

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

IN THE MATTER OF:

OSPI CAUSE NO. 2020-SE-0042

OAH DOCKET NO. 02-2020-OSPI-01017

SHORELINE SCHOOL DISTRICT

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Janice E. Shave by video conference on June 9, 10, 24, and 25, 2020. The Parent of the Student whose education is at issue¹ was represented by Ryan Ford, attorney at law. The Shoreline School District (School District) was represented by Lynette Baisch and Tevon Edwards, attorneys at law. Also appearing for the School District was Scott Irwin, Director of Secondary Student Services.

STATEMENT OF THE CASE

Procedural History

The Parent filed a Request for Special Education Hearing (Complaint) with the Office of Superintendent of Public Instruction (OSPI) on February 26, 2020. The Complaint was forwarded to the Office of Administrative Hearings (OAH) also on February 26, 2020, for the assignment of an administrative law judge (ALJ). A Scheduling Notice was issued on February 28, 2020, assigning this matter to ALJ Shave.

A prehearing conference was held March 6, 2020, during which scheduling of the Parent's Motion to Enforce Stay-Put (Motion for Stay-Put) was addressed. The Parent's Motion for Stay-Put was filed March 11, 2020. The School District's Response to Parent's Motion for Stay-Put (Response to Stay-Put) was filed March 17, 2020. Oral argument on the Parent's Motion for Stay-Put was heard March 19, 2020. An Order Granting Parent's Motion for Stay-Put was issued March 27, 2020. It held the Student was entitled to stay put placement under the individualized education program (IEP) in effect at the time of filing of the Complaint, including the terms of the Safety Plan in effect and identified as an accommodation in the IEP.

The Parent filed an Amended Complaint on April 10, 2020. During the due process hearing and on the record, the School District representative confirmed the School District did not oppose the amendment. The School District filed a Response to the Parent's Amended Complaint on May 27, 2020.

¹In the interest of preserving the family's privacy, this decision does not name the parents or student. Instead, they are identified as "Parent" and/or "Student."

The due process hearing on this matter was continued on a number of occasions due in part to the unavailability of the School District's counsel on the date initially set, but primarily due to COVID-19 public health restrictions and the Parent's preference for an in-person hearing.

Due Date for Written Decision

During the March 6, 2020, prehearing conference, the School District requested the decision due date be extended to the close of the record plus thirty (30) calendar days, in order to accommodate the requested hearing dates. The Parent did not object to the School District's request to extend the decision due date. The First Prehearing Order continued the decision due date until the close of the record plus 30 days. The record closed July 31, 2020, when both parties filed post-hearing briefs; therefore, the decision is due August 30, 2020.

Evidence Relied Upon

The following exhibits were admitted into evidence:

Parent's Exhibits: P1-74 with the exception of P9, P38, P53, P56, P57, P58, P60
School District's Exhibits: D1-27

The following witnesses testified under oath, in order of their appearance:

Matt Markell, the Student's private therapist;
Elizabeth Hinson, the Student's Shorecrest directed studies (special education) teacher, case manager, and math teacher;
Lisa Gonzales, Shorecrest High School (Shorecrest) principal;
Nicole Steward, the Student's Shorecrest general education science teacher;
Lacy Clark, Shorecrest Dean of students since early March 2020, formerly the Student's Shorecrest general education language/literature teacher;
Jennifer Breed, the Student's assigned Shorecrest school counselor;
Steve Hirsch, PhD., Shorecrest school psychologist;
Scott Irwin, School District Director of Student Services;
Becky Worrell, Shorecrest Assistant Principal;
Parent.

ISSUES AND REMEDIES

As stated in the Parent's Amended Complaint, the issues for the due process hearing are:

A. Whether the School District's procedural violations of the Individuals with Disabilities Education Act (IDEA) rise to the level of a substantive violation, thus, denying the Student a free appropriate public education (FAPE) by:

a. Predetermining the content of the Student's safety plan outside of the individualized education program (IEP) team process;

b. Denying the Parent meaningful participation in her daughter's special education by not allowing the Parent to participate in the revision of the safety plan through the IEP team process;

c. Circumventing other procedural requirements under the IDEA as it relates to the Student's safety plan, including but not limited to:

i. Failing to assemble all mandatory IEP team members to participate in the January 21, 2020, meeting when the School District notified the Parent it would change the Student's safety plan;

ii. Permitting non-IEP team member Lisa Gonzalez to act as the de facto School District representative during the meeting and make the final decision regarding changes to the Student's safety plan;

iii. Failing to send a prior written notice to the Parent documenting the School District's decision to change the Student's safety plan; or

iv. Failing to add the IEP team agreed upon "written walking plan" provision for school assemblies and class-wide events to the Student's safety plan or IEP?

B. Even if none of the foregoing procedural issues independently rise to the level of a substantive denial of FAPE, whether the cumulative impact of all or some of the foregoing procedural violations resulted in a denial of FAPE?

C. Whether the School District materially failed to implement the Student's IEP when the Parent brought to the School District's attention that the Student's IEP team agreed to add the "written walking plan" provision to the Student's safety plan, but the School District refused to acknowledge and implement the provision, causing the Student to miss two of the final three school assemblies or class-wide events?

The Parent requested the following relief:

1. An order finding the School District denied the Student a FAPE by predetermining the content of the Student's safety plan.

2. An order finding the School District denied the Student a FAPE by denying the Parent meaningful participation in crafting the content of the Student's safety plan through the IEP team process.

3. An order finding the School District circumvented procedural requirements under IDEA as it relates to the Student's safety plan, resulting in a denial of FAPE.

4. An order finding the cumulative effect of the School District's procedural violations resulted in a denial of FAPE.

5. An order requiring the School District to continue to implement the safety plan in effect at the time of the November 2019 IEP team meeting, unless the parties mutually agree to a different safety plan.

6. If the School District wishes to revise the safety plan and is unable to reach an agreement with the Student's family, an order requiring the School District to contract with an independent outside provider that is a licensed therapist, psychologist (including neuropsychologist), or psychiatrist, with expertise in post-traumatic stress disorder (PTSD) to observe, consult, and make recommendations regarding the Student's safety plan and that the independent outside provider not have had or have a contractual relationship with the School District during the 2018-19, 2019-20, or the 2020-21 school years, other than for the express purpose of consulting on Student's matter.

a. Alternatively, if, prior to the proposed order, the Student's family has retained a provider that is a licensed therapist, psychologist (including neuropsychologist), or psychiatrist, to observe, consult, and make recommendations regarding the Student's safety plan, that the School District reimburse the Student's family for all expenses related to their retention of expert and retain the expert to observe, consult, and make recommendations regarding the Student's safety plan.

7. An order requiring the School District to incorporate the "written walking plan" provision into the Student's safety plan for the 2020-21 school year.

8. An order to implement the Student's safety plan with fidelity.

9. An order that the Student's safety plan may not be removed from her IEP unless both parties mutually agree.

10. Parent reserves the right to seek attorney's fees and costs incurred.

11. Such other and further relief as the Court may deem just and proper.

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.

General Background

1. The Student and Parent have resided within the School District boundaries at all times material to this matter. The Student attended eighth grade at Kellogg Middle School (Kellogg) within the School District during the 2018-2019 school year.

2. On October 16, 2018, the Student was pushed from behind by Classmate 1 while the Student was bent over a drinking fountain at Kellogg (the drinking fountain incident). Ex. P71. Kellogg disciplinary staff investigated the drinking fountain incident. Ex. P71. Classmate 1 was found to have pushed the Student into the drinking fountain; the conduct was classified as "minor harassment – intimidation - bullying" (HIB).

3. A safety plan was put in place between the Student and Classmate 1 at Kellogg (Kellogg Safety Plan). Ex. D1. The Kellogg Safety Plan was not offered into evidence in this proceeding; it contained a number of provisions restricting contact between the Student and Classmate 1. Ex. D1.2.

4. The Parent and Student filed a report about the drinking fountain incident with Shoreline police on October 18, 2018, two days after the incident. Ex. P69. The Parent further informed Shoreline Police a safety plan between the Student and Classmate 1 had been put in place at Kellogg. Ex. P69. The Parent reported she was upset that Classmate 1, who admitted she pushed the Student at the drinking fountain, had been disciplined but not suspended from school. Ex. P 69.1.

5. On November 1, 2018, the Student was seen at Children's Hospital. Ex. P73. The Parent and Student reported the Student had a history of multiple previous concussions. Exs. P73 and Ex. A to Mother's Declaration In Support of Parent's Motion to Enforce Stay Put. The Student told medical staff at Children's she was 98% recovered, and was experiencing headaches 1-2 out of 7 days a week, which were 1 out of 10 on a pain scale; she "denied any cognitive or physical triggers". Ex. P73.2.

6. An IEP was developed by the Student's IEP team on May 6, 2019 (May 2019 IEP). Ex. P1. The May 2019 IEP did not mention the Kellogg safety plan then in effect. The May 2019 IEP stated the Student was eligible for special education on the basis of other health impairment due to obstructive sleep apnea, sleep-related hypoventilation, and concussion history adversely impacting her academically, most notably in math, and behaviorally due to inattention, fatigue, and inability to focus. The IEP provided for specially designed instruction (SDI) to support her progress in math computation, and needed accommodations to support her ability to focus and attend to direct instruction and independent learning activities. Ex. P1.4. The IEP provided 120 minutes per week of SDI in math, with the remaining 92.94% of school time spent in general education. Ex. P1.9. The accommodations provided in the 5.6.2019 IEP included: adult check for understanding of critical direction in core classes; adult proximity; breakdown of assignments / materials into manageable parts; check of work frequently to ensure understanding; use of a computer for long response items; extra time on tests; extra time to complete tasks / assignments if Student effort is shown; manipulative materials; preferential seating; assistance of a scribe; small group; sunglasses as needed for light sensitivity; and use of graph paper for math. Ex. P1.6.

2019-2020 School Year

7. The Student and Classmate 1 were both freshmen at Shorecrest High School (Shorecrest) during the 2019-2020 school year.

8. On August 30, 2019, the Parent, Student, and Shorecrest Principal Lisa Gonzalez, Shorecrest school counselor Jennifer Breed, Shorecrest school psychologist Stephen Hirsch, Ph.D., the school nurse, and the assistant director of student interventions and compliance met at the request of the Parent to discuss the Student's transfer to Shorecrest, her safety, and the family's concerns about Classmate 1. Ex. D1.2. The Parent provided information about the Student's medical history, including her symptoms, and the drinking fountain incident. The meeting participants discussed steps to ensure the Student and Classmate 1 did not have contact

during the 2019-2020 school year, including limiting their contact with one another. The Parent informed the School District she was at that moment seeking a civil protection order in King County Superior Court against Classmate 1. Exs. D1.2, D4.1, P74.

9. Also on August 30, 2019, the School District received notice of a temporary protection order obtained by the Parent and Student which excluded Classmate 1 from attending Shorecrest. Ex. D1.2. That order was served upon Classmate 1 in school by police. Ex. P20.3; Gonzalez T327².

10. On September 24, 2019, the Parent and Student returned to King County Superior Court in an effort to obtain a full order of no contact against Classmate 1. The Student informed the judge she did not trust anyone in the Shorecrest administration. Ex. P74.13. The Parent and Student's request for a full no contact order was denied. However, the denial order stated: "Court strongly urges Shoreline School District to immediately enter into a Safety Plan for these students. If Classmate 1 violates the Safety Plan the Court would recommend she be transferred to another school." The previous temporary no-contact order expired on September 24, 2019. Ex. P74.

September 24, 2019 Safety Plan

11. A document entitled Shorecrest Behavior Agreement 2019-2020 No Negative Contact and Targeted Student Safety Plan (9/24 safety plan) was signed by the Student, the Parent, Classmate 1, the family of Classmate 1, and Principal Gonzalez on behalf of Shorecrest administration on or about September 24, 2019. Exs. P2, D5. The proposed end date was listed as June 18, 2020, with an annotation to "revisit at end of school year." In pertinent part, the 9/24 safety plan required the Student and Classmate 1 to:

- Maintain 10 feet distance at all times from one another, and be aware of one another's proximity in any open space, activity or athletic event, school dance, on bus, etc. While waiting in any line, the students will maintain 10 feet distance and/or remain at least five people apart.
- Turn and go in opposite direction if there is a physical proximity in hallway, library, classroom, or any open spaces, including during transition times. If not able to move in opposite direction, students will move to opposite sides of hallway, classroom, library or other open space, etc. to keep distance and/or maintain 10 feet of distance.
- Sit in assigned areas in the gym during assemblies. Student A [redaction in Exhibit] will sit in the south section closest to the small gym and Student B [Student] will be seated in the north side half of her class section closest to junior section. During class meetings in the small gym, Student A [redaction in Exhibit P2.1] will be seated on the east (parking lot) section and Student B [Student] will be seated on the west (locker room) side.

² Citation to the testimony of a witness is by last name and page number of the Transcript. For example, citation to "Parent T121" is a citation to the testimony of the Parent at page 121 of the transcript.

- Use assigned stairwells for any movement in the building. Student A [redaction in Exhibit P2.1] will utilize the main stairway. Student B [Student] will utilize Otis and Green Stairs. Neither should be in blue or yellow stairways.
- Not gather or linger at any entry or exit.
- Not have any negative verbal or nonverbal interaction or innuendo (race, color, national origin, sex, sexual orientation including gender expression or identity, creed, religion, age). Nonverbal communication includes glares and hand gestures.
- Not engage friends and/or acquaintances in negative contact.

...

Shorecrest will:

- Be conscious of students' proximity in events and activities that group students by alphabet and keep students at least 10 feet apart.

...

If I fail to follow the guidelines of this agreement, I realize I will be subject to disciplinary consequences, up to and including suspension and/or expulsion.

Exs. P2, D5.

12. The Parent's disagreement with the portion of the 9/24 safety plan related to the two students' use of school restrooms is not at issue in this proceeding, and therefore is not addressed further.

13. Lisa Gonzalez was the Shorecrest principal during the 2019-2020 school year. She earned a Bachelor's degree in political science and a Master's degree in education, along with a teaching certificate in secondary social studies from the University of Michigan. Gonzales T253. She taught middle school for two years in Battle Creek, Michigan. Principal Gonzalez spent many years working as a program director for the YMCA of Greater Seattle, then returned to the classroom for 12 years as a social studies teacher with the School District. She was the assistant principal at Kellogg for two years, then the principal at Kellogg, and has been the Shorecrest principal for four years. Principal Gonzalez received general training in special education in the course of her education training, supported the special education department as the Kellogg assistant principal, oversaw special education as the Kellogg principal, and oversees special education as the Shorecrest principal. Gonzalez T256. She has attended many annual in-School District trainings through the years, but has no degree or certification in special education, and has not taken continuing education classes related to special education for certification. Gonzalez T257. She does not have a background in PTSD. Gonzalez T289.

14. Principal Gonzalez was not a member of the Student's IEP team during the 2019-2020 school year. T267, Exs. P13, P15. She was the leader of the Student's safety team, the team of

building administrators and staff plus the Parent and Student, and in this case, Classmate 1 and her family, responsible for drafting safety plans. Gonzalez T276; Exs. P2, D5.

Student's Private Therapy with Matt Markell and School Therapy with Stephen Hirsch

15. Beginning in mid-July 2019 or early Autumn 2019, the Student participated in weekly private mental health therapy with Matthew Markell, a licensed marriage and family therapist (LMFT) and mental health counselor (MHC). Markell T49; Ex. P54³. The therapy sessions are for the purpose of treating the symptoms of what Mr. Markell eventually diagnosed as post-traumatic stress disorder (PTSD). Markell T49.

16. Mr. Markell earned a Bachelor's degree in Philosophy and a Master's degree in Marriage and Family Therapy, both from George Fox University. He has worked as a counselor with children, adolescents, and families in mental health counseling centers from 2007 to 2016, and has been in private practice with Mindful Therapy Group since 2016. Ex. P54. Mr. Markell has not worked in a school setting, and has never observed the Student at school. Markell T65, T69, T70, T72, T77; P54.

17. Mr. Markell's information about the triggers to the Student's PTSD symptoms comes from the Student's reports to him in therapy sessions, and from the Parent. Markell T49, T70, T71. Those triggers include taunting, bullying, name-calling, being in too-close proximity to Classmate 1, being approached from behind, her belief the 9/24 Safety Plan is not being honored (followed), and interactions with/thoughts about School District and Shorecrest administrators (because of her distrust in them). Markell T 70, T82, T86, T90, T94, T96, T97. Her symptoms include emotional arousal, reactivity, irritability, and anger. Markell T97. The Student also experiences headaches. Parent T 664. The Student repeatedly informed Mr. Markell she felt School District administrators were not following through and not protecting her by enforcing the 9/24 Safety Plan proximity restrictions. Markell T86.

18. Mr. Markell spoke with only one School District staff member about the Student's symptoms and treatment, Shorecrest school psychologist Stephen Hirsch, Ph.D. Gonzalez T276. These discussions occurred during one or two telephone calls in late 2019 and/or early 2020 in the course of Dr. Hirsch conducting a reevaluation of the Student. Markell T63, Hirsch T425. Mr. Markell informed Dr. Hirsch he was leaning toward a diagnosis of PTSD, but had not made an official diagnosis. Hirsch T427.

19. Dr. Hirsch was the Shorecrest school psychologist during the 2019-2020 school year. Dr. Hirsch earned a Bachelor's degree in science from Brooklyn City University of New York in 1973, a Master's degree in psychology from Brooklyn College in 1975, a Ph.D. in biopsychology from the University of Washington (UW), and became a certificated school psychologist in 1986 through the UW. Hirsch T409-417. He taught at the university level from 1979 through 1986 at Thomas More College and Thomas More University in Kentucky, and at the UW, and taught at Washington State University from 2000 to 2010. Hirsch T410-416. He worked for the Sumner

³ Exhibit P54 is Mr. Markell's declaration, however it is labeled with a different docket number and the name of different school district. It is assumed the contents relate to this Student, this School District, and the case proceeding under this docket number.

School District, the East Valley School District (Spokane area), and joined the Shoreline School District in 2011, where he has remained. He served as a guardian ad litem in Tacoma for five years.

20. Dr. Hirsch has been a school psychologist for thirty (30) years. He has the same education and expertise in PTSD as he has in any disorder, and does not consider himself a specialist in any particular mental health field, including PTSD. He conducts evaluations of students with IEPs, and counsels some students, including the Student during the 2019-2020 school year. Dr. Hirsch did not recall specifics about what PTSD training he has participated in, and was certain he has not received PTSD-specific training in the past three years.

21. During the 2019-2020 school year, the Student had a scheduled 30-minute visit each week with Dr. Hirsch to review therapeutic approaches that were being used in school. Hirsch T436. She also went to Dr. Hirsch's office due to a panic attack, anxiety, or PTSD symptoms. Hirsch T478. He defined a "panic attack" as the Student experiencing stressful stimulation that resulted in the Student leaving class and seeking out his office. Hirsch T435.

22. When she visited Dr. Hirsch, the Student generally was angry about a perceived violation of the 9.24 Safety Plan by Classmate 1, and particularly angry at Shorecrest administrators for not following through with a consequence or discipline against Classmate 1. Hirsch T437, 439. She reported she felt she was being betrayed by the administration. Hirsch T439. The Student visited Dr. Hirsch one or two times a week throughout the 2019-2020 school year, staying from fifteen minutes to an hour. Hirsch T436; P55. Dr. Hirsch estimated the Student asked to be picked up by the Parent less than one time per week. Hirsch T437. The Student usually calmed down within 5 to 10 minutes in Dr. Hirsch's office. Ex. P35.2; Hirsch T440.

23. Mr. Markell agrees with Dr. Hirsch on the need to support the Student by teaching her to calm herself, using calming strategies and stress management. Markell T53-54. Mr. Markell worked with the Student on self-calming strategies and stress management. Markel T53.

24. In Mr. Markell's opinion it would be professionally inappropriate for him to advise the School District on how it should support the Student relative to her PTSD symptoms and the classmates the Student reports trigger her PTSD symptoms, because he has not observed her in a school environment. Ex. P54. Markell T53, 54, 65, 69, 70, 77, 81. He noted it is important for the Student to feel safe in her school environment. Ex. P54.

25. Mr. Markel did not describe the Student's mental health as deteriorating over the 2019-2020 school year. In his professional opinion, the Student made progress under his supervision as her therapist, which includes the period of in-person instruction during the 2019-2020 school year. Markel T54.

November 13, 2019 IEP Amendment

26. An IEP meeting was held on November 13, 2019 (November 2019 IEP meeting). Exs, P13, P15 (as adopted). The Parent, the Student, their attorney, and the School District's members of the Student's IEP team, plus the School District's attorney, participated. Ex. P12. Principal Gonzalez did not attend, as she is not a member of the Student's IEP team. Gonzalez T267, Exs.

D8, P13, P15. Meeting notes were taken by the School District. Ex. P13. The Parent reported the Student had been diagnosed with PTSD by her private therapist. Ex. P13.

27. The IEP team discussed the Student's Present Levels of Educational Performance and Measurable Annual Goals (PLEP MAP), which showed the Student was doing well in math, the only area for which specially designed instruction (SDI) was being provided. Ex. P12. The Student had met her IEP goal in math; a new math goal was adopted. The November 2019 IEP provided 100% of instruction in the general education environment, with SDI in math being provided three times per week for thirty (30) minutes in the general education environment. Ex. 15.17. This was a change from the May 2019 IEP, which provided the math SDI in a special education environment. Ex. P1.

28. Elizabeth Hinson was the Student's directed studies (special education) math teacher and case manager during the 2019-2020 school year. Hinson T106. She earned a Bachelor's degree from Western Washington University in 2001 in general studies and psychology, and earned a Master's degree in education from Antioch University in 2014. Hinson T103-104. She obtained a special education endorsement following studies at Seattle Pacific University. Ms. Hinson taught through Americorps in Washington State, taught in South Korea, and was a special education teacher at Children's Institute for Learning Differences (CHILD) in a self-contained classroom for emotionally disturbed students from 2011-2016; she began her public school career at Shorecrest in the 2016-2017 school year. Hinson T104.

29. As the Student's case manager, Ms. Hinson attended the Student's IEP meetings, including the November 2019 IEP meeting. She gathered information about the Student from other teachers for the IEP process. Hinson T180. The other teachers reported the Student had no attendance problems and was a pleasure to have in class.

30. The Student's attendance was described as "solid" by the Band teacher; the Student was missing only one assignment in Health class. Ex. P12.4. The teachers who attended the November 2019 IEP meeting reported they had not noticed the Student exhibiting signs of panic attacks or needs for accommodation due to PTSD. Ex. P13.4. The PLEP MAP notes the Student's strengths include being enthusiastic and friendly, willing to share in class, being helpful toward partners and working well with other people and in groups. Ex. P15.13.

31. At the meeting, Dr. Hirsch commented the Student usually goes to talk with him when she is having a panic attack, which helps the Student be productive when she is in class. He noted the Student can zone out, and can exhibit some tics. Ex. P13.4. The Student told the IEP team she would like the teachers to notice "she is struggling a little bit." Ex. P13.4. The IEP team discussed preferential seating to include preferential grouping, so the Student could avoid working with or being in proximity to friends of Classmate 1. Ex. P13.5.

32. The accommodations in the November 2019 IEP included most of those in the May 2019 IEP except the use of manipulatives for math, and the assistance of a scribe. Exs. P1, P15. Some new accommodations were added, in large part in response to the Parent's input, including "breaks outside of classroom or stress inducing environment to go to a preferred staff location," one-time per test retake in math; the use of multiplication tables was removed. "Preferential seating" was defined as grouping with preferred peers with Student's input." Exs. P15.2, P15.14.

33. During the November 2019 IEP meeting, the IEP team also discussed the Student's safety plan. Ex. P13. The Parent and her attorney requested the 9/24 safety plan be made part of the IEP. Ex. P13.5. Dr. Hirsch commented that a safety plan is not special education instruction. Ex. P13.6. Dr. Irwin noted the IEP could not name any other student, and could not include restrictions on any student other than the Student. Exs. D2.1, D3; Worrell T567, Clark T196. At the request of the Parent and her attorney, the School District agreed to add as an accommodation in the November 2019 IEP that the Student had a safety plan. Ex. P13.5.

34. The School District members of the IEP team said the IEP team could not meet quickly enough to make timely changes to the Student's safety plan, and therefore, changes in the safety plan would be handled by the Shorecrest safety team. Parent T688, T689, T690, T695-697. Dr. Irwin stated the building-level administrators, not the IEP team, would be responsible for changes to the Student's safety plan, so the Parent would need to work with Shorecrest administrators for changes to the safety plan. Irwin T631-631, 761. Parent T688, T761, T763, T765, T780. The Parent noted she did not want the Student's safety plan to be "removed" without an IEP meeting. Ex. P13.5; Parent T688, T690, T691, T731.

35. On her first day of testimony during the hearing, the Parent acknowledged the IEP team discussed the process that would be used to make changes to the Student's safety plan, and that process was through the safety team, not the IEP team. Parent T688, T689, T690, T691, T731.

36. However, on Day 2 of her testimony, the Parent recanted this portion of her Day 1 testimony. Parent T720-726. She then testified she had experienced some audio issues on the first day of her testimony, had not understood one question, and therefore did not answer it correctly. After reviewing the transcript of both days of the Parent's testimony, the meeting notes of the November 2019 IEP meeting, and the Parent's actions after the November 2019 IEP meeting, Day 1 of Parent's testimony is found to be more reliable and credible. The Parent's testimony on Day 1 was fulsome, internally consistent, and consistent with her actions thereafter, including her efforts to request a safety team meeting, her request to include proximity restrictions for more classmates and increase the proximity distance. She responded to questions readily and on point, did not express difficulty hearing the questions, and when her testimony was summarized on Day 1, neither the Parent nor her attorney disagreed with the summary. ALJ Shave T690-691.

37. During the November 2019 IEP meeting the Parent and/or her attorney requested a written walking plan be added as an accommodation to the IEP related to the movements of the Student and Classmate 1 within Shorecrest, specifically for assemblies and schedule changes, and distinct from the walking instructions they already were provided with for moving between classes, lunch, etc. Exs. P12.15, P13.6. The School District agreed to provide a written walking plan for wholesale schedule changes, including assemblies, but not for individual or unforeseen schedule changes. This provision was to be added to the safety plan, and to the November prior written notice (PWN) under "Any other factors that are relevant to the action" but not to the IEP itself. Exs. P13.6, P15.21; Irwin T635.

38. The Parent's attorney requested an outside expert on PTSD be hired as a consultant. Ex. P13.6. The School District declined this request, noting its own staff expertise should be used first, along with the Student's outside therapist for reference. Ex. P13.7. The IEP team agreed

Dr. Hirsch would conduct a reevaluation to focus on the Student's social-emotional development based upon the report of a new private-provider diagnosis of PTSD. Ex. P13.7.

November 13, 2019 Prior Written Notice and IEP

39. The School District issued an IEP and Prior Written Notice (PWN) dated November 13, 2019. Exs. P15, D8.

40. The November 2019 IEP included as an accommodation "Safety Plan" on an "as needed" frequency. Ex. P15.14. The 9/24 safety plan was not attached to the IEP, and no terms, dates, or specifics were mentioned. Ex. P15.14.

41. The November 2019 PWN advised the Parent the team "agreed to initiate a reevaluation in order to gather data in the area of social-emotional." Ex P.15.20. The reason stated for the proposed reevaluation was

"at the request of parent's attorney to determine whether Student needs additional supports or SDI to address PTSD. Parent felt that addit[sic] supports were necessary because Student is missing class. The teachers present at the IEP meeting did not indicate that Student has missed a significant amount of class. The parent's request to utilize an outside evaluator with expertise in PTSD was declined at this time because District members of the team felt that adequate data could be gathered from other sources to determine any educational needs associated with Student's PTSD diagnosis."
Ex. D8, P15.20.

42. Under "Description of the proposed or refused action", the November 2019 PWN provided as follows:

- ...
- Specified as an accommodation that Student has a safety plan to regulate contact with another student.
- Clarified the preferential seating accommodation to encompass proximity ... or with preferred peers, in order to ensure that Student is seated with peers who are unlikely to trigger a panic attack...
- Added a grouping accommodation so that Student will be paired with peers she is comfortable with for group work.
- The team also agreed to initiate a reevaluation in order to gather data in the area of social-emotional.

Exs. D8.14, D15.20.

43. Under the section "Any other factors relevant to the action" the PWN also stated in pertinent part:

... The [IEP] team discussed several clarifications to the current Safety Plan, including addressing the concern that Student has around encountering the other student [Classmate 1] when coming or going from assemblies or class meetings.

The Student will receive a written reminder about how to handle those ingress/egress situations.
Exs. D8.15, P15.21.

44. Although the IEP team agreed a provision for written walking instructions for assemblies and large-scale changes would be added to the 9/24 safety plan, the parties do not dispute this was not done.

Reports of Possible Violations of 9/24 Safety Plan and November 2019 PWN

45. The terms of the 9/24 safety plan required each of the students to “maintain 10 feet distance at all times from one another, and be aware of one another’s proximity” during the 2019-2020 school year. The Student was extremely focused the whereabouts of Classmate 1 and of the friends of Classmate 1 at all times. The Student was focused on the rules, and on whether a violation occurred. Hirsch T471, T473, T477, T478.

46. During November and December 2019, the Parent sent a variety of emails to Principal Gonzalez and other School District administrators informing them of individual instances where she and/or the Student believed Classmate 1 had violated the 9/24 Safety Plan. Ex. P19. For instance, on one occasion the Parent observed Classmate 1 walk down a stairway and out of the building without an adult escort, as Principal Gonzalez had said would be provided. Ex. P19.4. The Parent was provided written notice when Classmate 1’s classroom was changed, so that the two students would be aware of each other’s location, and be able to avoid contact. Ex. P19.15.

47. The Parent sought to change the 9/24 safety plan through the Shorecrest safety team, consistent with the discussion at the November 2019 IEP meeting that this was the process to change the 9/24 Safety Plan. Parent T698-699. For instance, on November 22, 2019, the Parent emailed Principal Gonzalez advising her the November 2019 IEP team had extensive conversation about the Student’s needs related to the 9/24 safety plan. Ex. P19. The Parent notified Principal Gonzalez, who was the head of the Student’s safety team, that the Student now required fifteen (15) feet distance from Classmate 1 due to the Student’s “deteriorating mental health”. Exs. D9.2, D10, P19.3. The Mother provided a list of other students she felt should not be allowed to sit by the Student. D11.3.

48. Also on November 22, 2019, the Parent emailed Dean of Students Zachau to report what the Parent considered inappropriate touching by a friend of Classmate 1 who was in the Student’s math class (Classmate 2). Ex P20. The conduct by Classmate 2 was touching the Student’s shoulder blade area with a capped writing instrument while sitting behind her during math class on or about November 20, 2019. Ex. P20. After this incident the Student appeared angry and frustrated. Hinson T165. Ms. Hinson, the Student’s math teacher and special education case manager, offered the Student a break. Hinson T180. The Student declined the offered break, stated she was fine, and remained in the classroom the rest of the period. Hinson T180.

49. Ms. Hinson investigated the reported incident, determined Classmate 2’s conduct was “a violation of anyone’s personal bubble,” but “made the professional decision to not refer him for his actions.” Hinson T166; Ex. P20.8. Ms. Hinson suggested to Dean Zachau that Classmate 2 might be transferred out of the Student’s class along with other students because the class was extremely full, and also because of the effect he had on the Student. Hinson T167. Dean Zachau

did not transfer Classmate 2 to a different class; instead, she contacted the Student's teachers and asked that the Student not be seated near or in any groups with one or more additional students. Hinson T167; Exhibit P20. The Student was not in any classes with Classmate 1.

50. The Parent requested Dean Zachau "tell Classmate 1's group of 10-15 friends that the Student is completely off limits and to leave her alone and if they don't, their conduct will be viewed through the prism of bullying instead of isolated and unconnected incidents, as has been the case thus far." Exs. P20.2, D11.1. Principal Gonzalez responded that the incident had been investigated, did not involve Classmate 1, invited further reporting of specific events of bullying, and offered to have Dr. Hirsch contact the Student to discuss the matter. Ex. P20.1.

51. On December 3, 2019, the Parent emailed Principal Gonzalez and other Shorecrest administrators to inform them a different friend of Classmate 1 had stood too close behind the Student, and said "excuse me" twice in a rude manner. Ex. P22.3. The Parent reported this immediately triggered the Student to experience an anxious state. School District administrators responded by reviewing the Student's preferential seating accommodation and classroom configurations to determine whether the Student could be seated with her back to a wall. Ex. P22.2.

52. The Student was noticeably upset one day in March 2020, and missed math class as a result. Hinson T177. The Student saw Classmate 1 in school that day, but Ms. Hinson's impression was that the Student was upset about that day's announcement of cancelation of a Band trip to Ireland for St. Patrick's Day because of COVID-19. Hinson T177-178.

53. Principal Gonzalez observed the Student very upset, crying, and distraught in school on one occasion during the 2019-2020 school year, just before in-person school ended in March 2020 due to COVID-19. Gonzalez T289-290. She assumed this was PTSD symptoms, but was unaware of the trigger to the response.

54. The Parent kept an Incident Tracker with information about alleged incidents and violations of the 9/24 Safety Plan, as well as therapy appointments, legal appointments, telephone calls, and school meetings and emails. Ex. 59. Parent T686.

55. The Student called the Parent two to three times a week during the in-person portion of the 2019-2020 school year to report proximity violations of the 9/24 Safety Plan triggering a stress response. Sometimes the Parent picked the Student up from school and took her home. Parent T685, Hirsch T437. The Student's headaches and irritability have gotten better over time. Parent T664.

Requests for Written Walking Plan for Assemblies

56. On December 6, 2019, the Parent emailed Principal Gonzalez and requested a written walking plan be provided for the Student for an assembly. Ex. P24.1. Principal Gonzalez emailed a response to the Parent, noting the Safety Plan provides language regarding seating during an assembly, and attached a copy of the Safety Plan. She also noted:

...the IEP meeting notes indicate that providing written directions for any schedule changes is not a feasible option and it is not an IEP accommodation.

However, we address assembly seating in the Safety Plan and that is where these directions can be provided. If there needs to be an update or revision to the safety plan, we can do that.

57. Principal Gonzalez was not aware the School District had agreed in the November 2019 PWN to provide a written walking plan for assemblies. Gonzalez T298, T301. She read the November 2019 IEP, but not the November 2019 PWN, and the parties do not dispute the 9.24 Safety Plan itself was not updated with the walking plan language. When Principal Gonzalez received the Parent's requests for a written walking plan, she did not realize the School District had agreed to provide something beyond what was called for in the 9/24 Safety Plan. Gonzalez T298.

58. The Parent made several other requests for a written walking plan for assemblies. Parent T698-699; Exs. P33, P49, P59. School Counselor Jennifer Breed delivered a written walking plan to the Student at the end of the first term, because both student's classes changed. Breed T241, Parent T738. This walking plan did not address assemblies or class meetings. The Student appeared stressed by delivery of the written walking plan. Breed T241, Parent T738.

59. In early February 2020, the Parent advised Assistant Principal Worrell the walking plan provided by Ms. Breed at the change of semesters "did not help [Student] remember where to go to get to her classes or help alleviate her anxiety and in fact is part of what overwhelmed her and triggered her anxiety." D17.1.

60. There is no dispute that the School District did not provide the Student with written walking instructions to any assembly after the November 2019 IEP meeting. P33; Parent T698.

61. The Student attended one assembly with Dr. Hirsch after the November 2019 IEP and PWN; he was listed as one of her safe adults. Hirsch T457-458. She did not attend two or three school assemblies from the start of the 2019-2020 school year through the end of in-school instruction (the parties agreed in-school instruction ended on or about March 12, 2020, due to COVID-19 public health considerations). Parent T698. (The Parent's issues statement assumes the Student missed two out of three assemblies.)

62. The Parent estimated the Student missed 4 or 5 days of school during the in-person period of school. Parent T702.

63. Although the Parent and Student reported what they perceived as violations of the contact restrictions between the Student and Classmate 1 during the 2018-2019 and 2019-2020 school years, no incident of HIB between Classmate 1 and the Student was documented by the School District during the 2019-2020 school year. Gonzalez T326.

January 21, 2020 Safety Team Meeting

64. On December 17, 2019, the Parent requested a Shoreline safety team meeting to discuss the 9/24 safety plan and supports the School District could provide to the Student. Ex. P26. The safety team meeting was not held until January 21, 2020, due to snow days, school breaks, and

Principal Gonzalez's recommendation to wait until the special education reevaluation was completed. Gonzalez T288-289; Ex. P35.

65. Principal Gonzales led a safety team meeting on January 21, 2020 (January 2020 safety team meeting) pursuant to the Parent's December 2019 request. Gonzalez T268; D1. Principal Gonzalez informed the Parent and Student the School District intended to move to a more therapeutic approach in the Safety Plan. Gonzalez T283; Ex P35. According to notes taken at that meeting by School District staff, Principal Gonzalez noted the Student's "focus is now on reporting, not on coping." P35.3.

66. The family expressed their agreement with a therapeutic approach; their attorney stated the family was "on board" with the therapeutic changes. Ex. P35.3, P35.4. However, the family asked for increased proximity (distance) restrictions, and asked to limit more classmates beyond just Classmate 1. Ex. P35.3, P35.4; Gonzalez T361. No changes to the 9.24 Safety Plan were made at the January 2020 safety team meeting; changes were delayed until the reevaluation could be completed. Ex. P35; Gonzalez T288, Hirsch T483.

67. On January 23 and 24, 2020, the Parent and Principal Gonzalez exchanged emails about the Parent's request for more limits in the revised safety plan. Ex. D21. Principal Gonzalez again provided notice of the School District's intent to change to a "therapeutic based safety plan". Ex. D21.2. The stated basis for the planned change was Parent's report that an increasing number of classmates trigger the Student's response by the Student seeing the classmates "from any distance", and the Student's own thoughts trigger the Student's stress response, without any visual or physical contact. Ex. D21.2.

February 7, 2020, Reevaluation and IEP meeting

68. School psychologist Dr. Hirsch conducted an Assessment Revision (evaluation) of the Student in response to the November 2019 IEP team decision to reevaluate the Student to determine whether she needed support in the area of social-emotional development. Ex. D18.7; Hirsch T427. The re-evaluation began in December 2019; the report was presented February 7, 2020. D18.1.

69. In the course of the reevaluation, Dr. Hirsch observed the Student in a variety of locations and circumstances at school, including in an unspecified classroom, in the AVID class located in the cafeteria, and during lunch. Ex D.18.1. She was experiencing a range of social-interactive environments from relative isolation to laughing and hanging out with others. The Student participated on athletic teams year-round, but contact sports must be carefully monitored due to her history of concussion. Dr. Hirsch commented:

Observed during the group (AVID in the cafeteria) and classroom environments was a very 'healthy' learning situation where the Student engaged in ongoing class activities both individually and within group setting. She did not seem distracted by the presence of other student [sic] who have been triggers for PTSD-type responses in the past. Student's learning did not seem to be impacted by any particular student's presence and her social interactions seemed perfectly acceptable. It appears that except for specific incidents that are quite traumatic for the Student, her learning experience is what one would hope it to be. It should also

be noted that her AVID teacher has reported a marked positive upswing in her general demeanor.

70. On self-assessment using the Behavior Assessment for Children (BASC-3), none of the Student's ratings reached the level of clinical significance, but several were rated as "at risk." Ex. D18. The Student reported some difficulty establishing and maintaining close relationships with other and sometimes being lonely and isolated. She also reported substantial worrying, nervousness and/or an inability to relax. She reported she is often afraid she will make a mistake.

71. The Parent's assessment of the Student, also using the BASC-3, was different than the Student's own. Ex D18. Both anxiety and withdrawal indexes were rated in the clinically significant range. The English and AVID class teachers' assessments both demonstrated some at-risk concerns for anxiety and withdrawal. The rating of the AVID teacher showed more areas of at-risk or concern. One of the friends of Classmate 1 is in the AVID class. Ex. D18.3.

72. Dr. Hirsch's evaluation report concluded the Student experienced extreme anxiety and should receive SDI in the area of social-emotional development. Ex. D18.

73. The adverse impact was described as the Student demonstrating symptoms of several possible barriers to mental health including PTSD, generalized anxiety, depression, and mood disturbance. The symptoms were described as having significant adverse impact on the Student's education, as "virtually every day sees a disturbance that 'pulls' her away from class/school." Ex. D18.4.

74. The evaluation report proposed social-emotional SDI "to coincide with outside therapy with respect to empowering her to be able to regain control of a situation once she is triggered, and, as she appears to be learning the strategies, the goal should be for her to demonstrate the strategies once her anxiety is triggered." Ex. D18.4.

75. A meeting was held February 7, 2020, to discuss the reevaluation report, and to discuss an amendment to the IEP to add a social-emotional goal for the Student. Ex. P42, P43. A social-emotional goal was added to the IEP:

to demonstrate the ability to successfully utilize an independent coping strategy improving coping skills from leaving class or school and missing classroom instruction time in 95% of anxiety provoking situations to leave class or school and missing classroom instruction time in 5% of anxiety provoking situations as measured by student self report.

Ex. P43.8.

76. At the meeting, school psychologist Hirsch recommended providing the Student with training on how to minimize the disruptive effects of triggering events. The Parent renewed her request for the School District to hire an outside expert with special expertise in PTSD; the School District rejected this request. Ex. P43.16.

77. Mr. Markel testified he did not see any inconsistencies between the mental health support the School District was to provide pursuant to the 2.7.2020 IEP Amendment and the work he was doing with the Student in private therapy. Markell T53.

78. The School District issued a PWN dated February 7, 2020 (February 2020 PWN), noting the proposed change to the evaluation because of the diagnosis of PTSD. Ex. D18.9. The School District issued a separate PWN dated February 7, 2020, noting the proposed change to the IEP based on the evaluation, and declining the Parent's request for consultation with an outside PTSD expert, with an implementation date of February 24, 2020. Ex. D.19.16. The IEP was amended to add thirty (30) minutes per week of social emotional SDI, and to add a goal consistent with the recommendation in the reevaluation report, above. Ex. D18.16.

79. Ms. Hinson, the student's special education and math teacher, agrees the Student needs SDI in how to respond to high levels of stress. Hinson T161.

Changes to Safety Plan February 2020

80. On February 11, 2020, Principal Gonzalez instructed school counselor Jennifer Breed and school psychologist Hirsh to develop a draft of a new safety and coping plan with an emphasis on therapeutic coping strategies to present to the Parent at a safety team meeting. Breed T238, Hirsch T480-481, Gonzalez T277, T312. Principal Gonzales asked Ms. Breed and Dr. Hirsch to provide coping strategies that had worked well with other students, could be utilized in a school setting, and were consistent with input from the private therapist, Mr. Markell. Breed T238; Gonzalez T276. Principal Gonzalez, Ms. Breed, and Dr. Hirsch all contributed ideas; Ms. Breed and Dr. Hirsch contributed wording; Ms. Breed typed the document. Hirsch T480, Breed T236, Gonzalez T313.

81. Dr. Hirsch felt it was important for the Student's safety plan to emphasize a therapeutic approach, one that was focused on what the Student would do, and to support the Student's self-calming and self-confidence, rather than focus on Classmate 1's perceived breach of proximity rules. Hirsch T472, 479, 522. In his opinion, continuing with a safety plan that included physical proximity limits was probably counterproductive to the therapeutic approach of how to handle the stressful situation. Hirsch T472, T473, T477, T478.

82. Although Ms. Breed was the Student's assigned counselor, throughout the in-person portion of the 2019-2020 school year, the Student chose to speak with Dr. Hirsch, instead of Ms. Breed. Breed T219, T222. Ms. Breed had more than superficial interaction (meaning more than observed in the hallway or lunchroom) on only three or four occasions during the 2019-2020 school year prior to the COVID-19 public health school closure on or about March 12, 2020. Breed T220. This contact generally occurred when Dr. Hirsch was with another student, and therefore unable to speak with the Student.

83. Ms. Breed earned a Bachelor's degree and teaching credentials from the University of Michigan in 1992, and a Master's degree in counseling from Seattle University in or about 1998. Breed T216. She holds teaching endorsements in English, German, and environmental education. She taught English at Kent High School in 1993, then was hired at Shorecrest as a school counselor, where she has remained. She studied PTSD as part of her counseling degree, but not as an emphasis area, and does not feel she has a depth of knowledge about PTSD. Breed

T234. She is aware a person with PTSD can have multiple triggers, which can be variable and unpredictable. Breed T 235.

February 13, 2020, Safety Team Meeting

84. A Safety Team meeting was held February 13, 2020. Principal Gonzalez attended the meeting, as did the Parent and Student. Principal Gonzalez presented the School District's proposed new Coping/Safety Plan (Coping/Safety Plan) for review. Ex. P45. The Coping/Safety Plan did not include any proximity restrictions; instead, it listed causes of upset, warning signs, coping strategies, and adults to contact for support. The proposed implementation day of the new safety plan was March 2, 2020. D21.1. Principal Gonzalez asked the Parent to respond and provide information about the Student's signals of distress, or successful coping strategies, so they could be included in the Coping/Safety Plan. D21.1; Gonzalez T314, Parent T791.

85. The Parent did not respond to Principal Gonzalez's email request for information, and did not provide information to other members of the Safety Team or the IEP team in response to the request for input to adjust the Coping/Safety Plan. Gonzalez T314, T751, Parent T791. The Parent felt there was no point in providing input because she felt Principal Gonzalez had been hostile during the January 21, 2020, Safety Team meeting, communication had broken down, and the School District was violating the Student's rights. Parent T791.

86. The Parent actively participated in the Student's IEP and safety team meetings throughout the 2019-2020 school year, with the exception of providing the requested response to the February 13, 2020, safety plan. She attended all scheduled meetings, communicated with School District staff on a frequent basis, and commented on School District actions. The reevaluation was initiated at the request of the Parent; numerous changes to the proposed IEPs were made at the request of the Parent, including changes to accommodations. Ex. D19; P31.2; P15. She was informed on/attentive to each detail of the Student's daily activities and interactions at Shorecrest. The evidence of record does not show the Parent is a behavior or education specialist, and she is not employed in those fields. Parent T662.

87. The Parent filed the Complaint resulting in this special education due process hearing on February 26, 2020.

Testimony of Shorecrest Staff

88. The Student's grades overall during the 2019-2020 school year were As and Bs. Hinson T184; Hirsch T428. Ms. Hinson, the Student's special education and math teacher, noted the Student did very well in math during the 2019-2020 school year, earning As or high Bs, and has an aptitude for math. Hinson T176. Ms. Hinson believes the Student needs SDI in how to emotionally regulate when feeling high levels of stress. Hinson T161.

89. Lacy Clark was the Student's English language teacher from the start of the 2019-2020 school year until early March 2020, when she became the Shorecrest Dean of Students. She earned a degree in French language and literature, and a minor in English language and literature, from Whitman College in 2013; she earned a Master's degree in teaching from the University of Puget Sound in 2014. Clark T188. She worked with a co-teacher to develop special education

materials, and has completed a few continuing education units in special education, but has not received any compliance training in special education.

90. During the months Ms. Clark was the Student's teacher, she did not observe the Student experiencing any PTSD symptoms. Clark T191. Ms. Clark is aware the Student's symptoms are triggered by exposure to particular classmates. Neither Classmate 1 nor Classmate 2 was in Ms. Clark's class with the Student, but another classmate who triggers the Student's symptoms (Classmate 3) was in the class. Clark T192. Ms. Clark did not observe the Student having any difficulty with Classmate 3 in or out of class. Clark T206. On one occasion the Student asked to be placed in a group with Classmate 3, but Ms. Clark had heard this was not a good match. Clark T206. Ms. Clark asked the Student about the grouping, and the Student dropped the request. Clark T206-207.

91. The Student initially attempted to receive honors credit for the class she took from Ms. Clark, and completed some but not all of the required extra assignments for an honors designation. Clark T192. Many students attempt honors credit in the class; it is not uncommon for students to attempt honors but not complete the required 3 out of 5 extra assignments. Clark T206.

92. The Student earned a grade of A- in Ms. Clark's class, then in the following semester received a B. Clark T212. Nothing stood out to Ms. Clark as being a big problem for the Student. Clark T213.

93. Scott Irwin earned a Bachelor's degree in music education, a Master's degree in education, and a teaching certificate, all from the University of Puget Sound. He earned his administrative certification through Western Washington University, and obtained his principal certification. He earned a doctorate degree from the UW in 2018, and obtained his superintendent certification. He taught in the Mukilteo School District from 1999 through 2003, and was an elementary principal from 2013-2015 and director of categorical programs from 2013 through 2015 in the Marysville School District. Dr. Irwin became the director of secondary student services in the School District in 2015. He oversees special education at the middle school and high school levels, as well as occupational therapy (OT), physical therapy (PT), vision, hearing, out-of-district services, counseling, and other unspecified areas. Irwin T624-626. He has taken many courses related to special education, including direct classes and courses, formally and informally through universities, continuing education, conferences, and training workshops. Irwin T626. Dr. Irwin attended the Student's IEP meetings during the 2019-2020 school year. Exs. P12, D19.

94. Nicole Stewart was the Student's general education science teacher during the 2019-2020 school year. Stewart T398. She earned a Bachelor of Science in physics and astronomy, a Master's degree in teaching, and a teaching certificate with an endorsement in secondary science, all from the UW. She worked as a lab manager for a startup company making home beer brewing equipment from 2012-2016, and worked as a tutor for Sylvan learning for two or three years. Ms. Stewart has been a science teacher for the School District for three years. Stewart T397.

95. According to Ms. Stewart, the Student was a good student who came to class. Stewart T399. Ms. Stewart was aware the Student had social-emotional issues from attending the November 2019 IEP meeting, but did not observe the Student have any social-emotional issues during the in-school portion of the 2019-2020 school year. Stewart T399. The Student was not

absent from class more than the average student, and her classroom performance did not trend downward during the 2019-2020 school year. Stewart T404.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

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 burden of proof in an administrative hearing under the IDEA is on the party seeking relief, in this case the Parent. See *Schaffer v. Weast*, 546 U.S. 49 (2005).

The IDEA

3. 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 *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

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

Rowley, 458 U.S. at 206-207 (footnotes omitted). For a school 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 . . .

Andrew F. v. Douglas County Sch. Dist. RE-1, 580 U.S. ____, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Andrew 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., 852 F.3d 840 (9th Cir. 2017).

5. A "free appropriate public education" (FAPE) consists of both the procedural and substantive requirements of the IDEA. The *Rowley* court articulated the following standard for determining the appropriateness of special education services:

[A] "free appropriate public education" consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" [FAPE] as defined by the Act.

Rowley, 458 at 188-189.

6. A school district is not required to provide a "potential-maximizing" education in order to provide FAPE, but only a "basic floor of opportunity" that provides "some educational benefit" to the Student. *Id.* at 200-01. A school district must provide a student with a "meaningful benefit" in order to satisfy the FAPE requirement. *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 852 (9th Cir. 2014).

Procedural Compliance with the IDEA

7. Procedural safeguards are essential under the IDEA:

Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.

Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 882 (9th Cir. 2001).

8. Procedural violations of the IDEA amount to a denial of FAPE only if they:

(l) impeded the child's right to a free appropriate public education;

- (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

20 SC §1415(f)(3)(E)(ii); see WAC 392-172A-05105(2).

9. The IDEA requires that parents have the opportunity to “participate in meetings with respect to the identification, evaluation, and educational placement of the child.” WAC 392-172A-03100; 34 CFR §300.322. To comply with this requirement, parents must not only be invited to attend IEP meetings, but must also have the opportunity for “meaningful participation in the formulation of IEPs.” *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007).

10. A district violates this procedural requirement if it predetermines a student's placement, meaning that it “independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification.” *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). Likewise, a district “may not enter an IEP meeting with a ‘take-it-or-leave-it’ approach.” *Id.* However, preparation by a district prior to an IEP meeting, including developing a draft IEP, does not itself establish predetermination. *Lee's Summit R-VII Sch. Dist.*, 112 LRP 14677 (SEA MO 2012). And Parents do not have veto power over individual provisions or the right to dictate any particular educational program. *Ms. S.*, 337 F.3d at 1131.

11. The Parent alleges the School District committed procedural violations by predetermining and changing the terms of the 9/24 safety plan in January 2020, outside the context of an IEP meeting, and failing to provide allow the Parent to participate in the revision of the safety plan through the IEP team process. The specific facts in this case do not support the Parent's position. As a threshold matter, the parties agreed on the method to change the Student's safety plan outside the context of an IEP meeting, through a safety team meeting. A large factor in the IEP team's decision to do so is the fact that the 9/24 safety plan restricted the movement within school of a classmate who was not part of the IEP team. The 9/24 safety plan subjected that classmate to potential discipline for even inadvertently violating the proximity restrictions.

12. The School District's actions in changing the Student's safety plan were not a procedural violation, and did not deny the Student a FAPE, because the School District followed the terms agreed upon at the November 2019 IEP meeting. The Parent does not argue that the agreement itself was inappropriate. In effect she argues the protections of an IEP team meeting should apply to a safety team meeting, even though the specific method to change the safety plan was discussed in detail at the time of the agreement, and the Parent was accompanied by her attorney at the time.

13. The November 2019 IEP meeting notes show the parties expressly discussed the possibility of safety plan changes, determined the procedure was through the safety team, and agreed to place a limit on the changes that could be made. The discussion shows the sole limit placed on the safety team's ability to change the safety plan was that the existence of a safety plan could not be eliminated, or taken away, without an IEP meeting. The Parent testified to this on Day 1.

14. The November 2019 IEP meeting notes, as well as the testimony of the School District witnesses in attendance at that meeting, the Parent's testimony on Day 1 of the due process hearing, and the Parent's actions after the November IEP meeting, all show the parties agreed, and the Parent understood, the procedure to change the terms of the safety plan was through the Shorecrest building administration, not the IEP team. So long as a safety plan for the Student at Shorecrest is not eliminated, the decision to change the safety plan remains a safety team decision, not an IEP team decision, and PWN is therefore not required.

15. The parties agree the Student's safety plan needs to be revised. According to the Student's private therapist, who was the Parent's primary witness other than herself, proximity to Classmate 1 is no longer the only trigger for the Student's anxiety or PTSD symptoms. The Student is triggered by the mere thought of Classmate 1 and her friends, by the Student's own thoughts about School District administrators, and by the Student's own thoughts about violations of the 9/24 safety plan. The triggers have increased, the Student's focus is on violations of the Safety Plan, and according to the Parent, the Student's mental health is deteriorating, although this observation is not supported by School District staff. According to Dr. Hirsch, the Student's first focus has been on perceived violations of the 9/24 safety plan, but her focus should instead be on increasing her own feelings of safety through learning how to cope. It cannot be said the 9/24 Safety Plan assists the Student to cope, or protects her from the symptoms of anxiety and PTSD. The questions of how to revise it, and what the revision will look like, were agreed to be safety team issues.

16. The School District's safety team proposed a new safety plan, entitled Coping/Safety Plan. The School District followed the terms of the IEP's incorporation of the presence of a safety plan as an accommodation. Further, although the procedure to develop or change a building-level safety plan is not at issue in this special education due process proceeding, it is noted Principal Gonzalez requested the Parent's input on the safety plan changes, and the Parent chose not to participate in that process. Although the Parent does not like the proposed changes to the 9/24 Safety Plan, the process used to make the changes satisfies the conditions agreed to by the IEP team. The Coping/Safety plan continues to provide the Student with a safety plan, one focused on mitigating the negative effects of stressful thoughts and exposure.

Walking Plans for School Assemblies

17. Prior written notice is mandated by 20 USC § 1414(b)(1), 20 USC § 1415(b)(3), 34 CFR § 300.503, and WAC 392-172A-05010. The School District complied with its obligation to issue a PWN regarding its agreement to add the provision of a written walking plan for assemblies and general changes to the Student's safety plan, but failed to actually do so. The failure to add the requirement of the written walking plan to the Student's safety plan was a procedural violation.

18. The School District's failure to actually provide a walking plan for two school assemblies (or possibly three; the Parent's testimony is not consistent with the Parent's issues statement) from November 20, 2019 (the day after the IEP meeting) through March 12, 2020, when in-school teaching ended due to COVID-19, violated the parties' agreement at the November 2019 IEP meeting as memorialized in the November 2019 PWN.

19. Material failures to implement an IEP violate the IDEA. On the other hand, minor discrepancies between the services a school provides and the services required by the IEP do not violate the IDEA. See *Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811 (9th Cir. 2007).

“[S]pecial education and related services” need only be provided “*in conformity with*” the IEP. [20 USC §1401(9)] There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education.

...

We hold that a *material* failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.

Van Duyn, 502 F.3d at 821 and 822 (italics in original).

20. The evidence is clear the School District included the agreement to add provision of a written walking plan for general assemblies in the November 2019 PWN, but did not actually add the provision to the 9/24 safety plan as it was obligated to do, and did not provide a walking plan to the Student, resulting in her missing two or three school assemblies. However, the evidence does not support finding this amounted to more than a minor implementation failure. Despite missing two or possibly three school assemblies, the record shows the Student made progress toward her IEP goal, earned As and Bs, participated in school athletics, was planning on participating in a school band trip to Ireland until it was canceled due to COVID-19, socialized in school settings, and worked in groups and alone at school. Her attendance was similar to that of other Shorecrest students.

21. The School District’s failure to include the provision of a written walking plan in the 9/24 safety plan, and failure to provide written walking instructions causing the Student to miss two or three school assemblies, were not material failures to implement the November 2019 IEP. Therefore, the failure did not deny the Student a FAPE.

Remedies

22. The record does not support the award of any remedy as the Parent has not proven a substantive denial of FAPE under the facts presented here.

23. 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.

.....

ORDER

1. The School District committed a procedural violation by not including the parties' agreement to add the requirement of provision of a written walking plan for assemblies to the Student's safety plan. The procedural violation did not result in the denial of FAPE to the Student; therefore no award for these non-material violations is ordered.
2. All other claims of the Parent are denied.

SERVED on the date of mailing.



Janice E. Shave
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.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served this document on each of the parties listed below. I emailed via secure email or mailed a copy to the parties at their addresses of record using Consolidated Mail Services or U.S. Mail.

Parent



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Dated August 28, 2020 at Seattle, Washington.

lan

Representative
Office of Administrative Hearings
600 University Street, Suite 1500
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cc: Administrative Resource Services, OSPI