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

OFFICE OF
ADMINISTRATIVE HEARINGS

IN THE MATTER OF:

HIGHLINE SCHOOL DISTRICT

SPECIAL EDUCATION
CAUSE NO. 2006-SE-0102

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

A hearing was held before Administrative Law Judge (ALJ) Janice E. Shave at Renton, Washington, February 1 and 2, 2007. The Mother of the Student whose education is at issue¹ in this matter participated in the hearing. The Highline School District (hereinafter the School District) participated through its co-director of special education, [REDACTED]. The School District was represented by David Hokit, Attorney at Law.

Testimony was taken under oath or affirmation from the following: the Mother, [REDACTED] (co-director of special education), [REDACTED] (school psychologist), and [REDACTED] (special education teacher). School District's Exhibits D1 through D31 were admitted. School District Exhibit D32 was submitted post-hearing at the request of the ALJ, and was admitted. Parents' Exhibits P1 through P13, P15, P17 and P36 were admitted. Documents offered but not admitted were P14 and P16. Court Exhibit C1 was also admitted.

PROCEDURAL HISTORY

The School District submitted a Request for Due-Process Hearing (hereinafter Complaint) dated December 13, 2006, and received by the Office of the Superintendent of Public Instruction (OSPI) December 14, 2006. Ex. C1. The School District sought a hearing to override the Parents' refusal to grant consent for a full reevaluation of the Student.

OSPI transmitted the Complaint to the Office of Administrative Hearings (OAH) and a Scheduling Notice was issued December 14, 2006. A prehearing conference was scheduled to be held December 22, 2006. The hearing was scheduled for January 10, 2007. A Corrected Scheduling Notice was issued December 19, 2006, setting the hearing to be heard January 19, 2007.

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¹ To ensure confidentiality of the Student, the family members are hereinafter referred to as Parents, Mother, and Student.

On December 19, 2007, the School District requested postponement of the prehearing conference. The prehearing conference was then scheduled to be heard January 10, 2007. The Order confirming this was issued December 20, 2006. The Order also extended the decision due date, at the request of the School District. The prehearing conference was held January 10, 2007, and on January 17, 2007, a Prehearing Order was issued. The issue for the hearing was identified as: whether the Parents' refusal to consent to a reevaluation should be overridden, and if so, whether the Parents should be ordered to make the Student available for reevaluation. Certain defenses of the Parents to the request to override the refusal to consent to reevaluation were identified by the Parent at the January 10, 2007, prehearing conference, and were included in the January 17, 2007, Prehearing Order.

Another prehearing conference was held January 19, 2007. At the Mother's request, her defenses were altered slightly. A Prehearing Order was then issued January 19, 2007.

A final Prehearing Order was issued January 24, 2007, following a prehearing conference held that date.

The 45-day decision due date was initially January 28, 2007. Following the first request for postponement, the decision due date was moved at the request of the parties to February 15, 2007. Following a subsequent request for postponement of the proceeding, the decision due date was moved to March 1, 2007, again at the request of the parties.

The Mother requested the opportunity to submit post-hearing briefing. The due date for both sides to submit post-hearing briefing, in the event they chose to do so, was agreed to be February 16, 2007. The decision due date remained March 1, 2007.

FINDINGS OF FACT

1. As of the time of the hearing, the Student was seven years of age, about to turn eight. He was first identified as a special education student when he was less than three years old. He receives special education services under the eligibility category of developmentally delayed. The Student currently resides within the School District with his Parents, his older brother (who also receives special education) and his younger sister, not yet school age.

2. The Mother was previously a special education teacher, but has not taught for nine or ten years. She holds a teaching certificate from the State of Washington with the following endorsements: special education, reading, school psychologist, and elementary education. The Mother obtained a Bachelor's degree from Central Washington University in education and a Master's degree from the same college, also in education. She has taught at a variety of places in the School District, as well as a four-year stay as a special education teacher in the Seattle

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School District's African American Academy. The Father was employed until a few weeks prior to the hearing by the School District's Human Resources Office.

3. The Student currently has a medical diagnoses of severe asthma and anaphylaxis. Both of these conditions can be life-threatening. The Student has a health plan for this, and he works with the school nurse, [REDACTED], on a daily basis. The Student receives speech and language services because of a communication disorder. He receives special education in reading and in language and speech articulation. The majority of his education is delivered in a general education classroom, with pull-out resource room services as well as speech and language support delivered outside of the classroom. Up until the time of the hearing, the School District did not believe the Student's behavior impeded his learning, or that of others. The School District perceives the Student as being friendly toward others and having an outgoing personality.

Prior History

4. The School District issued a Child Find Screening Letter to the Parent in January 2002. Ex. P1. The Parent signed her consent for child find developmental screening January 8, 2002. Ex. P1, pg. 1. The School District issued a Notice of Action to the Parents on that same date, noting the reasons it was taking the action of screening for special education services were the Student's scores on the DIAL screening, and concerns about his behavior. It was also noted that the Student had been referred to Highline/West Seattle Mental Health for behavior concerns. Ex. P1, pg. 2.

5. The Student was first evaluated for special education eligibility prior to age three by the Early Education/Preschool Child Find Team. On January 31, 2002, the School District issued a letter confirming an assessment appointment for the Student to be conducted February 12, 2002. On February 12, 2002, the Parent signed her consent allowing the evaluation to determine if he was eligible and in need of special education services. The evaluation took place that day. The Student was evaluated in the following areas: social, communication, cognitive, and adaptive. These were identified as areas of possible delay based on a DIAL screening done January 8, 2002.

6. The initial evaluation resulted in an Evaluation Report with an eligibility determination date of February 12, 2002 (hereinafter 02-12-02 Evaluation Report). Ex. D21. The primary staff contact at the time of the evaluation was [REDACTED], whose job title was 'transition facilitator.' Ex. P2, pg. 1. The School District staff members who signed the 2-12-02 Evaluation Report were [REDACTED] (transition facilitator), [REDACTED] (speech and language therapist (SLP)) and a school nurse. Ex. P2, pg. 4. The three-year reevaluation was due on May 12, 2005.

7. Page 5 of the 02-12-02 Evaluation Report has a place for the School District team to answer the following question:

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ELIGIBILITY

Based on the assessment findings, this student is considered eligible not eligible for special education funding under the Category of Communication Disordered.

Ex. P2, pg. 4. The Parent found this question, without an answer, confusing. There was recommendation for SLP intervention on that same page.

8. The Student was evaluated by Highline/West Seattle Mental Health Center on or about March 5, 2002, just before he turned three. He was taken there because his mother reported a concern with physical aggression, specifically, episodic outbursts where the Student became very aggressive, kicking, hitting, and biting his mother, brother and/or father. The psychiatrist who evaluated him, James Peacey, M.D., diagnosed disruptive behavior disorder, not otherwise specified (NOS), expressive language disorder, phonological disorder, asthma, and a bilateral hearing deficit. Dr. Peacey made the following recommendations:

RECOMMENDATIONS

1. Current plans for a developmental education program with speech and language services is certainly appropriate.
2. A family-centered approach to management of aggressive behavior should include both analysis and refinement of behavioral interventions, as well as examination of family dynamics, which may contribute to the outbursts or make it difficult to respond effectively.
3. If developmental lags do not respond to correction of hearing problems and speech and language therapy interventions, further developmental assessment may be appropriate.

Ex. P4, pg. 3.

9. The Parent provided Dr. Peacey's psychiatric evaluation to the School District within a reasonable period of time after she obtained it. Although the Student was determined to be eligible for services based upon the results of the 02-12-02 Evaluation Report, no special education services had begun for the Student and no Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP) was developed for the Student as a result of the 02-12-02 Evaluation Report. The reason for the delay in services is not at issue in this proceeding.

10. The Student was reevaluated exactly one year after the 02-12-02 Evaluation Report. This resulted in issuance of a second Evaluation Report, this one dated February 12, 2003 (02-12-03 Evaluation Report). Ex. D21. The similarity of dates resulted in confusion. This time, the Student was evaluated in communication, social, and cognitive areas. These were identified as areas of possible delay or problems based on parental report and on previous evaluations. The primary staff contact was again listed as [REDACTED]. The three-year reevaluation due date was

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listed as "02-12-06." The social/emotional testing revealed a significant delay in the Student's social skills. He was noted to have friends and to be able to play, but to not have any verbal interaction, with parallel play, rather than interactive play. It was recommended that the Student receive special education in the form of SLP services, with the primary focus on improvement of intelligibility of his speech. It was recommended that he be placed in a public preschool program with direct SLP services as well as opportunities to improve his social skills. The 02-12-03 Evaluation Report was signed by [REDACTED] (transition facilitator), [REDACTED] (SLP), and the school nurse. Ex. D21, pg. 4.

11. An IEP was adopted March 10, 2004. Ex. D26. It correctly listed the date of reevaluation as February 12, 2003. An amendment to the March 10, 2004, IEP was written June 15, 2004, to add a consultation with an occupational therapist (OT) to address sensory needs in the kindergarten classroom for the following year. Ex. D27.

12. In or about March 2004, the Parent requested an assessment of the Student's intellectual development/potential, commonly referred to as an IQ Test, or cognitive testing. Cognitive testing is not the same as academic (achievement) testing. On March 13, 2004, the Parent signed a Notice and Consent for Evaluation/Reevaluation, Medicaid Consent. Ex. P8, pg. 8. This testing was requested by the Mother. The form utilized by the School District did not make it easy for the school psychologist to indicate that what was contemplated was piecemeal testing at the request of the Parent, not testing for the purpose of determining eligibility.

13. On May 10, 2004, the School District completed an Evaluation Report (05-10-04 Evaluation Report) which was limited solely to evaluation of the Student's "intellectual development/potential." Ex. P8. This testing and 05-10-04 Evaluation Report were completed by a new school psychologist, [REDACTED]. The report was signed off on by [REDACTED], the Mother, the special education teacher, OT, and the SLP. Ex. P8, pg. 7.

14. Some of the boxes checked on the Notice and Consent for Evaluation, and on the 05-10-04 Evaluation Report itself, were incorrect. For instance, the Notice and Consent for Evaluation/Reevaluation states the Parent's consent was required for "reevaluation to determine continuing eligibility and need for special education services." That was not the purpose of the test, which was listed under the sentence "The following evaluations, tests, records or reports were used to make this determination:" where the School District typed in "[the Student]'s mother requested he receive an IQ test to determine cognitive capacity." The consent was for cognitive and social/behavioral testing. Ex. P8. The School District administered cognitive testing in the form of the Stanford Binet - 4th Ed. The evaluation team reviewed existing information and determined that information or additional testing was needed in the areas of "cognitive" and "sensory." The Evaluation Report is not clear what sensory testing of the Student was done, if any. Ex. P8.

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15. Since the 05-10-04 Evaluation Report was done solely at the request of the Mother, and out of sync with other testing, and since the 05-10-04 Evaluation Report form did not accommodate this out-of-cycle partial testing, some problems resulted. The 05-10-04 Evaluation Report that was issued utilized the form from the underlying complete reevaluation done February 12, 2003. That is, the exact same document was printed out, at least page one, and some handwriting was added to the 02-12-03 Evaluation Report to include updated information. Someone, presumably the school psychologist, simply crossed out the underlying date of eligibility determination and hand wrote in "05/10/04." The date of the next three-year reevaluation was listed as "02/12/05." However, the actual due date for the next three-year reevaluation was 02-12-06, since the last complete evaluation was the reevaluation performed 02-12-03. School District staff responsible for entry of the dates for record keeping and calendaring purposes did not realize the dates were incorrect and calendared the 05/10/04 Evaluation Report as if it had resulted from a complete three-year reevaluation. This was a clerical error. The School District then proceeded to utilize the 05/10/04 Evaluation Report as a part of the special education formal documents, including IEPs, which it generated thereafter.

16. An IEP was drafted by the School District and signed March 23, 2005, by the Mother, special education teacher, general education teacher, district representative (by review only, the district representative did not actually participate in the IEP meeting), the SLP and an OT. Ex D28. It included the wrong reevaluation date.

17. In September 2005, the Parents took the Student to receive SLP services from a private provider, Highline Therapy Services. Ex. P9. It is not clear whether the Parents notified the School District of this private SLP service, at least until sometime after May 23, 2006, when the Mother submitted a report to the School District regarding the past several months of SLP services, along with the private SLP's recommendations for continuing therapy, and her progress report. Ex. P9.

18. An IEP meeting was held June 8, 2006. The School District presented a draft IEP which stated the current evaluation was the 05/10/04 Evaluation Report. Ex. P10. This was incorrect, since that evaluation was merely a partial evaluation, which the School District now refers to as an 'individual assessment,' rather than a full evaluation.

19. Sometime in or about the Spring of 2006, the Parent asked the School District to exit the Student from special education. The School District determined it was not able to exit the Student from special education based solely on the Parents' request, and would need to do a complete reevaluation.

20. An IEP team meeting was held October 30, 2006. The Mother provided two letters to the School District staff at that time. One was a letter addressed to the School Principal and a second letter was a request for an independent educational evaluation (IEE) at public expense.

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Exs. D4 and D5. The first of those two letters, Exhibit D-4, was a complaint to the School District advising it that the 05/10/04 evaluation report was incorrectly labeled as a full evaluation and was incorrectly being utilized by the School District as the basis for its draft IEPs. Prior to receipt of that letter, the School District was unaware of its clerical error in utilizing the May 10, 2004, partial evaluation or individual assessment as if it were a complete reevaluation.

21. On October 31, 2006, [REDACTED] co-director of special services for the School District, issued a letter to the Parents which included a chronology of what had occurred to date. Ex. D6. In her chronology, [REDACTED] stated the 05/10/04 Evaluation Report utilized the wrong date of February 12, 2003. Unfortunately, [REDACTED] letter then contained an error of its own, which it repeated on several occasions. [REDACTED] stated in error that the Student's reevaluation date should have remained February 12, 2005, rather than February 12, 2006, which was the correct three-year date following the last full reevaluation.

22. [REDACTED] made two proposals for the Parents' consideration in her letter. The first proposal was for the School District to immediately undertake its three-year reevaluation, and conduct a planning meeting when the participants would "outline all areas to be addressed by the reevaluation, the instruments to be used, and questions that need to be answered." The Parents were advised they would still have the option of requesting an IEE if there were areas of reevaluation they continued to have questions about or if they wanted further information. The second proposal offered by [REDACTED] was "if you decide that you would prefer to go directly to an [IEE], I would need to know what areas you want addressed by this evaluation in order to provide you with a list of potential evaluators." Ex. D6, pg. 2.

23. The Parents understood from [REDACTED]' letter that they could choose whether to proceed to a School District three-year evaluation or "go directly to an [IEE]." The Parents chose to go directly to an IEE.

24. On November 3, 2006, [REDACTED] (the Student's special education teacher) responded to the Parents with a brief memo. She included copies of assessments, evaluations, and progress reports. Ex. D7.

25. On November 6, 2006, [REDACTED] issued a letter to the Parents in the form of a Prior Written Notice for the Student. The Prior Written Notice summarized the Parents' concerns as expressed at the October 30, 2006, meeting. Ex. D8. [REDACTED] also sent the Parents notes from the October 30, 2006, meeting. Ex. D17. On November 13, 2006, [REDACTED] sent a letter to the Parents informing them the School District intended to proceed with its own evaluation, given that the Student did not have a current three-year reevaluation. Ex. D11.

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December 1, 2006, Reevaluation Planning Meeting

26. The School District scheduled a meeting to be held December 1, 2006, with the agreement of the Parents. The purpose of the December 1, 2006, meeting was to discuss and plan the Student's three-year reevaluation, which all participants conceded was overdue. At the meeting, the Mother first raised three items which she wanted to have addressed in the reevaluation; specifically, the need for improved friendship skills on the playground, additional reading support in class, and writing support. The School District proposed the three-year reevaluation include the following areas: academic (achievement), cognitive (IQ or intellectual), behavioral, social/emotional, speech and language, and health. The Mother expressed her concern about the incorrect date (May 10, 2004) on the prior reevaluation, and requested an investigation into the use of that date and the handwriting on the prior form which changed the date of the evaluation to May 10, 2004, without being initialed. The Parent also reiterated her concerns about the Student's medical status, and voiced her concern that the Student has dyslexia.

27. The school psychologist advised the Parents that the testing the School District planned to administer would not formally label or diagnose dyslexia, but would reveal patterns and trends in reading and writing. The school psychologist offered to do additional testing to determine where some of the Student's specific reading and writing difficulties arise.

28. The Parents inquired about the status of the IEE, which the Parents had identified as being performed at the University of Washington Center on Human Development and Disability (UW CHDD) child development clinic. Ex. D10. The School District had already agreed to pay for the requested IEE. Neither the Parent nor the School District has control over the UW CHDD scheduling, and scheduling has been a problem. It has not proven possible to schedule the testing as quickly as the Parents would like.

29. Toward the end of the meeting, the School District's school psychologist advised the Parents the next step was for the Parents to provide written consent for the three-year reevaluation. The Mother did not ask the School District to identify the specific tests it proposed to administer. She advised the School District that the Parents would not sign their consent for the School District to perform the three-year reevaluation until after they had obtained the results of the IEE. At that point, the meeting broke down.

30. The school psychologist had planned to administer a broadband evaluation which would have included anxiety issues experienced by the Student. However, he had not prepared a consent form for the Parents to sign in advance of the meeting; he planned to first obtain the Parents' agreement to the idea of the reevaluation, then determine the specific tests, and then obtain their signature. When the Parents stated their intention not to sign the consent to reevaluate, the school psychologist did not prepare the consent forms with the specific tests to be

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performed. Nor did he identify the specific tests to be performed to the Parents, since they had already said they would not sign the consent forms. Although the school psychologist intended to complete a final consent form, which would have included the specific tests, the Parents were not aware of this. At the conclusion of the meeting, ██████████ advised the Parents that the School District would have to file a request for due process hearing to override the Parents' refusal to consent to reevaluation, since the School District was now providing special education to a student with an out-of-date evaluation.

31. The Mother believed the problems which existed between the parties would be solved at the administrative hearing, and all communication between the parties essentially stopped on or about December 1, 2006. Although the Mother testified she had an open mind when she attended the December 1, 2006, meeting, the overwhelming evidence presented points to the determination that the Mother had a remarkable lack of trust or confidence in the School District, and her intention was to obtain the IEE prior to proceeding to the School District's stage of the evaluation, and prior to the next IEP meeting.

32. The Mother does not trust the School District because of its clerical errors which were not caught and which were then compounded by the misinformation (the May 10, 2004, date) automatically in-filling on subsequent School District documents. The Mother also does not believe the School District adequately considered information she provided sometime after August 26, 2006, to the School District from the psychiatrist, from the private SLP, and from a physician who provided verification of asthma and emotion-induced anaphylaxis. Ex. P28. The Mother also does not believe the School District, specifically the school psychologist, gave adequate consideration to the Student's behaviors, including recent notice of self-injurious behaviors which led to bruising of his arm and legs in or about June 2006. Exs. P21 and P22. The Mother does not trust the current special education teacher, ██████████ because the Mother believes ██████████ was not truthful at the June 2006 IEP meeting regarding the attendance of the general education teacher. The Mother also points to errors and inconsistencies in the Student's older brother's evaluation and IEP.

33. The Mother does not object to the School District performing a triennial reevaluation; instead, she agrees the School District may perform a triennial reevaluation, and objects to the timing of the reevaluation. The Mother wants the IEE to be completed by the UW CHDD first, prior to the School District's reevaluation.

34. The School District concedes it made clerical errors which it did not catch.

35. The parties have a great deal in common. Both parties want to have in place a current, comprehensive triennial reevaluation of the Student. Both parties are willing to have the UW CHDD

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conduct an IEE, which will then be read and considered by the School District. Both parties want to utilize the completed, updated triennial reevaluation as the basis for a new IEP.

36. [REDACTED] is the school psychologist assigned to the Student. He has a Bachelor's degree in history from the University of Washington, a Master's degree in pastoral studies from Seattle University, a second Master's degree in education/school counseling, also from Seattle University, and an educational specialist in school psychology from Seattle University. His first year of employment as a school psychologist was the 2005-2006 school year. He did his internship in the School District during the 2004-2005 school year. During the current school year, 2006-2007, he is assigned as the Student's case manager, and is responsible for the triennial reevaluation. [REDACTED] became involved with the Student during the Spring of 2006, when the Parent requested the Student be exited from Special Education, and the School District determined that a full reevaluation was needed prior to exiting the Student.

37. [REDACTED] is the Student's special education teacher. She has a Bachelor's degree in special education, with a minor in elementary education from Central Washington University. She has been teaching for 27 years in a variety of settings. She holds a special education endorsement in the State of Washington.

38. [REDACTED] is the Student's School District SLP. She holds the certification necessary to work as a school SLP.

39. The specific request of the Parent, and the specific basis for the Mother's refusal to sign her consent to the reevaluation, is that she prefers to have the results of the IEE prior to the School District's completion of its reevaluation.

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 United States Code (USC) § 1401 *et seq.* [Individuals with Disabilities Education Act (IDEA), formerly Education for All Handicapped Children Act], Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) § 300 *et seq.*, and Chapter 392-172 Washington Administrative Code (WAC).

2. Local educational agencies (LEAs, which in Washington are called school districts) are required to ensure that a reevaluation of each child with a disability is conducted at least once every three years, unless the parent and LEA agree that a reevaluation is unnecessary. 20 USC § 1414(a)(2). The LEA is required to provide notice to the parents of a student with a

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disability that describes any evaluation procedures the agency proposes to conduct. 20 USC § 1414(b)(1).

3. In the present case, the parties agree the Student is overdue for his triennial reevaluation. The parties also agree the areas identified by the School District as needing reevaluation are both necessary and appropriate. Those areas are: academic, cognitive, behavioral, social/emotional, speech and language, and health. Ex. D18. The parties agree that such a full assessment would assess the Student in all areas of suspected disability. The parties agree the School District has proposed appropriate individuals (school psychologist, school nurse, and SLP) to perform the evaluations, with the exception of the school psychologist to undertake any evaluation of the Student's anxiety.

4. In conducting the proposed reevaluation, the LEA is required to use a variety of assessment tools and strategies

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

- (i) Whether the child was a child with a disability; and
- (ii) The content of the child's [IEP] . . .

(B) May not use any use single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; 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) Additional Requirements. Each [LEA] shall ensure that --

(A) Assessments and other evaluation materials used to assess a child under this section --

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

- (B) The child is assessed in all areas of suspected disability[.]
- (C) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided[.]

20 USC § 1414(b)(2)(a).

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5. [REDACTED], the school psychologist, has sufficient credentials to qualify as an appropriate individual to administer testing to the Student. He is trained and knowledgeable in the areas of the reevaluation which he would perform, even though he is relatively new at his position. He might not be the Parents' first choice for the anxiety testing, but he is nonetheless trained and knowledgeable, despite the relatively few years he has been certificated in the State of Washington as a school psychologist. The School District has the right to select the staff it utilizes to perform the testing for the reevaluations, not the Parents, so long as those individuals are trained and knowledgeable.

6. The question which remains in this inquiry is whether the School District provided sufficient notice to the Parents of the testing it proposed to conduct.

7. WAC 392-172-182 requirement for reevaluation is consistent with federal law in requiring a full reevaluation at least once every three years. Further, the results of any reevaluations are required to be addressed by the IEP team when reviewing and, as appropriate, when revising the IEP. WAC 392-172-182(3).

8. Pursuant to WAC 392-172-304, informed parental consent must be obtained in writing, or denial of consent must be overridden by a due-process hearing, before a school district may conduct a reevaluation.

9. State law requires school districts to provide parents with prior written notice a reasonable time before the school district proposes to initiate or change the evaluation of a special education student. WAC 392-172-302(1). The specific contents of the prior written notice are also identified by state law. Prior written notice is required to include a description of each evaluation procedure, test, record, or report the district or other public agency used as a basis for the proposal or refusal and a description of any evaluation procedures the school district or other public agency proposes to conduct. WAC 392-172-306. The "description of each evaluation procedure, test, record, or report the district or other public agency used as a basis for the proposal or refusals [underline added]" means the foundational information that went into a school district's decision to do a reevaluation. WAC 392-172-306.

10. The underlined material is critical to this inquiry. What is required to be identified with such specificity is the tests a school district used as a basis for the proposal or refusal to test, pursuant to WAC 392-172-306. That is not what is at issue in this proceeding. What is at issue is "any evaluation procedures the school district ... proposes to conduct." Both the federal government and OSPI are aware of how to utilize specific language requiring a great deal of specificity. The State has done this through OSPI at WAC 392-172-306(1)(c). The language utilized there is much more explicit than merely "any evaluation procedures." It requires "a description of each evaluation procedure, test, record, or report."

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11. The current language of the IDEA does not support the Parents' position regarding the proper interpretation of 34 CFR § 300.304(b), conduct of evaluation. In the Analysis of Comments and Changes, 71 Fe. Reg. 46643 (2006), the comments address use of the words 'procedure' and 'measure of assessment' and whether public agencies are required to provide parents with evidence of the reliability and validity of the specific tests proposed or used. The discussion section makes it clear such detailed information is not required by law, and that those parents with such information may always request it before providing informed written consent for the reevaluation. Case law which has addressed this narrow point, arising from earlier versions of the evaluation and reevaluation requirements, is in accord. See, *Okaloosa Co. Sch. Bd.*, 43 IDELR 94 (SEA FL 2005).

12. The federal Department of Education's Office of Special Education Programs (OSEP) issued a Letter to Sutler, which is the agency's interpretation of federal special education law. *Letter to Sutler*, 18 IDELR 307 (1991). That letter analyzed a prior version of the same provision. In that letter, the agency answered the question as follows:

Whether for purposes of a reevaluation (not a 3 year reevaluation) the public agency is required pursuant to 34 CFR §§ 300.504 and 300.505, to notify the parent of every test to be administered and each professional's qualifications prior to conducting the evaluation?

13. OSEP explained the requirement to specify each test is concerned with tests that have already been given to a student, and not with those that might be used in the future. The agency specified that "if the purpose is to meet the three-year reevaluation requirement at 34 CFR § 300.534, then the agency would not be required to list any tests." This is consistent with the current language in federal and state statute and regulations.

14. There is no provision within federal law for a parent to withhold consent based solely on timing. Either a school district has proposed an appropriate reevaluation, and is therefore entitled to proceed to the reevaluation, or the school district has not proposed an appropriate evaluation and provided appropriate notice to the parents or guardian, and therefore is not entitled to proceed. In the present case, the School District has proposed an appropriate reevaluation, and the Student is in need of such evaluation. Not only is his current evaluation sorely out of date, but he is about to age-out of his current eligibility category (developmentally delayed), which is age-limited. WAC 392-172-114(4). The notice provided by the School District was adequate and appropriate. The errors made by the School District, identified above, do not constitute a valid reason to withhold consent to reevaluate.

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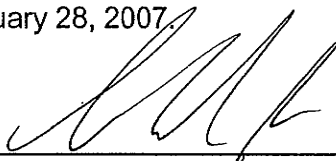
Superintendent of Public Instruction
Administrative Resource Services

Office of Administrative Hearings
1904 Third Avenue, Suite 722
Seattle, WA 98101-1100
(206) 464-6322 1-800-583-8270
FAX (206) 587-5136

ORDER

1. The Parents' refusal to consent to a full reevaluation of the Student is overridden.
2. The School District shall commence and conclude the reevaluation as quickly as possible, and in no event later than thirty days after issuance of this decision.
3. The Parents must cooperate with the School District to make the Student available for a complete, full reevaluation.

Signed at Seattle, Washington on February 28, 2007



Janice E. Shave
Administrative Law Judge
Office of Administrative Hearings

Final Decision

**Further Appeal Rights: Information About Your Right To Bring A Petition For
Reconsideration And Your Right To Bring A Civil Action**

Reconsideration

This is a final administrative decision. Pursuant to RCW 34.05.470, either party may file a petition for reconsideration within 10 days after the ALJ has served the parties with the decision. Service of the decision upon the parties is defined as the date of mailing of this decision to the parties. A petition for reconsideration must be filed with the ALJ at his/her address and served on each party to the proceeding. A copy of the petition must be provided to OSPI, Administrative Resource Services. The filing of a petition for reconsideration is not required before bringing a civil action under the appeal provisions of the IDEA.

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. If a timely petition for reconsideration is filed, this ninety-day period will begin to run after the disposition of the petition for reconsideration pursuant to RCW 34.05.470(3). 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.

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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. Jul 11

Parents
[REDACTED]
[REDACTED]

[REDACTED] Co-Director of Special Education
Highline School District
PO Box 66100
Burien, WA 98166

David Hokit, Attorney at Law
Curran Law Firm
555 W Smith St / PO Box 140
Kent, WA 98035

cc: Administrative Resource Services, OSPI
Barb Cleveland, Executive Assistant, OAH
Janice E. Shave, ALJ, OAH/OSPI Caseload Coordinator

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