade point average is based solely on effort. The Parent believes the Student receives an "A" in everything if she simply turns in the work. The Student is not graded on spelling based on her disability. The Parent believes the Student's grades are not reflective of her work.

44. The Parent would like further testing on the Student to make a better placement for the Student. The Parent is not aware of assessments and does not know exactly what to ask for. Continuing throughout the Student's education at the District, the Parent has expressed her concern the Student does not read sufficiently and has extreme difficulty with writing. The Parent believes this was sufficient information for the District to be aware an SLP evaluation should have been performed.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 U.S.C. § 1401 *et seq.* (Individuals with Disabilities Education Act (IDEA)), Chapter 28A.155 RCW, Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 CFR 300 *et seq.* and Chapter 392-1721 WAC.

#### **Nonissues in case**

2. The parties have raised several issues which are not relevant to this case. The issue in this case is not whether the Student received a Free and Appropriate Public Education (FAPE). The analysis regarding FAPE asserted by the Parent is not applicable to whether the Student is eligible for an IEE at public expense.

3. The case is not regarding the appropriateness of the May 2000 reevaluation. Similarly, the issues regarding an assistive technology assessment and ESY services are not at issue in this case. Those matters may be raised in a different hearing request.

4. The District argues had it been able to perform a reading evaluation by Ms. Garcia, many of the Parent's issues could have been addressed. However, that is not the issue in this case. If the District believed an evaluation from Ms. Garcia was necessary and the Parent refused such an evaluation, the District had an obligation to request a hearing to override the Parent's refusal to consent. WAC 392-172-304(1). The District has consistently argued that the May 2003 evaluation, without additional data, was appropriate, which is the issue for this case.

5. The Parent argues she was not provided all the data to be an informed participant on the reevaluation team. However, the Parent's concern is based upon the District's alleged failure to provide documents after the May 2003 reevaluation was completed. Therefore, failure to provide the documents is not relevant to the appropriateness of the May 2003 reevaluation.

#### Reevaluation

6. A parent may be entitled to an IEE at public expense if a parent disagrees with a school district's evaluation. WAC 392-172-150(4). A school district must pay for the IEE or request a hearing within 15 days of the Parent's request for an IEE at public expense. WAC 392-172-150(5). If a district establishes at a hearing that the evaluation is appropriate, then the parent may have an IEE, but not at public expense. WAC 392-172-150(6)

7. WAC 392-172-182(2) provides:

Each school district or other public agency shall ensure:

That a reevaluation of each student is conducted in accordance with the evaluation and reevaluation procedures contained in this chapter if conditions warrant a reevaluation, or if the student's parent or teacher requests a reevaluation, but at least once every three years[.]

As of May of 2004, the Student was required to be reevaluated as her initial evaluation was three years prior.

8. The Student must be reevaluated in all areas related to the Student's suspected disability. WAC 392-172-106. A reevaluation is defined by WAC 392-172-040(2) as:

... procedures used to determine the special education student's continuing eligibility and need for special education and related services consistent with WAC 392-172-182 through 392-172-190. Reevaluation shall also be used to determine the appropriateness of the services being provided to the special education student.

(Emphasis added). The last line of WAC 392-172-040(2) is not contained in the Federal Regulations. See 34 CFR § 300.321; 34 CFR § 300.500; 34 CFR § 300.536.

#### Procedural requirements

9. To perform an appropriate evaluation, the District must comply with both the procedural requirements and the substantive requirements of the regulation. WAC 392-172-185 outlines the requirements regarding notice and consent for reevaluation. The regulation provides:

(1) A reasonable time prior to conducting a reevaluation, the district or other public agency shall provide prior written notice to parents or adult students consistent with WAC 392-172-302.

(2) Informed parental consent for reevaluation shall be obtained consistent with the provisions in WAC 392-172-304.

(3) Parental consent is not required before reviewing existing data as part of a reevaluation, or administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

(4) Informed parental consent need not be obtained for reevaluation if the school district or other public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent has failed to respond.

(5) To meet the reasonable measures requirement in this section, the public agency must use procedures consistent with those in WAC 392-172-15700 (3) and (4).

(6) A reevaluation shall be conducted consistent with the timelines in WAC 392-172-104(2) and 392-172-182(2).

10. Consent, as defined by WAC 392-172-040 (3), means:

... that the parent or adult student:

(a) Has been fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication;

(b) Understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and

(c) Understands that the granting of consent is voluntary and may be revoked at any time.

If a parent revokes consent, that revocation is not retroactive (it does not negate an action that has occurred after the consent was given and before the consent was revoked).

11. The Notice of the reevaluation sent by the District states that the reevaluation procedure to be used is "File review indicates it has been three years since the last reevaluation." D-10. Although a list of each and every test or assessment to be performed does not have to be listed, at least some indication of the type of tests, i.e. cognitive, achievement, etc. needs to be indicated. The Notice given by the District to the Parent of the three year reevaluation was not sufficient.

12. Next, the Parent did not attend a meeting held by District personnel prior to May 2003 in which the fact the Student's three year reevaluation was due was discussed. Also, the Parent did not receive written notice of the reevaluation meeting held on May 12, 2003. The

Parent did receive a telephone call from the District informing her of the meeting and did attend the reevaluation meeting. D-12.

13. WAC 392-172-105 provides:

**Parent participation in meetings and notice.** (1) Parents shall be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and provision of a free appropriate public education to the student.

(2) For meetings other than IEP or educational placement meetings each public agency shall notify parents consistent with WAC 392-172-15700 (1)(a) and (2) to ensure that parents have the opportunity to participate in the meetings. The school district or public agency will notify parents consistent with WAC 392-172-15700 for IEP meetings and WAC 392-172-15705 for placement meetings.

(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

The meeting held by the District which noted the Student was due for a reevaluation was a preparatory meeting as described in WAC 392-172-105(3). The District was not required to invite the Parent to this meeting.

14. As to failing to provide the Parent written notice of the May 12, 2003, reevaluation meeting, WAC 392-172-15700 (1)(a) and (2) provides:

(1) Each school district or other public agency shall take steps to ensure (in the case of nonadult students) that one or both parents of the special education student are present at each IEP meeting or are afforded the opportunity to participate, by:

(a) Notifying the parent(s) of the meeting early enough to ensure that they will have an opportunity to attend; and

(b) Scheduling the meeting at a mutually agreed upon place and time.

(2) The notice to the parent(s) shall include the purpose, time, location of the meeting and who will be in attendance. If the purpose of the meeting is to develop, review or revise an IEP, the notice shall also inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If the purpose of the meeting is the consideration of transition needs or services, the provisions in WAC 392-172-164 and 392-172-166 apply.

The regulation does not require that the notice of the reevaluation meeting be in writing. Therefore, telephoning the Parent is sufficient. Based on the documentation of the telephonic invitation to the meeting, the District provided all the information required in the regulation. D-12.

### Substantive Requirements

15. The reevaluation was conducted in the areas related to the Student's disability regarding reading and math difficulties.

16. The evaluation performed by Ms. Spencer complied with WAC 392-172-108, the regulation regarding evaluations. Ms. Spencer is a qualified, credentialed and certified school psychologist. Based upon her credentials, she has had sufficient education and practical experience to conduct the evaluation. Therefore, the District has complied with WAC 392-172-108(2)(a) and (3).

17. Ms. Spencer used a variety of assessment tools and strategies to gather relevant information. Ms. Spencer administered the Woodcock-Johnson III. In addition, she spoke with the Student's special education teacher and the general education teachers who had the most interaction with the Student and thus the most knowledge regarding to the Student's classroom behavior. Therefore, the District complied with WAC 392-172-108(4) through (6), (8), and (10) through (12).

18. The problem with Ms. Spencer's assessment is it did not comply with WAC 392-172-040(2) in that it did not determine the appropriateness of the services being provided to the special education student. The District, through the director of special education (Ms. Hawkins), agrees the Student was not progressing as much as the District would like. However, the District did not perform any assessment to determine why the Student was not progressing. The District's three year reevaluation correctly assesses the Student's achievement to date. However, it does not make any effort to determine why the Student has not progressed, as indicated by Ms. Hawkins, as much as the District would like. Therefore, the reevaluation as to the Student's reading difficulties is not appropriate.

19. The District was not required to perform additional diagnostic testing to discover why the Student was having learning difficulties. The diagnostic testing should have been aimed at why the Student had made such small progress in three years.

20. As the District's evaluation regarding the Student's reading difficulties was not appropriate, the Parent is entitled to an IEE at public expense. WAC 392-172-150. The next issue is to determine if the evaluation by Ms. Maroney qualifies under the regulations, thus requiring the District to pay for the evaluation.

21. The evaluation performed by Ms. Maroney complies with WAC 392-172-150 in that it was conducted by a qualified examiner who is not employed by the District. WAC 392-172-150(3)(a). The District is not asserting Ms. Maroney's evaluation failed to meet the District's criteria for an IEE. WAC 392-172-150(3)(a). Therefore, the District is required to reimburse the Parent for the cost of the IEE in the amount of \$1,100 (\$110 and hour x 10 hours.)

22. The Parent, failed, however, to demonstrate why a neuropsychological assessment is required for the Student. The Parent asserts Ms. Maroney informed her the Student may have ADD. However, Ms. Maroney denied she made this statement. Although Ms. Maroney's report indicates the Student has some issues related to memory, there was no indication a neuropsychological test was required to assess this memory issue.

23. The District argues it is not required to pay for an IEE because it was not on notice an SLP evaluation was required. In support of this argument, the District cites the fact the Student had no speech difficulties. However, the Parent was not asserting the Student had speech difficulties, but delays related to reading. In the District, reading issues are addressed by the school psychologist. However, Ms. Maroney, as an SLP, is also qualified to address reading difficulties. The District was on notice the Parent had disputes regarding the three year reevaluation as it relates to reading. Therefore, the assertion the District is not obligated to pay for the IEE as it was not on notice of a requirement for an SLP evaluation is not persuasive.

### ORDER

1. The District's three year evaluation is not appropriate as it does not sufficiently analyze the Student's lack of progress as it relates to reading.

2. The District shall pay \$1,100.00 to the Parent to reimburse her for the cost of Ms. Maroney's evaluation and report.

3. The District is not required to pay for an independent neuropsychological test.

Dated at Seattle, Washington, on the date stamped above

  
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Andrea Conklin  
Administrative Law Judge  
Office of Administrative Hearings