



STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
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June 6, 2018

Parents
[REDACTED]

Dr. Kevin Peterson, Assistant Superintendent, Special Services
Mead School District
2323 East Farwell Road
Mead, WA 99021

Gregory L. Stevens, Attorney at Law
Stevens Clay PS
421 W. Riverside, Suite 1575
Spokane, WA 99201-0402

In re: Mead School District
OSPI Cause No. 2018-SE-0029
OAH Docket No. 03-2018-OSPI-00488

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,

COURTNEY E. BEEBE
Administrative Law Judge

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

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Superintendent of Public Instruction
Administrative Resource Services

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

IN THE MATTER OF:

MEAD SCHOOL DISTRICT

OSPI CAUSE NO. 2018-SE-0029

OAH DOCKET NO. 03-2018-OSPI-00488

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Courtney E. Beebe via telephone conference, on May 10, 2018. The Parents whose education is at issue¹ did not appear. The Mead School District (District) was represented by Greg Stevens and Jon Dalley, Stevens Clay, P.S., attorneys at law. Also present for the District was Suzanne McKibbon, Special Education Director. The following is hereby entered:

STATEMENT OF THE CASE

The District filed a due process hearing request on March 12, 2018. Prehearing conferences were held on March 22, 2018 and April 12, 2018. The Parents did not appear at either prehearing conference. A Continuance Order and Second Scheduling Notice was issued on March 23, 2018. A First Prehearing Conference Order was issued prior to the due process hearing on April 17, 2018.

As set forth in the order dated March 23, 2018, the due date for a written decision in this case was continued to thirty (30) days after the close of the record at the District's request. As the record closed at the conclusion of the hearing on May 10, 2018, the due date for the written decision is June 10, 2018. See Continuance Order and Second Scheduling Notice of March 23, 2018 and First Prehearing Order of April 17, 2018.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

District's Submissions: Declaration of Lindy Terry and attached Exhibits D-1, D-2, and D-3, which were admitted into the record; Declaration of Hayley Calhoun; Declaration of Tammy Spence; and Declaration of Maria Howes.

Parents' Exhibit: None offered.

The District presented direct witness testimony via declaration. The Parents did not present any witnesses or testimony.

¹ In the interest of preserving family privacy, the names of all family members of the Student are omitted from this decision. Instead, they are identified as, e.g., "Parents," "Mother," "Father," "Student," or "Sibling."

ISSUES

Whether the District's evaluation of the Student was appropriate, and if not, whether the Parents are entitled to an independent educational evaluation (IEE) at public expense. See First Prehearing Order of April 16, 2018.

FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness and plausibility of the evidence has been considered and weighed. To the extent a Finding of Fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted has been determined more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue.

1. The Parents moved from California to Mead, Washington, and enrolled the Student in ninth grade in the District for the fall semester of the 2017-2018 school year.
2. On October 18, 2017, the District issued to the Parents a "Reevaluation Notification / Consent" ("Reevaluation Notice") form. (Exhibit D-2, p.1) In the Reevaluation Notice, the District notified the Parents that because the Student transferred from a school where she qualified for special education services under the disability category "other health impairment" due to a cerebral palsy diagnosis, the District was required to perform a re-evaluation of the Student. (*Id.*) The District informed the Parents that it intended to re-evaluate the Student in the following areas to determine current levels: General Education, Medical-Physical, Academic, Age Appropriate Transition Assessment, Review of Existing Data, Adaptive, Cognitive, Communication, and Observation. (*Id.*) The District rejected the option of not conducting a re-evaluation at the time, because the District determined that current levels were needed to determine eligibility for educational services in Washington.
3. The Parents signed the consent form attached to the Reevaluation Notice on October 12, 2017, and gave consent for the Student to be re-evaluated. (*Id.* at page 2.)
4. Lindy Terry, a state-certified school psychologist for the District, completed the re-evaluation of the Student on December 7, 2017, within thirty-five days of the date the Parents consented to the re-evaluation. (Declaration of Lindy Terry, p.2, ¶6.) Ms. Terry has a Masters of Sciences degree in School Psychology and has worked as a school psychologist for fourteen years. (Dec. L. Terry, p.1, ¶2 and ¶4.) Ms. Terry evaluated the Student in the areas of General Education, Medical-Physical, Academic, Age Appropriate Transition Assessment, Review of Existing Data, Adaptive, Cognitive, Communication, and Observation. (Declaration of L. Terry, p.2, ¶7; Exhibit D-1.)
5. Ms. Terry assessed the Student's medical and physical capabilities on November 2, 2017. (Exhibit D-1, p.5.) The evaluation results reflected that the Student's diagnosis of cerebral palsy with expressive dysfluency adversely affect academic performance within the general education setting and require specially designed instruction in some areas. (*Id.*)
6. To assess the Student's adaptive skills, Ms. Terry used the Behavior Assessment System for Children, 3d Edition ("BASC-3") to assess anxiety, depression, adaptability, and social skills, and the Behavior Rating Inventory of Executive Function, 2nd Edition ("BRIEF-2") to assess

executive functioning in the classroom and in the home environment. (Dec. L. Terry, p.2, ¶ 7; Exhibit D-1, pp. 6-9.) Both of the Parents completed the BASC-3 rating scale, and the Student's Father participated in the BRIEF-2 rating scale. Kelli Burkhardt, the Student's teacher also participated in the teacher rating scale for the BASC-3 and BRIEF-2. (Dec. L Terry, pp.2-3, ¶ 8-9; Exhibit D-1, pp.10-11.)

7. Ms. Burkhardt's and the Parents' responses fell within acceptable ranges for responses, thereby indicating that the BASC-3 and BRIEF-2 results are a valid measure of the Student's adaptive skills, behavioral skills, and social skills. (Dec. L. Terry, p.3, ¶ 10; Exhibit D-1, pp.6-11.) The results also confirmed that the Student's behavior is not a factor impacting her ability to learn and that she has no difficulty with executive functioning in the classroom. (Dec. L. Terry, p.3, ¶ 11; Exhibit D-1, pp.6-11.)

8. Ms. Terry assessed the Student's cognitive ability using the Wechsler Intelligence Scale for Children, 5th Edition (WISC-V). The WISC-V also measures intellectual ability in the categories of verbal comprehension, spatial reasoning, fluid reasoning, working memory and processing speed. (Dec. L. Terry, p.3, ¶12; Exhibit D-1, pp.12-14.) The Student's WISC-V full scale IQ score fell within the low average range according to the test result. (Dec. L. Terry, pp.3-4, ¶ 13; Exhibit D-1, pp.12-14.)

9. Ms. Terry reviewed the Student's "Independent Education Plan" from her previous district in California. (Dec. L. Terry, p.4, ¶ 16; Exhibit D-1, p.1.)

10. Haley Calhoun, Mead District Educational Specialist, administered the Woodcock-Johnson IV, Form A to assess the Student's academic achievement. (Declaration of Hayley Calhoun, pp.2-3, ¶¶ 5 and 6; Dec. L. Terry, p.4, ¶ 14; Exhibit D-1, pp.15-17.) Ms. Calhoun has a Masters of Sciences degree in Special Education and has worked in special education for twenty years. (Dec. H. Calhoun, p.1, ¶2 and ¶ 4.) The Woodcock Johnson IV, Form A uses a standardized scale that compares students based on age and sex in the areas of reading skills and comprehension, math problem solving skills and calculation skills, and written expression in the areas of writing fluency and responsiveness to prompting. (Dec. H. Calhoun, pp.2-3, ¶¶ 5 and 6; Dec. L. Terry, p.4, ¶ 14; Exhibit D-1, pp.15-17.) The results of the test indicated that the Student had difficulties in the areas of reading and mathematics to such a degree that the Student qualified for specially designed instruction. (Dec. H. Calhoun, p.3, ¶ 6; Exhibit D-1, pp.15-17.) However, the Student worked at grade level in the area of written expression and did not qualify for specially designed instruction in this area. (*Id.*)

11. Tammy Spence, speech pathologist for the District, has a current Certificate of Clinical Competence from the American Speech Language Hearing Association and a Masters of Sciences degree in Communication Disorders. (Declaration of Tammy Spence, p.1, ¶ 2 and ¶3.) She administered three assessments to gain a comprehensive picture of the Student's communication strengths and deficits, using the Adolescent Word Test, the Oral and Written Language Scale, 2nd Edition, and the Social Language Development Test-Adolescent. (Dec. T. Spence, pp.1-2, ¶ 5; Exhibit D-1, pp.18-20.)

12. The Adolescent Word Test reflected a result that the Student's expressive language was within the normal limits for her age. (Dec. T. Spence, pp.1-2, ¶ 6; Exhibit D-1, p.20.) The Oral and Written Language Scale test determined that the Student "demonstrated difficulty with inferencing, following directions, understanding adjectives, and understanding complex sentences, showing

that she had a deficit in her listening comprehension." (Dec. T. Spence, p.2, ¶ 7; Exhibit D-1, pp.18-19.) The Student, however, demonstrated normal expressive skills. (*Id.*)

13. The Social Language Development Test-Adolescent, evaluated the Student in the areas of making social inferences, interpreting social language, problem solving, interacting in social situations, and interpreting social language, and interpreting ironic statements. (Dec. T. Spence, pp.2-3, ¶ 8; Exhibit D-1, pp.18-19.) The result of the assessment showed that the Student's social language skills are within normal ranges. (*Id.*)

14. Ms. Spence concluded that the Student would benefit from specially designed instruction in the area of receptive language. (Dec. T. Spence, p.3, ¶ 9.)

15. Ms. Spence also noted during the tests that the Student spoke quietly and may need reminders to "speak up," but that specially designed instruction in the area of vocal quality was not recommended. (Dec. T. Spence, p.3, ¶ 10.)

16. Maria Howes, school psychologist for the District, observed the Student in her math class for 25-30 minutes on December 1, 2017, in order to determine whether there were any environmental and behavioral factors that impacted the Student's ability to learn. (Declaration of Maria Howes, pp.1-2, ¶ 6; Exhibit D-1, p.21.) Ms. Howe has a Masters of Sciences degree in Social Work and an Educational Specialist degree in School Psychology. (Dec. M. Howes, p.1, ¶2 and ¶3.) Based on no reported problems in the class room and observing the Student to be on task during the observation, Ms. Howes did not identify any environmental or behavioral factors that negatively impacted her learning process. (Dec. M. Howes, p.2, ¶ 8; Exhibit D-1, p.21.)

17. On December 7, 2017, Ms. Terry, Ms. Calhoun, and Ms. Spence, and Ms. Burkhardt, as well as the Parents and others, met to develop a re-evaluation report. (Exhibit D-1, pp.1-4 and p.22.)

18. On December 7, 2017, the District sent the Parents a prior written notice informing the Parents of the services the District proposed to provide the Student. (Exhibit D-3.) The District notified the parents that the re-evaluation was complete and that the Student qualified for "special education and needs specially designed instruction . . . [in the] areas of service including reading, math and language." (*Id.*) The District notified the parents that based on the re-evaluation, the Student no longer qualified for specially designed instruction in the area of written language. (*Id.*)

19. On March 8, 2018, the Parents requested an Independent Education Evaluation and informed the District that they did not agree with the District's re-evaluation of the Student. ON March 13, 2018, the District filed a due process hearing request with the Office of Superintendent of Public Instruction. The matter was forwarded to the Office of Administrative Hearings the same day.

CONCLUSIONS OF LAW

The IDEA

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter

28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

2. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

3. *Rowley, supra*, 458 U.S. at 206-207 (footnotes omitted). For a district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Rowley*, 458 U.S. at 200 - 201.

4. The Supreme Court recently clarified the substantive portion of the *Rowley* test quoted above:

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . [H]is educational program must be appropriately ambitious in light of his circumstances . . .

Endrew F. v. Douglas County Sch. Dist. RE-1, ___ U.S. ___, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Endrew F.* standard as follows:

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

M.C. v. Antelope Valley Union High Sch. Dist., ___ F.3d ___, 2017 U.S. App. LEXIS 9359, at 22 (9th Cir. 2017).

5. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief, in this case the District. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

IEEs and Evaluations under the IDEA Regulations²

6. If the parent of a student eligible for special education disagrees with a district's evaluation, the parent has the right to obtain an IEE, which is an evaluation conducted by a qualified examiner not employed by the district. If a parent requests an IEE at public expense, the district must provide the parent with certain information on obtaining IEEs, and must either initiate a due process hearing within 15 days to defend the appropriateness of its evaluation, or else ensure that a publicly-funded IEE is provided without unnecessary delay. If the district initiates a hearing, and the final decision is that the district's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. WAC 392-172A-05005; see also 34 CFR §300.502.

7. In this case, the District initiated a hearing by filing a due process hearing request on March 12, 2018. Therefore, the issue presented in this case is whether the evaluation conducted by the District is appropriate.

8. Additionally, WAC 392-172A-03030 provides, in pertinent part, that districts must reevaluate a student "in accordance with WAC 392-172A-03020 through 392-172A-03080 before determining that the student is no longer eligible for special education services." *Id.*; see also 34 CFR §300.305(e).

9. The District conducted a re-evaluation of the Student as required by WAC 392-172A-03030, because the Student transferred to the Mead District from another district in another state. Therefore, re-evaluating the Student was appropriate.

10. When a district conducts a special education evaluation, a "group of qualified professionals selected by the district" must use a "variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent . . ." The group must not use "any single measure or assessment as the sole criterion" for determining eligibility or educational programming. The group must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical and developmental factors. WAC 392-172A-03020; see also 34 CFR §300.304.

11. Districts must also ensure that assessments are selected and administered to avoid discrimination based on race or culture, and are administered in the student's native language or mode of communication. Assessments must be administered by "trained and knowledgeable personnel" and "in accordance with any instructions provided by the producer of the assessments." Students must be assessed "in all areas related to the suspected disability" and the evaluation must be "sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified." *Id.*

12. WAC 392-172A-03025 concerns the review of existing data for evaluations. It provides that evaluations must review existing evaluation data on the student and identify what additional

² The Washington regulations on IEEs and evaluations are lengthy. The most pertinent provisions of the regulations at issue in this case are summarized here. The full text of the cited Washington regulations is attached as an Addendum to the decision.

data is needed to determine whether the student meets eligibility criteria. *Id.*; see also 34 CFR §300.305.

13. WAC 392-172A-03040 concerns eligibility determinations, and provides in pertinent part as follows. Upon completing the evaluation assessments, a group of qualified professions and the parent must determine whether the student is eligible for special education. A student must not be determined eligible “[i]f the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.” In interpreting evaluation data to determine eligibility, the district must draw upon information from a variety of sources, including parent and teacher input. The district must also ensure that information obtained from all of these sources is documented and carefully considered. *Id.*; see also 34 CFR §300.306.

14. Finally, WAC 392-172A-03035 concerns evaluation reports. It requires that they include: a statement of whether the student has a disability that meets eligibility criteria; a discussion of the assessments and review of data that supports the eligibility conclusion; a discussion of how the disability affects the student's progress in the general education curriculum; and the recommended special education and related services the student needs. *Id.*; see also 34 CFR §300.304-.306.

15. All arguments made by the parties have been considered. Arguments not specifically addressed herein have been considered, but are found not to be persuasive or not to substantially affect a party's rights.

Analysis

16. The Parents did not appear for the hearing or submit witness testimony or other evidence. The conclusions, therefore, are based on the evidence submitted by the District.

17. Based on the evidence in the record, it is concluded that the District relied on a group of qualified, trained, and knowledgeable professionals to conduct the re-evaluation as required by WAC 392-172A-03020. The evidence establishes that Ms. Terry, Ms. Spence, Ms. Howe and Ms. Calhoun are qualified in their respective fields to administer the assessments and evaluations that they performed.

18. Further, the evidence in the record shows that the District used a variety of technically sound evaluation and assessment tools to gather information in all areas of suspected disability. The evaluation and assessment tools gathered medical, functional, academic and behavioral information about the Student, and included consideration of cognitive, and physical factors as directed by WAC 392-172A-03020. Moreover, in the declarations filed in this case each of the evaluators specifically described why the test results were valid.

19. The evaluations and assessments are comprehensive and identify all of the Student's special education and related service needs. There is no evidence presented that shows there are other special education and related services needs that were not identified by the District or that are otherwise not commonly linked to the disability category in which the Student has been classified.

20. Importantly, Ms. Terry reviewed the existing "Independent Education Plan" from the Student's prior district in another state as part of the re-evaluation, as required by WAC 392-172A-03025.

21. The District determined that the Student is eligible for special education and specially designed instruction in the areas of reading, math and language, but is not eligible in the area of written expression, as set forth in the re-evaluation report Exhibit D-1. The District's determination is based on the Student meeting the eligibility criteria because the disability of cerebral palsy is present and the disability adversely impacts the Student's education such that specially designed instruction is needed. The District based its determination on information from the variety of assessments and evaluations performed, including input from the Student's parents and teachers. The information was documented and carefully considered as shown in the re-evaluation report Exhibit D-1.

22. The District's re-evaluation report and the prior written notice include statements of the Student's disability, a discussion of the assessments and review of the data that supports the District's conclusion, and a discussion of how the Student's disability impacts the Student's progress in the areas of reading, math and language. The District's re-evaluation and prior written notice also include recommendations of special education and related services. The District's re-evaluation report and the prior written notice meet the requirements of WAC 392-172A-03035.

23. Based on the evidence in the record, then, it is concluded that the District's re-evaluation of the Student meets the criteria set forth in WAC 392-172A-03020, WAC 392-172A-03025, WAC 392-172A-03040, and WAC 392-172A-03035. As a result, the District has shown that its re-evaluation of the Student is appropriate and therefore, the Parents are not entitled to an independent educational evaluation at public expense.

ORDER

The Mead District's Evaluation of the Student is appropriate. The Parents, therefore, are not entitled to an independent educational evaluation at public expense.

Signed at Seattle, Washington on June 6, 2018.



COURTNEY E. BEEBE
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.

CERTIFICATE OF SERVICE

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein. 

Parents


Dr. Kevin Peterson, Assistant Superintendent, Special Services
Mead School District
2323 East Farwell Road
Mead, WA 99021

Gregory L. Stevens, Attorney at Law
Stevens Clay PS
421 W. Riverside, Suite 1575
Spokane, WA 99201-0402

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

Addendum

392-172A-03020 Evaluation procedures.

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

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

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

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

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

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

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

(3) Each district must ensure that:

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

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

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

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

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

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

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

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

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

(e) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

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

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

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

392-172A-03025 Review of existing data for evaluations and reevaluations.

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

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

(a) Evaluations and information provided by the parents;

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

(c) Observations by teachers and related services providers.

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

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

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

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

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

(4) The district must administer such assessments and other evaluation measures as may be needed to produce the data identified in subsection (2) of this section.

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

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

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

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

392-172A-03030 Evaluations before change in eligibility.

(1) Except as provided in subsection (2) of this section, districts must evaluate a student eligible for special education in accordance with WAC 392-172A-03020 through 392-172A-03080 before determining that the student is no longer eligible for special education services.

(2) A reevaluation is not required before the termination of a student's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under WAC 392-172A-02000 (2)(c).

(3) For a student whose eligibility terminates under circumstances described in subsection (2) of this section, a public agency must provide the student with a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the student's postsecondary goals.

392-172A-03035 Evaluation report.

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

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

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

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

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

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

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

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

392-172A-03040 Determination of eligibility.

(1) Upon completion of the administration of assessments and other evaluation measures:

(a) A group of qualified professionals and the parent of the student determine whether the student is eligible for special education and the educational needs of the student; and

(b) The district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(2)(a) A student must not be determined to be eligible for special education services if the determinant factor is:

(i) Lack of appropriate instruction in reading, based upon the state's grade level standards;

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(b) If the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction.

(3) In interpreting evaluation data for the purpose of determining eligibility for special education services, each district must:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and

(b) Ensure that information obtained from all of these sources is documented and carefully considered.

(4) If a determination is made that a student is eligible for special education, an IEP must be developed for the student in accordance with WAC 392-172A-03090 through 392-172A-03135.

392-172A-05005 Independent educational evaluation.

(1)(a) Parents of a student eligible for special education have the right under this chapter to obtain an independent educational evaluation of the student if the parent disagrees with the district's evaluation subject to subsections (2) through (7) of this section.

(b) Each district shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in subsection (7) of this section.

(c) For the purposes of this section:

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the student in question; and

(ii) Public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with this chapter.

(2)(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted or obtained by the district.

(b) A parent is entitled to only one independent educational evaluation at public expense each time the district conducts an evaluation with which the parent disagrees.

(c) If a parent requests an independent educational evaluation at public expense consistent with (a) of this subsection, the district must either:

(i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense without unnecessary delay, unless the district demonstrates in a hearing under this chapter that the evaluation obtained by the parent did not meet agency criteria.

(3) If the district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the district may ask for the parent's reason why he or she objects to the district's evaluation. However, the explanation by the parent may not be required and the district must either provide the independent educational evaluation at public expense or initiate a due process hearing to defend the educational evaluation.

(5) If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation:

(a) Must be considered by the district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and

(b) May be presented as evidence at a hearing under this chapter regarding that student.

(6) If an administrative law judge requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(7)(a) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in (a) of this subsection, a district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.
