

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

IN THE MATTER OF

PENINSULA SCHOOL DISTRICT

OSPI CAUSE NOS. 2020-SE-0149 &
2020-SE-0194

OAH DOCKET NOS. 10-2020-OSPI-01174 &
12-2020-OSPI-01223

**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 video conference, on February 8, 9, 10, and 11, 2021. The Parent of the Student whose education is at issue¹ represented herself and was accompanied and advised by Helen Caldart, SEAL, her advocate. The Peninsula School District ("District") was represented by Carlos Chavez, attorney at law. John Yellowlees, Executive Director of Special Services, attended as the District's representative. The following is hereby entered:

STATEMENT OF THE CASE

The Parent filed a due process hearing request on October 1, 2020. The Parent filed an amended due process hearing request on November 12, 2020. The Parent requested an independent educational evaluation ("IEE") on December 2, 2020. In response, the District filed a due process hearing request on December 11, 2020. The parties appeared for multiple prehearing conferences and the matters were consolidated for purposes of hearing. The due process hearing was held on February 8, 9, 10, and 11, 2021. The record closed with the filing of the parties' closing briefs on March 22, 2021. The decision due date was continued to thirty (30) days after the close of the record. Therefore, the decision in this matter is due on April 21, 2021.

DISTRICT'S MOTION IN LIMINE

On February 5, 2021, the District filed a Motion in Limine to exclude the following witnesses from testifying: Kristen Chu, John Hellwich, Jennifer Miller, and Sheena Kullman. (District's Motion in Limine; Transcript, pp.13-16.) The Parent withdrew the witnesses prior to any ruling on the motion. (Tr. pp.180-182.)

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

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Parent's Exhibits: P1, pp.2-5, P2, P3, P4, P5, P6, P8, P12, P13, P14, P15, P16, P18, P19, P20, P21, P22, and P23.

District Exhibits: D1, D2, D3, D4, D5, D6, D7, D8, D9, D11, D12, and D13.

Exhibits P1, p.1, P7, P9, P10, and P17 were excluded. Exhibits P11 and P24 were not offered into evidence.

The following exhibits were admitted, but are duplicative: P1, pp.2-3 and D10, pp.1-2; P1, pp.4-5 and D11, pp.1-2; P8 and D1; P12 and D2; P13 and D4; P14 and D6; P15 and D12; P16 and D3; P18 and D9. Only the District's version of these duplicative exhibits are cited herein.

The following witnesses testified under oath. They are listed in order of appearance: Tammy Croissant, Betty Eichwald, Marsha Doran, Julie Rodenbeg, David Bentler, John Yellowlees, Elise Bullinger-Sandstrom, Lynne Truitt, Lisa Gibson, [REDACTED], Valerie Dadzie, Tina Jacobs, Dr. Sonja Hemmerling, Abigail Waite, Parent, Elizabeth Comstock, Lauren Rollins, and Elizabeth Shanshala.

ISSUES AND REMEDIES

The issue(s) presented by the Parent in OSPI Cause No 2020-SE-0149 / OAH Docket No. 10-2020-OSPI-01174 for the due process hearing are:

- a. *Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:*
 - i. *Failing to follow the Individualized Education Program ("IEP") Team decision on September 8, 2020, that the Student is not able to learn, or access, virtual learning as it does not meet the Student's needs;*
 - ii. *Predetermining the denial of the Parent's request for in-person services for the Student during the September 8, 2020, IEP Team meeting and refusing to consider alternatives including in-person services two (2) days per week;*
 - iii. *Failing to make a decision when the Parent requested compensatory education and instead choosing to determine "recovery services" when they return to traditional and in-person services, as per OSPI guidance;*
 - iv. *Predetermining the outcome of the Parent's request for compensatory education during the September 8, 2020, IEP Team meeting by refusing to consider other options presented by the Parent;*

- v. *Failing to provide special education and related services listed on the Student's October 31, 2019, IEP during the period of March 13, 2020 through June 19, 2020, and from September 8, 2020, forward, because the Student is not able to access his education by remote instruction because the Student unable to learn asynchronous and synchronous learning activities;*
 - vi. *Failing to provide the Student's supplementary aids and services of a full-time 1:1 paraeducator as listed in the Student' IEP;*
 - vii. *Recurrently neglected the Student, leaving the Student alone in the classroom without any supervision;*
 - viii. *Failing to provide a paraprofessional (educational assistant) to train a paraprofessional to appropriately modify instruction and/or content to meet the Student's level of ability;*
 - ix. *Failing to provide a dedicated [REDACTED] [REDACTED] in the school environment, engagement in learning, training of other staff, etc., in order to successfully educate the Student;*
 - x. *Failing to provide or consider instruction in [REDACTED] [REDACTED]*
 - xi. *Failing to evaluate and assess the Student's continuing changes in needs, including health, [REDACTED] general intelligence, academic performance, communicative status, and motor abilities, including a Functional Behavior Assessment (FBA) to determine whether the Student' lack of engagement behaviors require a Behavior Plan to assist the Student to have access to an appropriate education;*
 - xii. *Failed to consider that the Student's academic, social and emotional needs are no longer being met at the level required for sufficient and appropriate educational gains, creating a stagnant education.*
- b. *And, whether the Parent is entitled to her requested remedies:*
- i. *The District will contract with an outside group or organization(s), agreed upon by the Parent and District, to provide compensatory education, outside regular school day hours, for all special education services and related services not provided to the Student from March 13, 2020; and*
 - ii. *The District will provide in-person services, in small groups on the school campus with the same availability that the YMCA is able to provide; and*

- iii. *The District will contract with an outside provider, agreed upon by the Parent and District, to provide in-person services, at the family home, on days and times virtual learning would be expected during the school day; and*
- iv. *The District will contract with Behavior Cusp LLC, Diane (Dy) Thompson to develop or update, an FBA of the Student, and a subsequent Behavior Plan, to be used across all environments (school, community, home) to include: a) Observation, Assessment and Development (working side-by-side with the Student); b) modeling strategies to staff involved with Student (full-time 1:1 Registered Behavior Technician (RBT), Transportation, Occupational Therapist, Speech Language Pathologist, etc.); c) Training of all school support staff, community support and family support; d) development and staff training of data tracking system; e) fidelity checks; and*
- v. *The District will contract with an outside organization, agreed upon by the Parent and District, using the assistance of the [REDACTED]*
- vi. *District staff working with the Student will complete all training modules as a Deaf-Blind Intervener in accordance with Dr. Ayer and the Oregon Deafblind Project, within ninety (90) calendar days of signing this agreement, or of any hire date, whichever is the later;*
- vii. *In the event of in-person learning closure(s) due to guidelines from the health department and/or district decisions, the District agrees to contract with Behavior Cusp to provide IEP Special Education Services to the Student, in the Student's home environment (excluding virtual engagement), for a minimum of three (3) hours daily per week, providing continuity and lack of regression of skills for the Student.*
- viii. *Or other equitable remedies, as appropriate.*

The issue presented by the District in OSPI Cause No. 2020-SE-0194/OAH Docket No.12-2020-OSPI-01223 is:

Whether the District's October 1, 2019 re-evaluation and February 28, 2020 assessment revision are appropriate, or whether the Parent is entitled to an IEE at public expense.

See Third Prehearing Order dated December 15, 2020.

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 Student is a nine-year old fourth grader who attends the Options Program at Harbor Heights Elementary in the District. (D1, p.1; Tr., pp.473-488 (Parent); 429 (Waite).) The Options Program is a “life skills program or a self-contained program . . . for students with severe profound disabilities that need a separate setting to make the most progress and to learn.” (Tr., pp.430 (Waite).) Generally, students in the Options classroom attend general education 20-30 percent of the time for music, physical education, STEM, technology, library, recess, and class parties. (Tr., pp.465-466 (Waite).)

2. In the Student’s initial evaluation, the District determined that the Student qualified for special education under the “Developmental Delay” eligibility category.” (D1, p.1.) In October 2019, the District summarized the Student’s background stating that she:



(D1, p.1; Tr., pp.121-122 (Yellowlees); 289-290 (Jacobs); 479-481 (Parent); 560-561 (Shanshala).) The Student has a Health Plan on file with the District. (D1, p.1; Tr., p.418 (Waite).)

October 1, 2019, Reevaluation

3. On October 1, 2019, during the Student’s third-grade year, the District completed a special education reevaluation (“October 1, 2019 Reevaluation”) of the Student in response to the Parent’s request that the Student be assessed to “better determine [her] current educational needs.” (D1, pp.1-36; Tr., pp.148-149 (Yellowlees); 560-561 (Shanshala).) The following individuals were members of the reevaluation team (“Reevaluation Team”): Gillian Brandt,

Occupational Therapist (“OT”); Dr. Elizabeth Shanshala,² Psychologist; Valerie Dadzie,³ Physical Therapist (“PT”); Kristen Chu, Special Education Teacher; Abigail Waite,⁴ Special Education Teacher; Amy McCall, Audiologist; Jessica Lumblad, Vision Specialist; David Bentler,⁵ District Representative; Elizabeth Comstock,⁶ Speech / Language Pathologist (“SLP”), Lisa Rodside, Director of Special Education; Nicole Senon, General Education Teacher; and the Parent. (D1, p.5; Tr., pp.278-280 (Dadzie); 433 (Waite); 497-498 (Parent); 560-561 (Shanshala).)

4. The Student was evaluated in the following areas of concern: medical-physical, audiology, social / emotional behavioral, adaptive skills, cognitive, math, reading, writing, communication, fine motor, gross motor, and vision. (D1, pp.6-29; Tr., pp.278-280 (Dadzie); 537-541 (Comstock); 552-554 (Rollins); 561, 565-566 (Shanshala).) When performing the reevaluation, Dr. Shanshala used common and generally accepted tools to gather information and assess the Student. (Tr., pp.560-564, 566-570 (Shanshala).) Additionally, Dr. Shanshala gathered input from the Student’s teachers, medical providers, service providers, and the Parent, and she observed the Student. (*Id.*) During the Reevaluation, Dr. Shanshala and the other members of the Reevaluation Team conducted a review of existing information and data. (*Id.*)

5. The Reevaluation Team, including the Parent, met on October 1, 2019, and reviewed the Reevaluation. (D1, pp.2, 30; Tr., pp.500-501 (Parent); 562-563 (Shanshala).) The Reevaluation Team determined that the Student met the criteria for the “multiple disabilities” eligibility category, and that the Student could not access the general education curriculum without special education. (D1, pp.2, 30; 571-574 (Shanshala).) The Reevaluation Team concluded that the Student continued to qualify for specially designed instruction (“SDI”) in the areas of reading, math, written language, adaptive skills, social / emotional behavioral, communication, and vision. (D1, p.2.) The Student continued to qualify for OT and PT as related services. (D1, p.2.)

6. Each member of the Reevaluation Team, including the Parent, signed the October 1, 2019, Reevaluation. (D1, p.5; Tr., pp.500-502; (Parent); 564 (Shanshala).) The same day, the District

² Dr. Elizabeth Shanshala is a licensed school psychologist with a degree in educational psychology and a Ph.D. in philosophy. (Tr., pp.559-560 (Shanshala).) Dr. Shanshala has worked as a school psychologist for ten years, and for nine years at the District. (*Id.*)

³ Valerie Dadzie has a doctorate degree in physical therapy and is a licensed physical therapist. (Tr., pp.271-272 (Dadzie).)

⁴ Abigail Waite has a bachelor’s degree in health education and promotion and a bachelor’s degree in special education with an emphasis on working with children with severe and profound disabilities. (Tr., pp.401-403 (Waite).) Ms. Waite has been employed by the District since 2017 as a special education teacher. (*Id.*) Prior to 2017, Ms. Waite worked as a registered behavioral technician and in-home care provider. (*Id.*)

⁵ David Bentler is the principal of Harbor Heights Elementary School and has a bachelor’s degree in education with a certification in mathematics and physical education. (Tr., pp.87-88 (Bentler).) Mr. Bentler also earned a master’s degree in mathematics and a national board certification in mathematics, as well as a principal certificate. (*Id.*)

⁶ Elizabeth Comstock has a bachelor’s degree and a master’s degree in speech and hearing science, and is certified by the American Speech and Hearing Association. (Tr., pp.536-537 (Comstock).) Ms. Comstock has worked for the District for over fifteen years. (*Id.*)

issued a prior written notice (“PWN”) proposing to change the Student’s eligibility category from “developmental delay” to “multiple disabilities.” (D1, p.30; Tr., pp.565-566 (Shanshala).)

October 31, 2019, Individualized Education Program

7. On October 31, 2019, the District convened the Student’s Individualized Education Program team (“IEP Team”), consisting of: the Parent, Ms. Rodside; Ms. Senon; Ms. Brandt; Ms. Dadzie; Ms. Waite; Ms. Comstock; Ms. Lundblad; Mr. Bentler; and Helen Caldart, an advocate for the Parent. (D2, p.1; Tr., pp.542-544 (Comstock); 431-432 (Waite).)

8. The IEP Team considered the strengths of the Student and the Parent’s concerns, the Student’s needs for assistive technology devices and services, and whether the Student’s behavior impedes her learning. (D2, p.3.) The District identified that the Student communicates with adapted sign language, a communication device provided by the Parent, and a District provided Ipad. (*Id.*) The IEP Team agreed that the Student’s behavior does not impede her learning. (*Id.*)

9. The October 1, 2019, Reevaluation revealed that the Student

[REDACTED]

(D2, p.4; Tr., pp.210-213 (Bullinger-Sandstrom).)

10. The IEP Team proposed amending the Student’s current IEP to reflect new goals in the areas of adaptive skills, math, reading, writing, and social / emotional behavioral, based on information from the October 1, 2019, Reevaluation and IEP Team member input. (D2, pp.30-31.) The IEP Team also proposed delivering the Student’s related services and SDI in communication and motor skills using a half “push-in” to the general education classroom, and half “pull out” to the resource room schedule. (*Id.*)

11. The Parent requested that the Student be included in the general education environment 100% of the time “with appropriate supports and services . . . [with] a full time 1:1 paraeducator.” (D2, p.3.) The Parent’s request to place the Student in the general education environment 100% of the time was discussed, but the other members of the IEP Team recommended that “[the Student] have blended opportunities to receive targeted instruction (SDI) in a special education classroom and that she have authentic and meaningful activities in her general education setting as well. [The Student’s] time in general education has increased from 12% (previous IEP) to 57% recommended in this IEP.” (D2, p.31; Tr., pp.431-432 (Waite).)

12. The IEP Team drafted an IEP that included six accommodations, fifteen modifications, and three supports for the Student. (D2, pp.22-24.) The IEP required that the Student would receive full-time paraeducator support while in attendance at school to assist with [REDACTED] (D2, p.26; Tr., pp.33-35 (Croissant); 56 (Eichwald); 66-67 (Doran); 432 (Waite); 547 (Comstock).) The Student would receive paraeducator support during vision services and written language in the general education environment. (*Id.*) The IEP also provided SDI and related services as follows:

Services 11/12/2019 - 11/11/2020

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
Yes	Communication	Sp Ed Teacher	Sp/Lang Path	20 Minutes / 1 Times Daily	Special Education	11/12/2019	11/11/2020
No	Gross Motor	PT	PT	90 Minutes / Monthly	Special Education	11/12/2019	11/11/2020
No	Fine Motor	OT	OT	45 Minutes / Monthly	General Education	11/12/2019	11/11/2020
No	Fine Motor	OT	OT	45 Minutes / Monthly	Special Education	11/12/2019	11/11/2020
Special Education							
No	Communication	Sp/Lang Path	Sp/Lang Path	30 Minutes / 3 Times Monthly	General Education	11/12/2019	11/11/2020
No	Communication	Sp/Lang Path	Sp/Lang Path	30 Minutes / 3 Times Monthly	Special Education	11/12/2019	11/11/2020
No	Reading	Sp Ed Teacher	Sp Ed Teacher	30 Minutes / 5 Times Weekly	Special Education	11/12/2019	11/11/2020
No	Math	Sp Ed Teacher	Sp Ed Teacher	30 Minutes / 5 Times Weekly	Special Education	11/12/2019	11/11/2020
No	Written Language	Paraeducator	Sp Ed Teacher	20 Minutes / 5 Times Weekly	General Education	11/12/2019	11/11/2020
No	Adaptive Behavior	Sp Ed Teacher	Sp Ed Teacher	15 Minutes / 4 Times Daily	Special Education	11/12/2019	11/11/2020
No	Social Emotional/Behavioral	Sp Ed Teacher	Sp Ed Teacher	30 Minutes / 5 Times Weekly	Special Education	11/12/2019	11/11/2020
No	Vision	Vision Specialist	Vision Specialist	20 Minutes / 1 Times Weekly	Special Education	11/12/2019	11/11/2020

Total minutes per week student spends in school: 1740 minutes per week
 Total minutes per week student is served in a special education setting: 826.25 minutes per week
 Percent of time in general education setting: 52.51% in General Education Setting

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	Vision	Paraeducator	Vision Specialist	20 Minutes / 1 Times Weekly	General Education	11/12/2019	11/11/2020
No	Communication	Sp/Lang Path	Sp/Lang Path	10 Minutes / Weekly	General Education	11/12/2019	11/11/2020
No	Paraeducator	Special Education Teacher	Sp Ed Teacher	348 Minutes / 1 Times Daily	General Education	11/12/2019	11/11/2020

(D2, p.26.) The October 31, 2019, IEP did not require that the District provide a 1:1 paraeducator for the Student for delivery of SDI and related services in all areas of disability. (D2, p.26; Tr., pp. 432-434 (Waite).) The District, however, assigned six paraeducators to the Options Classroom and provided the Student with a paraeducator for her time in the general education environment. (Tr., pp.41-42, 48 (Croissant).) The six paraeducators worked together to supervise the Student and the other 11 students in the classroom. (Tr., pp.41-42, 48 (Croissant); 430 (Waite).)

13. The members of the IEP Team, including the Parent, signed the October 31, 2019, IEP. (D2, p.1; Tr., pp.504-506 (Parent).) On November 4, 2019, the District issued a PWN proposing to continue the Student's IEP. (D2, pp.30-31.)

Paraeducator Support for the Student

14. Paraeducator Tammy Croissant has worked with the Student for six years and as a paraeducator for ten years. (Tr., pp.33-34, 47 (Croissant).) Ms. Croissant has access to the Student's IEP, but has not read the Student's IEP. (Tr., pp.35-36 (Croissant); 417-419 (Waite).) Ms. Croissant is trained to assist the Student with her [REDACTED] (Tr., pp.33-36 (Croissant); 415, 417-418 (Waite).) The Student and Ms. Croissant

communicate through signing and the Student's communication device. (Tr., p.36 (Croissant).) Ms. Waite provides Ms. Croissant with instruction on how and what to teach the Student during classroom instruction. (Tr., p.40 (Croissant); 415, 417-418 (Waite).) Ms. Croissant did not provide any paraeducator services to the Student between March 13, 2020, and June 19, 2020, but was willing to provide services in the Student's home if approved by the District. (Tr., p.41 (Croissant).) Ms. Croissant was assigned to work with the Student during the 2020-2021 academic year. (Tr., p.33-36 (Croissant).)

15. Paraeducator Betty Eichwald has worked as a paraeducator for fourteen years and for the District for three years. (Tr., pp.55-56 (Eichwald).) Ms. Eichwald has access to the Student's IEP but has not reviewed the IEP. (Tr., pp.55-56 (Eichwald); 415, 417-419 (Waite).) During the 2020-2021 school year, Ms. Eichwald worked with the Student from 12:30 p.m. to 3:30 p.m. (Tr., p.56 (Eichwald).) Ms. Eichwald did not work with the Student during the 2019-2020 school year. (*Id.*) Ms. Eichwald is trained to assist the Student with [REDACTED] (Tr., p.57 (Eichwald).) Ms. Eichwald communicates with the Student through signing and her communication device. (Tr., pp.57-58 (Eichwald).) Ms. Eichwald accompanies the Student to her SLP, PT, and OT service sessions. (*Id.*) Ms. Eichwald accompanies the Student to her general education classroom instruction and works with the Student in the Options Program. (Tr., p.59 (Eichwald).)

16. Paraeducator Marsha Doran has worked for the District for twenty-five years, and for two years as a paraeducator. (Tr., p.63 (Doran).) Ms. Doran worked with the Student during the 2020-2021 school year, and occasionally during the 2019-2020 school year. (Tr., p.64 (Doran).) Ms. Doran has access to the Student's IEP, but has not reviewed the Student's IEP. (Tr., pp.64-65 (Doran); 417-419 (Waite).) Ms. Doran is trained to assist the Student with Options Program instruction. (Tr., pp.65-66 (Doran).)

February 24, 2020, Resolution Agreement and February 24, 2020, Amended IEP

17. On February 24, 2020, the IEP Team, including the Parent, participated in a resolution meeting and IEP Team meeting.⁷ (D3, p.1; Tr., pp.150-151 (Yellowlees).) The Parent and the District signed a document entitled "Resolution Session Participants and Agreement" ("Resolution Agreement") setting forth the following agreed upon changes to the Student's October 31, 2019, IEP:

⁷ The following members of the IEP Team participated in the February 24, 2020, resolution meeting: Ms. Rodside, Ms. Waite, Ms. Comstock, Ms. Lundblad, and Ms. Senon.

1.	An agreement was reached to increase time in general education (provision of special education services in the areas of reading, writing, math, social/emotional/behavioral in the general education setting). The IEP will reflect 74% of the school-day with non-disabled peers.
2.	Language will be added to the IEP under "supports for school personnel" to reflect consultation frequency as 1x per trimester for those supports currently listed under "supports for school personnel"
3.	The District agrees that the paraeducators will participate in all service providers therapy sessions (OT, SLP, PT, vision, etc.). The student is assigned full-time para minutes for the duration of the school-day.
4.	The matrix page will be revised to reflect Vision Specialist as "staff responsible for delivering services" under Supplementary Aids and Services
5.	Consultation with the District Assitive Technology Team will be added under "supports for school personnel" for the purpose of consultation regarding assistive technology/communication device. Additionally, under "communication needs" it will be documented that the SLP will communicate with parent on a monthly basis regarding the student's AAC system
6.	The District has obtained consent for a reevaluation in the area of Orientation and Mobility. The evaluation is currently in process. A meeting will be scheduled at the conclusion of the evaluation to discuss results and potential considerations for the IEP team.
7.	In an effort to revise the IEP as part of this resolution agreement per the items listed above, parents have agreed to waive the attendance of the OT, PT, and Assitive Tech Team
8.	The District agrees to the parent's request to invite the paraeducator primarily assigned to the student to future IEP meetings during the 19-20 school year with the understanding that a paraeducator is not a mandatory team member and can not be compelled to attend a meeting beyond his/her contracted work-day.

(D3, p.1; (Tr., pp.506-508 (Parent).) Notably, the Resolution Agreement provided that the Student would have "full-time para minutes" and that paraeducators will "participate in all service provider therapy sessions," but it did not state that the Student would receive a 1:1 paraeducator. The Parent did not request a [REDACTED],⁸ a 1:1 paraeducator, or that the District consider [REDACTED] (Tr., pp.150-152 (Yellowlees).)

18. At the February 24, 2020, meeting Ms. Waite expressed concerns about placing the Student in the general education classroom 74% of the time because it moved the Student from a mastery of skill model to an exposure model, and the Student would not acquire and master skills. (Tr., pp.436-440 (Waite).) Ms. Waite found it difficult to develop goals for the Student if she was participating "with the whole group instruction with what her peers are doing," because it was not possible to deliver SDI "with fidelity" such that "she will make progress." (*Id.*)

19. The IEP Team revised and amended the Student's October 31, 2019, IEP to reflect the provisions of the Resolution Agreement. (D4, pp.1-33.) The IEP Team, including the Parent, reviewed and signed an IEP dated February 24, 2020. (D4, p.1; Tr., pp.153-155 (Yellowlees).) The February 24, 2020, IEP provided for the following SDI and related services:

⁸ A [REDACTED] (Tr., pp.263-266 [REDACTED])

Services 02/26/2020 - 11/11/2020

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
Yes	Communication	Sp Ed Teacher	Sp/Lang Path	20 Minutes / 1 Times Daily	Special Education	02/26/2020	11/11/2020
No	Gross Motor	PT	PT	90 Minutes / Monthly	Special Education	02/26/2020	11/11/2020
No	Fine Motor	OT	OT	45 Minutes / Monthly	General Education	02/26/2020	11/11/2020
No	Fine Motor	OT	OT	45 Minutes / Monthly	Special Education	02/26/2020	11/11/2020
Special Education							
No	Social Emotional/Behavioral	Paraeducator	Sp Ed Teacher	15 Minutes / 5 Times Weekly	General Education	02/26/2020	11/11/2020
No	Communication	Sp/Lang Path	Sp/Lang Path	30 Minutes / 3 Times Monthly	Special Education	02/26/2020	11/11/2020
No	Communication	Sp/Lang Path	Sp/Lang Path	30 Minutes / 3 Times Monthly	General Education	02/26/2020	11/11/2020
No	Reading	Paraeducator	Sp Ed Teacher	30 Minutes / 5 Times Weekly	General Education	02/26/2020	11/11/2020
No	Math	Paraeducator	Sp Ed Teacher	30 Minutes / 5 Times Weekly	General Education	02/26/2020	11/11/2020
No	Written Language	Sp Ed Teacher	Sp Ed Teacher	20 Minutes / 5 Times Weekly	General Education	02/26/2020	11/11/2020
No	Adaptive Behavior	Paraeducator	Sp Ed Teacher	15 Minutes / 4 Times Daily	Special Education	02/26/2020	11/11/2020
No	Social Emotional/Behavioral	Sp Ed Teacher	Sp Ed Teacher	15 Minutes / 5 Times Weekly	Special Education	02/26/2020	11/11/2020
No	Vision	Vision Specialist	Vision Specialist	20 Minutes / 1 Times Weekly	Special Education	02/26/2020	11/11/2020

Total minutes per week student spends in school: 1740 minutes per week
 Total minutes per week student is served in a special education setting: 451.25 minutes per week
 Percent of time in general education setting: 74.07% in General Education Setting

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	Vision	Vision Specialist	Vision Specialist	20 Minutes / 1 Times Weekly	General Education	02/26/2020	11/11/2020
No	Communication	Sp/Lang Path	Sp/Lang Path	10 Minutes / Weekly	General Education	02/26/2020	11/11/2020
No	Paraeducator	Paraeducator	Sp Ed Teacher	348 Minutes / 1 Times Daily	General Education	02/26/2020	11/11/2020

(D4, p.26.) The February 24, 2020, IEP provided that the Student would receive SDI in reading, math, and adaptive skills from a paraeducator, and would receive full-time paraeducator minutes to assist the Student with [REDACTED] (Id.) The Student's time in the general education environment increased from 52% to 74%. (Id.) The District issued a PWN on February 25, 2020, proposing to change the Student's IEP. (D4, p.30.)

20. In accordance with the Resolution Agreement, the District initiated an assessment revision of the Student in the areas of [REDACTED] (D5, p.1.) Dr. Shanshala conducted an assessment revision ("Assessment Revision") on February 28, 2020, and concluded that "[the Student] qualifies for [REDACTED]" (D5, p.2.) The Reevaluation Team, including the Parent, met on February 28, 2020,

and reviewed and signed the Assessment Revision, agreeing that the Student was eligible for SDI in the area of [REDACTED]. (D5, p.4.)

21. On March 6, 2020, the District issued a “Review Individualized Education Program Invitation” inviting the IEP Team to a meeting on March 20, 2020, to review and revise the February 24, 2020, IEP to reflect the Student’s eligibility for SDI in the area of [REDACTED]. (D6, p.31.) The District provided the Parent with a draft IEP that included the results of the Assessment Revision and an [REDACTED] annual goal. (D6, pp.18-20; Tr. pp. (Parent).) The IEP also added [REDACTED] (D6, p.26.)

22. On March 12, 2020, the District closed due to the Covid-19 public health emergency, but the District offered to hold the March 20, 2020, IEP Team meeting on-line. (D6, p.30.) The Parent declined the offer via email. (*Id.*) The District’s orientation and mobility specialist, Alex Skavlem, reviewed the present levels of performance, goals, and service minutes with the Parent over the telephone. (D6, p.30.) The District issued a PWN on March 20, 2020, proposing to initiate the March 20, 2020, IEP that included the [REDACTED] goals and service minutes. (*Id.*)

March 12, 2020, through June 19, 2020, School Closure and Remote Learning

23. The District was ordered to stop all in-person educational programs on March 12, 2020, by proclamation from the Governor of Washington State.⁹ The District was closed and did not provide educational services to any students from March 12, 2020, to March 18, 2020. (D7, p.1.) The District was closed due to spring break and did not provide educational services to any students from April 13, 2020, to April 17, 2020. (D13, p.1.) The District’s academic year ended on June 19, 2020. (*Id.*)

24. On April 20, 2020, the District created for the Parent a written “PSD Special Education Continuous Learning Plan” (“Continuous Learning Plan”) in an effort to assist the Parent with navigating the Student’s general education and special education curriculum, supports, and services during remote learning. (D7, p.1; Tr., pp.443-446 (Waite).) Notably, the Continuous Learning Plan anticipated that the Student would only receive paraeducator support for reading services in a small group on-line meeting twice a week with Ms. Waite. (*Id.*) The Continuous Learning Plan reflected the following matrix of “special education and related services” based on the Student’s February 24, 2020, and March 20, 2020 IEPs:

⁹ Governor Proclamation 20-08-09.1 issued in response to the Covid-19 public health emergency.

Special education and related services to be provided through continuous learning instruction:					
Service	Initiation Date	Frequency	Modality (e.g., worksheet, platform, program, etc.)	Duration	Staff Delivering Service
Specially Designed Instruction:					
Communication	4/20/2020	1x weekly	AAC group focusing on use of communication device and core words	6/19/20	SLP and Sped teacher
Communication	4/20/2020	1x weekly	1:1 zoom with SLP focusing on communication device and conversational skills and core words	6/19/20	SLP
Reading	4/20/2020	1x daily	Daily Assignments posted on schoology. Small group zoom meetings twice a week	6/19/20	Sped Teacher & Paraeducator
Math	4/20/2020	1x weekly	Daily and or weekly assignments posted on schoology.	6/19/20	Sped Teacher
Adaptive	4/20/2020	1x daily	Daily Calendar Activities & Lessons	6/19/20	Sped Teacher
Social/Emotional /Behavioral	4/20/2020	1x weekly	Weekly class zoom meetings	6/19/20	Sped Teacher
Related Services:					
Vision	4/20/2020	1x weekly	Weekly newsletters with activities and office hours; Zoom sessions upon parent request	6/19/20	Vision Specialist
Motor	4/20/20	1 per week	Newsletter with activities; Zoom session upon parent request	6/19/20	Physical Therapist
Motor	4/20/20	weekly	newsletter with motor activities for home along with access to goal targeted printables, parent resources, and zoom links for group student session and parent session on Schoology.	6/19/20	Occupational Therapist
Description of services: Use the space below to document/describe additional information regarding the services delivered through continuous learning instruction during school facility closure.					
<input checked="" type="checkbox"/>	Academic (reading, writing, math) Activities and Groups: Teacher will review with students and/or family's weekly activities. Students/families will have an opportunity to ask questions and clarify the instructions for the activities.				
<input type="checkbox"/>	Adaptive Activities and Groups: Teacher will review with student and/or family the adaptive weekly activities and provide recommendations on functional activities students may complete at home to support in-home learning.				
<input checked="" type="checkbox"/>	Social/emotional/behavioral Activities and Groups: Teacher will review with student and/or family the SEL weekly activities and provide recommendations on positive behavioral supports families may implement to support in-home learning.				
<input checked="" type="checkbox"/>	Communication/Fine Motor/Gross Motor Activities and Groups: The SLP, OT and/or PT will review with student/family the weekly activities and/or provide consultation to the family on communication and/or motor activities to support the student in-home learning.				
<input checked="" type="checkbox"/>	Other (describe): weekly Communication opportunities posted on Schoology page. Goal targeted and general motor activities are available in Schoology.				

(D7, p.2; Tr., pp. 413, 443-446 (Waite).)

25. Ms. Waite organized on-line learning opportunities for the Student through the Options Program from March 20, 2020, to June 19, 2020. (D8, pp.1-16; P19, p.38; Tr., pp.242, 249-250 (Tritt); 406, 420-21, 446-49, 485 (Waite); 474-476, 508-509 (Parent).) Ms. Waite frequently collaborated with the Parent via on-line meetings and called the Parent to discuss the Student's challenges with on-line learning and instruction. (Tr., pp.420-421(Waite).) The Student was able to access "some of her service minutes" via the on-line "Schoology" platform, which allowed Ms. Waite to post learning materials for the Student. (D8, pp.1-16; Tr., pp.422-423, 450-455 (Waite).) Ms. Waite prepared and provided the Student physical and written materials that assisted with math and reading, and created recorded activities. (Tr., pp.448-450 (Waite).) Ms. Waite and the Student participated in on-line sessions as required by the Continuous Learning Plan. (Tr. pp.448-455 (Waite).) The Mother of the Student attended the on-line classes with the Student. (Tr., pp.448-449 (Waite).)

26. Ms. Rodenberg provided the Student with OT services during the period of March 13, 2020, through June 19, 2020 in accordance with the Continuous Learning Plan. (Tr., pp. 77-78)

(Rodenberg.) Ms. Dadzie provided the Student with PT services via on-line learning and offered the Parent supports and services between March 13, 2020, and June 19, 2020. (Tr., pp.273-274 (Dadzie).) Ms. Comstock provided the Student with SLP services and supports in the area of communication between March 13, 2020, and June 19, 2020. (Tr., pp.544-548 (Comstock).)

Progress Monitoring March 12, 2020, through June 18, 2020

27. Ms. Comstock performed progress monitoring of the Student in the area of communication on March 12, 2020, and June 1, 2020, and concluded that the Student was making “sufficient progress” towards her IEP goals. (D9, pp.1-2.) Ms. Dadzie performed progress monitoring of the Student in the area of gross motor skills on March 13, 2020, and concluded that the Student’s skills were “emerging.” (D9, pp.2-3.) Ms. Dadzie was not able to perform progress monitoring of the Student after March 13, 2020, due to an inability to obtain sufficient data. (*Id.*) Ms. Lundblad performed progress monitoring of the Student in the area of vision on March 26, 2020, and concluded that the Student was making “sufficient progress” towards her IEP goals. (D9, pp.3-4.) Ms. Lundblad was not able to perform progress monitoring of the Student after March 26, 2020, due to an inability to obtain sufficient data. (*Id.*) Ms. Rodenberg was not able to perform progress monitoring of the Student in the area of written language due to insufficient data. (D9, pp.7-8.) Regarding the area of [REDACTED], the District could not provide the Student with services from March 12, 2020, through June 19, 2020, and no progress monitoring of the Student was performed. (D9, p.10.)

28. Ms. Waite performed progress monitoring of the Student in the areas of reading, math, and written language on March 12, 2020, by observing the Student and concluded that the Student was making sufficient progress in reading, and that her math and written language skills were “emerging.” (D9, pp.4-7; Tr., pp.404-406 (Waite).) Ms. Waite also performed progress monitoring of the Student in these areas on June 18, 2020, via on-line observation, paraeducator reports, and Parent reports, and determined that the Student made sufficient progress in reading, her math skills remained emerging, and that written language instruction was not provided between March 12, 2020, and June 18, 2020. (*Id.*) Ms. Waite next performed progress monitoring of the Student in the areas of adaptive behavior and social / emotional behavior, on March 12, 2020, and determined that the Student’s skills in these areas were “emerging.” (D9, pp.8-9; Tr., pp. (Waite).) Ms. Waite could not perform progress monitoring of the Student in the area of adaptive behavior on June 18, 2020, due to insufficient data, but performed progress monitoring of the Student in the area of social / emotional behavioral. (*Id.*) Ms. Waite determined that the Student’s social / emotional skills remained “emerging.” (*Id.*)

2020-2021 Academic Year

29. The Office of Superintendent of Public Instruction (“OSPI”) issued four guidance documents to assist Washington school districts in formulating plans for safely reopening schools to in-person learning during the Covid-19 public health emergency for the 2020-2021 academic year: “*Reopening Washington Schools 2020: Special Education Guidance*” (P4, pp.1-64); “*Questions and Answers: Provision of Services to Students with Disabilities During Covid-19 in the 2020-21 School Year*” (P3, pp.1-46); “*Special Education Planning Guide for Reopening Washington Schools 2020*” (P5, pp.1-7); and “*Summary of Reopening Washington Schools 2020: Special Education Guidance*” (P2, pp.1-4). Importantly, OSPI directed school districts to provide students

with IEP services “online, in person or both . . . one-on-one, in small groups, or in a class.” (P2, pp.3-4.) OSPI also created a class of special education services called “recovery services,” that are “extra services for students with disabilities once schools reopen.” (P2, p.1; Tr., pp.146-147 (Yellowlees).) These services were intended to address potential gaps in special education service provision caused by the Covid-19 public health emergency. (*Id.*)

30. The District used these guidance documents to develop the “2020-2021 Reopening Peninsula Schools Guidebook” (“Reopening Plan”). (P6, pp.1-51; Tr., pp.140-143 (Yellowlees).) The District committed to “maximizing in person learning while keeping [] students and staff safe” by beginning the 2020-2021 academic year with full-time remote learning for all students. (P6, pp.5-6.) When public health conditions improved, the District planned to allow a “limited number of students with the greatest needs and staff to safely be on campus” for instruction in small groups. (P6, p.6.) The students with the “most significant disabilities . . . will receive limited in-person instruction and services 2 days per week for up to 3 hours per session.” (P6, p.6.) Until students could return to school in person 100% of the time, all students participated in remote learning. (P6, pp.7-8.)

31. In regards to special education services, the District’s Reopening Plan provided:

. . . special education services will be provided at all stages of reopening . . . IEP services (specially designed instruction and related services) will be provided in both a remote and in-person setting depending on the stage of reopening and consistent with requirements and guidance from the Tacoma-Pierce County Health Department and OSPI’s Special Education Guidance. Based on current guidance, we expect to begin the school year on September 8 in Stage 3. In Stage 3, the majority of students will receive remote instruction. We are able to provide limited, in-person learning in small groups, or cohorts, of student with the highest needs. In each stage of reopening and in accordance with Tacoma-Pierce County Health Department and OSPI guidance, we will follow all Covid-19 related health protocols and procedures including, but not limited to: health screenings, cleaning protocols, physical distancing, and cloth face coverings.

(P6, p.11; Tr., pp.140-143 (Yellowlees).) Regarding the Options Program, SLP, OT, and PT services, the District’s Reopening Plan provided that after September 21, 2020, the District would deliver in-person services 1-2 sessions per week for 1-3 hours per session, depending on the student’s needs and IEP requirements. (P6, p.12; Tr., pp.140-143 (Yellowlees).) The District intended to continue to provide general education and special education students with remote learning throughout the 2020-2021 academic year until all students could return for in-person instruction 100% of the time. (P6, pp.1-51.)

32. On August 28, 2020, the Parent, via email, asked the District to provide the Student’s special education services in-person in the Student’s home, but through a third-party contracted agency. (D10, p.1; P19, pp.63, 69; Tr., pp.156-157 (Yellowlees); 475-476 (Parent).) The Parent also requested that the District begin providing compensatory education services. (D11, p.1; P19, p.70; Tr., pp.156-157 (Yellowlees); 475-477, 490-491 (Parent).) The District issued a PWN on September 3, 2020, seeking to initiate an IEP meeting to discuss 1) the Parent’s requests and 2)

the District's ability to offer the Student special education services in accordance with the Reopening Plan. (*Id.*)

33. The District convened an IEP Team meeting on September 8, 2020, and the Parent attended with her advocate. (D11, p.1; Tr., pp.490-491(Parent).) In accordance with the Reopening Plan, the District offered the Student:

- 1) *In-person services consist (sic) of 2 days per week (for a total of 6 hours) with remote special education and related services provided for the duration of the week. Additionally, the District agrees to increase in-person services to allow for the addition of SLP, OT/PT services above and beyond the 6 hours starting the week of September 21st. Based on a change of status per the [DOH] decision tree and consistent with the PS reopening guide, [the District] is preparing to offer 5 days/week of in-person special education and related services beginning the week of September 28, conditions permitting. The District is refusing to send a paraeducator or staff member into the home in order to provide in-person services at this time.*
- 2) *The District proposes, in accordance with OSPI guidance, that after a return to traditional in-person school operations, the IEP Team will consider the need for recovery services related to remote services due to the Covid-19 pandemic.*

(D11, p1; Tr., pp.141-145, 155-158 (Yellowlees); 239-240 (Truitt); 420-424 (Waite); 476-478, 490-492 (Parent).) The District documented in the PWN that it “refuses to send a paraeducator or staff member into the [Student’s] home in order to provide in-person services at this time and during this phase of the Covid-19 pandemic as health and safety requirements in the home setting cannot be ensured.” (*Id.*) The IEP Team recognized the Parent’s “concern that virtual / Zoom instruction is not accessible for [the Student],” and offered to “work to provide a variety of [SDI] resources, activities, modalities, accommodations and modifications other than Zoom provided (sic) remotely in order to offer a FAPE aligned with the services indicated in [the Student’s] IEP.” (*Id.*) The District issued a PWN on September 18, 2020, reflecting the proposed action to continue the Student’s March 20, 2020, IEP. (*Id.*)

34. On September 14, 2020, Ms. Waite emailed John Yellowlees,¹⁰ Executive Director of Student Services, to express a concern about the number of paraeducators in the Options Program classroom because one paraeducator would leave to assist the Student in the general education classroom, reducing the availability of paraeducators to all Options Program classroom students. (P19, p.74; Tr., pp.424-425 (Waite).) On September 25, 2020, Mr. Bentler and Ms. Truitt exchanged emails confirming that the Student would receive a “1:1 para allocation: Primary (6.5)” hours each day” and that the Options Program classroom would have six paraeducators for twelve students. (P19, p.73; Tr., pp.88-91 (Bentler); 229-230 (Truitt).)

¹⁰ John Yellowlees has a bachelor's degree in psychology and a master's degree in school psychology and school administration. (Tr., pp.118-119 (Yellowlees).) Mr. Yellowlees has worked for the District for four years. (*Id.*)

35. The Student attended school via remote learning from September 8, 2020, through September 18, 2020. (Tr., pp.141-145 (Yellowlees); 232-234 (Truitt).) The Student began attending school in person two days per week for three hours per day on September 21, 2020, and received remote learning at home the remaining school hours. (Tr., pp.131-132, 141-145 (Yellowlees); 232-234 (Truitt).) The Student was not able to attend school in person during the period of September 14, 2020, and September 20, 2020, due to air quality concerns from wildfires. (Tr., pp.456-457 (Waite).)

36. The Student began full-time in-person attendance on October 1, 2020, and thereafter has received in-person SDI, related services, and supports as required by the March 20, 2020, and October 27, 2020, IEPs. (Tr., pp.131-132 (Yellowlees); 250-252 (Gibson).) However, the Student's general education teacher and peers continued to attend classes full time via remote learning from September 8, 2020 through February 3, 2021. (Tr., p.131 (Yellowlees); 247-250 (Gibson); 513-514 9Parent.) To accommodate the Student's placement in the general education environment a majority of the time as requested by the Parent, the Student participated in on-line general education classes with paraeducator support while physically located in the Options Program classroom where Ms. Waite modified the curriculum. (*Id.*)

October 27, 2020, Annual IEP

37. The IEP Team¹¹ convened on October 27, 2020, to review a proposed draft of the Student's annual IEP. (D12, p.27; Tr., pp.457-460 (Waite).) Ms. Waite performed progress monitoring of the Student in the areas of academic and social / emotional behavior by observing the Student and consulting with the other members of the IEP Team, including the Parent. (P-19, pp.88-91; Tr., pp.408-410, 457-459 (Waite).) Using this information, Ms. Waite developed goals for the Student's October 27, 2020, IEP. (*Id.*) The October 27, 2020, IEP provided for the following SDI, related services, and supplemental supports and services:

¹¹ The following IEP Team members were present at the October 27, 2020, IEP Team meeting: the Parent, Ms. Truitt; Mr. Yellowlees; Ms. Gibson; Marjory Hulscher, Nurse; Ms. Rollins; Ms. Dadzie; Mr. Bentler; Ms. Waite; Ms. Comstock; Mr. Skavlem, O&M Specialist; Ms. Bullinger-Sandstrom; Cassandra Morrison, OT Intern; and Ms. Caldart, Parent Advocate. (D12, p1.)

Services 10/30/2020 - 10/29/2021

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Gross Motor	PT	PT	90 Minutes / Monthly	Special Education	10/30/2020	10/29/2021
No	Fine Motor	OT	OT	45 Minutes / Monthly	Special Education	10/30/2020	10/29/2021
No	Fine Motor	OT	OT	45 Minutes / Monthly	General Education	10/30/2020	10/29/2021
No	Communication	Sp Ed Teacher	Sp/Lang Path	20 Minutes / Daily	General Education	10/30/2020	10/29/2021
Special Education							
No	Orientation & Mobility	Orientation/Mobility Specialist	Orientation/Mobility Specialist	20 Minutes / 2 Times Monthly	Special Education	10/30/2020	10/29/2021
No	Adaptive Behavior	Paraeducator	Sp Ed Teacher	45 Minutes / 5 Times Weekly	Special Education	10/30/2020	10/29/2021
No	Math	Paraeducator	Sp Ed Teacher	60 Minutes / 5 Times Weekly	General Education	10/30/2020	10/29/2021
No	Reading	Paraeducator	Sp Ed Teacher	30 Minutes / 5 Times Weekly	General Education	10/30/2020	10/29/2021
No	Social Emotional/Behavioral	Paraeducator	Sp Ed Teacher	45 Minutes / 5 Times Weekly	General Education	10/30/2020	10/29/2021
No	Written Language	Paraeducator	Sp Ed Teacher	30 Minutes / 5 Times Weekly	General Education	10/30/2020	10/29/2021
No	Vision	Vision Specialist	Vision Specialist	30 Minutes / 1 Times Weekly	Special Education	10/30/2020	10/29/2021
No	Communication	Sp/Lang Path	Sp/Lang Path	30 Minutes / 3 Times Monthly	Special Education	10/30/2020	10/29/2021
No	Communication	Sp/Lang Path	Sp/Lang Path	30 Minutes / 3 Times Monthly	General Education	10/30/2020	10/29/2021

Total minutes per week student spends in school: 1740 minutes per week
Total minutes per week student is served in a special education setting: 321.25 minutes per week
Percent of time in general education setting: 81.54% in General Education Setting

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	Communication	Sp/Lang Path	Sp Ed Teacher	30 Minutes / 1 Times Monthly	Special Education	10/30/2020	10/29/2021
No	Vision	Vision Specialist	Vision Specialist	15 Minutes / 1 Times Weekly	General Education	10/30/2020	10/29/2021
No	Paraeducator	Paraeducator	Sp Ed Teacher	273 Minutes / Daily	General Education	10/30/2020	10/29/2021
No	Paraeducator	Paraeducator	Sp Ed Teacher	75 Minutes / Daily	Special Education	10/30/2020	10/29/2021

(D12, p.23.) The progress monitoring performed by Ms. Waite was provided to the Parent prior to the IEP meeting. (D12, p.3; P19, pp.88-91; Tr., pp.458-460 (Waite). At the meeting, the Parent did not express concerns about the October 27, 2020, IEP goals. (*Id.*)

38. The Parent requested that the District contract with an outside provider to perform a Functional Behavioral Assessment (“FBA”) and the District agreed to initiate an FBA conducted by the District’s Behavioral Specialist.¹² (*Id.*)

39. The Student would attend the general education classroom 81% of the time and receive paraeducator support during adaptive behavior skills, math, reading, social / emotional behavior, and written language services in the general education classroom. (D12, p.23.) As a result, the Student could not focus on functional academic goals. (Tr., pp.461-462 (Waite).) The Student would also receive full-time paraeducator support for [REDACTED]. (D12, p.23.) However, Ms. Dadzie recommended that the Student did not need a [REDACTED] as she had in the previous IEPs, because the Student did not rely on a paraeducator as much as she had previously. (D12, p.16; Tr., pp.275-276 (Dadzie); 478-479 (Parent).) However, Ms. Dadzie noted that the Student still needs a paraeducator to [REDACTED] (*Id.*)

¹² The Parent and District discussed a number of other Parental concerns at the October 27, 2020 meeting, but these issues are not before this tribunal for resolution.

40. The IEP Team, including the Parent, signed the October 27, 2020, IEP. (D12, p.1.) The District issued a PWN on November 3, 2020, denying the Parent's request that an outside provider conduct an FBA of the Student. (D12, p.27.) As of the date of the hearing, the Parent had not consented to the performance of an FBA by the District's behavioral specialist. (Tr., pp.496-497 (Parent).)

41. The general education students returned to a hybrid remote and in-person instruction at the District beginning February 3, 2021. (Tr., pp.251 (Gibson).) As of the date of the hearing the general education students had not returned full time to in-person learning at the District. (*Id.*)

November 4, 2020 Event

42. On November 4, 2020, Ms. Waite asked paraeducator Ms. Doran and another paraprofessional to direct a "tech time" activity for some Options Program students in room 105. (P19, p.105; Tr., pp.69-72 (Doran); 467-468 (Waite).) There were three students plus the Student in the room, and Ms. Doran began to set up the activity as directed. (*Id.*) The Student was present in room 105 with Ms. Doran, Ms. Waite, and the other paraeducator. (*Id.*) The Student was having some difficulty due to a fissure on her backside and was positioned in her wheelchair instead of a regular classroom seat because the wheelchair had a cushioned seat. (Tr., p.467 (Waite).) Ms. Waite walked out of room 105 across a hallway to room 107. (*Id.*) The Student followed Ms. Waite out into the hallway. (*Id.*) Ms. Doran and Ms. Waite were not aware that the Student had navigated her wheelchair out into the hall. (*Id.*) However, paraeducators Melanie Upchurch and Ms. Rodenberg were in the hallway and observed the Student. (P19, p.105; Tr., p.80 (Rodenberg).) Ms. Rodenberg said hello to the Student and continued to assist another student in the hallway. (*Id.*) Ms. Rodenberg was not concerned about the Student because the Student often worked on independent transitions and Ms. Rodenberg did not see a safety reason to intervene. (Tr., p.81 (Rodenberg).) Ms. Waite looked into the hallway from where she was in room 107 and observed the Student in the hall, approached her, and guided her back in to room 105. (Tr., pp.467-468 (Waite).) Ms. Waite asked Ms. Doran to watch the Student and left room 105 closing the door behind her. (*Id.*)

43. Mr. Bentler investigated the incident by obtaining statements from Ms. Doran, Ms. Upchurch, Ms. Rodenberg, and Ms. Waite. (P19, p.105; Tr., pp.92-95, 113 (Bentler).) Mr. Bentler provided the information to the Parent. (Tr., pp. 467-468 (Waite).)

November 11, 2020 Event

44. On November 11, 2020, Ms. Croissant accompanied the Student, Ms. Waite, and a small group of Options Program students to recess. (Tr., pp.43-45 (Croissant); 466-467 (Waite).) While the children were playing, a student with a large, motorized wheelchair hit the Student's wheelchair and knocked her over. (*Id.*) Ms. Croissant was located within a few steps of the Student and immediately attended to the Student. (*Id.*) The Student "didn't seem phased by" the event, and Ms. Croissant confirmed that the Student was not injured. (*Id.*) Ms. Waite attended to the student in the motorized wheelchair to address the student's actions. (*Id.*)

45. Mr. Bentler conducted an investigation of the incident by interviewing Ms. Waite and provided the information to the Parent. (Tr., p.113 (Bentler).)

Parent's [REDACTED] Request

46. Elise Bullinger-Sandstrom,¹³ the District's teacher for individuals with [REDACTED] [REDACTED] (D12, pp.16-18; Tr., pp.190-220 (Bullinger-Sandstrom).) Even with these [REDACTED] (Tr., p.210, 217 (Bullinger-Sandstrom).) Based on the Student's diagnoses and the previously conducted "learning media assessment," Ms. Bullinger-Sandstrom recommended continued special education services and supports for the Student that did not include [REDACTED] [REDACTED] (D12, pp.16-18; Tr., pp.210-212, 217 (Bullinger-Sandstrom).)

47. [REDACTED]

48. The Parent did not request the services of a [REDACTED] to assist the Student at any of the IEP meetings, and Ms. Bullinger-Sandstrom did not recommend the involvement of a [REDACTED] [REDACTED] (Tr., pp.208-209, 220 (Bullinger-Sandstrom).) Notably, at the beginning of the 2020-2021 school year, Ms. Bullinger-Sandstrom identified that the Student had [REDACTED] set forth in the October 30, 2019, IEP. (Tr., pp.216-217 (Bullinger-Sandstrom).)

¹³ Elise Bullinger-Sandstrom has a bachelor's degree in speech pathology and audiology, and a bachelor's degree in special education with endorsements in kindergarten through eighth grade in general education. (Tr., p.193 (Bullinger-Sandstrom).) Ms. Bullinger-Sandstrom has worked for school districts for more than thirty years and for the District as a TVI for two years. (*Id.*)

¹⁴ [REDACTED]

Dr. Hemmerling's Evaluation, December 2020

49. During the period of December 22, 2020, through December 27, 2020, the Parent contracted with an outside provider, Dr. Sonja Hemmerling¹⁵ to perform an evaluation of the Student. (P23, p.1; Tr., pp.347-348 (Hemmerling).) Dr. Hemmerling reviewed the October 27, 2020, IEP and assessed the Student using the Styer-Fitzgerald Program for Functional Academics Student Assessment and Assessment of Basic Language and Learning Skills-Revised. (Tr., pp.348-381 (Hemmerling).) Dr. Hemmerling observed and assessed the Student in the family home, not at school or in another educational environment. (Tr., pp.386-387 (Hemmerling).)

50. Based on her assessment, Dr. Hemmerling concluded that there was a:

disconnect between the goals in – in the IEP and the results of my direct assessment observations and what familiar adults reported. With this, the Student, in my observations and assessments, was working on beginning literacy and math skills. Many of her goals aligned to grade level modified curriculum. At this point in time, I do not see the Student being able to access grade-level curriculum without significant [SDI].

(Tr., pp.362-363 (Hemmerling).) Dr. Hemmerling recommended that the Student receive in-person instruction, less than a majority of the time in the general education classroom, and that the Student could not access Dr. Hemmerling's recommendations if she is in the general education environment a majority of the time. (*Id.*)

CONCLUSIONS OF LAW

The IDEA and Jurisdiction

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. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Regarding the claims asserted in the Parent's due process hearing request, the Parent has the burden of proof. Regarding the claim in the District's due process hearing request, the District has the burden of proof.

¹⁵ Dr. Sonja Hemmerling has a bachelor's degree in developmental psychology, and master's degrees in special education and educational leadership, as well as a doctorate in educational leadership. (P22, pp.1-4; Tr., pp.347-348 (Hemmerling).) Dr. Hemmerling does not have a doctorate in psychology and has not worked as a special education teacher. (Tr., pp.383-384 (Hemmerling).)

3. The IDEA provides 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.

Rowley, supra, 458 U.S. at 206-07 (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." *Id.* at 200-01.

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, 580 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., 858 F.3d 1189, 1201 (9th Cir.), *cert. denied*, 583 U.S. ____, 138 S. Ct. 556 (2017).

5. Procedural safeguards are essential under the IDEA. The Ninth Circuit has stated:

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).

Procedural Issue

The District Did Not Prevent the Parent from Meaningfully Participating in, or Predetermine the Outcome of, the September 8, 2020, IEP Team Meeting

6. Procedural safeguards are essential under the IDEA. The Ninth Circuit has stated:

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). 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).

7. 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). Also, 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.

8. It is not disputed that the Parent attended the September 8, 2020, meeting with her advocate, or that the Parent requested that the Student attend school in-person full-time or that the District provide the Student with special education services via in-home, third party providers. It is also not disputed that the Parent requested that the District provide compensatory education services for the Student to compensate for lost services during the period of March 13, 2020, to June 19, 2020.

9. The Parent alleges in issues two, three, and four, that the District “predetermined” that it would 1) deny the Parent's requests for in-person instruction, 2) deny the Parent's request for in-home instruction, and 3) deny the Parent's request for compensatory education. The Parent also asserts that the District has not actually denied her request for compensatory education. The District argues that the IEP Team, including the Parents, discussed and considered the Parent's requests at the September 8, 2020, IEP Team meeting without predetermining the outcome.

10. In support of her claims, the Parent presented evidence that one paraprofessional (Ms. Croissant) was willing to enter the Student's home to provide in-person services, and therefore the District should have allowed the Parent's request. The Parent also presented testimony from Dr. Hemmerling that the Student could not access either general education or special education

via remote learning so in-person instruction was necessary for the Student to receive special education services.

11. The members of the IEP Team testified that they agreed the Student could not access either general education or special education via remote learning. Regardless, the District was bound by the Reopening Plan, OSPI guidance, and the Student's February 24, 2020, and March 20, 2020, IEPs. Therefore, at the September 8, 2020, meeting the IEP Team reviewed the Parent's requests, discussed the Parent's concerns, and evaluated the District's available options. The September 18, 2020, PWN sets forth in detail the Parent's requests, the District's offer of special education services as per the Reopening Plan, and the reasons for the District's decision to refuse the Parent's request for in-home and in-person services.

12. On balance, then, it must be concluded that the District did not prevent the Parent from meaningfully participating in the September 8, 2020, IEP meeting or predetermine the Student's educational placement prior to the meeting. As a result, the Parent has not shown that the District engaged in a procedural violation of the IDEA.

13. The Parent also alleges that the District both predetermined it would deny her request or compensatory education, and ignored her request for compensatory education services. The District argues that the Parent misunderstands compensatory education and recovery services as they relate to the Covid-19 public health emergency school closure. Further, the District argues that the IEP Team reviewed and discussed compensatory education services at the September 8, 2020, meeting, and that the District denied the request.

14. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), cited with approval in *R.P. v. Prescott Unif'd Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011). Compensatory education is not a contractual remedy, but an equitable one. "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994).

15. Recovery services, however, are services that are "extra services for students with disabilities once schools reopen." (*Reopening Washington Schools 2020: Special Education Guidance*, P4, pp.13-15.) These services are specific to assisting students in recovering the loss of special education services caused by the Covid-19 public health emergency. (*Id.*)

16. The Parent relies on her own testimony that the District predetermined the outcome of her compensatory education request, but provides no other evidence in support. However, the September 18, 2020, PWN and testimonial evidence from other members of the IEP Team shows that the District discussed the Parent's request for compensatory education and recovery services at the September 8, 2020, meeting and determined it would follow OSPI's guidance regarding providing recovery services once the Student could attend school in-person. Thus, the Parent's claim that she was not provided with an opportunity to meaningfully participate in the September 8, 2020, meeting, is not supported by the record.

17. The Parent's claim that the District has not acted on her compensatory education request is confusing in light of her assertion that the District also predetermined it would deny her compensatory education request. The September 18, 2020, PWN addresses the Parent's request in terms of the District's decision to follow OSPI guidance and offer recovery services to the Student once in-person instruction resumes. No procedural violation of the IDEA has occurred.

18. The Parent, like many parents, is frustrated with the options available due to the Covid-19 public health emergency and disagrees with the IEP Team decisions that resulted from the September 8, 2020, meeting. However, based on the record, it cannot be said that the District either predetermined the outcome of the September 8, 2020, IEP Team meeting, or denied the Parent the right to meaningfully participate as required by WAC 392-172A-3100. As a result, the Parent has not shown that the District engaged in a procedural violation of the IDEA.

Substantive Issues

The District's October 1, 2019, Reevaluation of the Student and February 28, 2020, Assessment Revision are Appropriate

19. After a District completes a reevaluation or assessment revision¹⁶ of a student, a parent who disagrees with the process or results may request an IEE at public expense (WAC 392-172A-05005). Reevaluations are addressed by WAC 392-172A-03015(1), which states:

A school District must ensure that a reevaluation of each student eligible for special education is conducted in accordance with WAC 392-172A-03020 when:

- (a) the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or*
- (b) if the child's parent or teacher requests a reevaluation.*

WAC 392-172A-03015(1). Here, the District conducted a reevaluation of the Student on October 1, 2019, because the District determined the educational and related services needs of the Student warranted a reevaluation. Also, the District conducted the Assessment Revision on February 28, 2020, because the Parent requested an evaluation in the area of orientation and motility, and the District agreed.

20. When conducting a reevaluation or assessment revision, the District must convene a group of qualified professionals and this reevaluation team determines whether the student continues to be eligible for special education and the content of the Student's IEP. WAC 392-172A-03020 and 03040. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. WAC 392-172A-03020. The reevaluation must also include a review of existing data. WAC 392-172A-03025.

¹⁶ While the District referred to an "assessment revision," a term not defined in the IDEA or WAC implementing regulations, it is clear that the District conducted a reevaluation of the Student in the area of orientation and motility as per WAC 392-172A-03015 and WAC 392-172A-03020 through 03080.

21. The District has shown that the October 1, 2019, Reevaluation is appropriate. Dr. Shanshala performed a comprehensive assessment of the Student in the areas of medical-physical, social-emotional / behavioral, adaptive skills, and cognition, using generally accepted assessment tools. Further, Dr. Shanshala observed the Student as required. The October 1, 2019, Reevaluation includes information, input, and data from the Student's general education teacher, the special education teacher, OT, SLP, PT, audiologist, vision specialist, and the Parent. Also, the October 1, 2019, Reevaluation reflects that the Student was evaluated in all areas of concern identified (medical-physical, audiology, social / emotional behavioral, adaptive skills, cognitive, math, reading, writing, communication, fine motor, and gross motor). Finally, the Reevaluation Team reviewed and considered all existing data as part of the reevaluation process.

22. While it is not the Parent's burden to show that the October 1, 2019, Reevaluation is inappropriate, the Parent has also not specifically challenged any portion of the October 1, 2019 Reevaluation or identified how it is lacking in either sufficiency or comprehensiveness. When asked at the hearing ". . . what do you specifically dispute about the October 1st, 2019, reevaluation of the Student," the Parent stated only that "I don't think that it lays out the steps needed to make adequate and appropriate growth for the Student. I think there is more that we could know." (Tr., p.498 (Parent).) Notably, the Parent does not address this issue in her post-hearing brief.

23. Regarding the February 28, 2020, Assessment Revision, the Parent and the District agreed at the February 24, 2020, resolution meeting that the scope would be limited to an evaluation of the Student in the area of orientation and motility. Dr. Shanshala conducted an orientation and motility assessment, reviewed and considered all existing data, and received input from the Parent and the Student's teachers and providers. Dr. Shanshala recommended that the Student qualified for special education services due to a disability in the area of orientation and motility. At the due process hearing, the Parent stated that she does not challenge the appropriateness of the February 28, 2020, Assessment Revision. (Tr., p.498 (Parent).)

24. Based on the evidence presented by the District, it is concluded that the District has carried its burden and has shown that the October 1, 2019, Reevaluation and the February 28, 2020, Assessment Revision are sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. As a result, the October 1, 2019 Reevaluation and the February 28, 2020, Assessment Revision are appropriate and the Parent is not entitled to an IEE at public expense.

The Parent has Shown that the District Failed to Materially Implement the Student's February 24, 2020, and March 20, 2020, IEPs to the Maximum Extent Possible from March 23, 2020, through June 19, 2020, and September 8, 2020, and September 30, 2020.

25. The Parent essentially argues in issues 1 and 5 that the District failed to materially implement the Student's February 24, 2020, IEP, and March 20, 2020, IEP, because the District provided the Student with on-line remote learning which the District knew the Student could not

use to access SDI and related services.¹⁷ The District argues that it materially implemented the Student's IEPs by providing special education services as allowed by the Covid-19 public health emergency, OSPI Guidance, and the District's Reopening Plan.

26. Once an IEP is completed, the District is obligated to implement the IEP in conformity with its provisions. Only material failures to implement an IEP violate the IDEA. *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9th Cir. 2007). Minor discrepancies in the services required by the IEP do not violate the IDEA. *Id.*

"[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.

Id. at 821-22 (italics in original).

27. All Washington school districts were ordered to stop all in-person educational programs on March 12, 2020, by proclamation from the Governor of Washington State. Governor Proclamation 20-08, 20-09.1. The U.S. Department of Education ("DOE") issued guidance that same day stating:

If an LEA closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, than an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child's individualized education program (IEP)

U.S. Dep't of Education, Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (March 2020) at p. 2.

28. OSPI also issued guidance stating, "[t]here remains an expectation that individualized education program (IEP) services will be delivered to the maximum extent possible during the pandemic while adjusting delivery methods to comply with state and local health/safety restrictions." *OSPI Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in Summer and Fall 2020* (released 3/24/20, last updated 8/26/20). This guidance further recognized that there have been no changes made to the IDEA or its implementing regulations, thus, school districts are not relieved of their obligation to comply with said laws. *Id.* Further, OSPI provided school districts with the "*Reopening Washington Schools*

¹⁷ While issues 1 and 5 refer to the October 31, 2019, IEP, the Parent clarified at the hearing she challenged the implementation of the IEPs in effect for the period of March 13, 2020 and thereafter.

2020: *Special Education Guidance*,” “*Special Education Planning Guide for Reopening Washington Schools 2020*,” and “*Summary of Reopening Washington Schools 2020: Special Education Guidance*” to assist schools with formulating reopening plans.

29. The Washington State Department of Health (“DOH”) also issued two guidance documents regarding reopening public schools for in-person instruction: “*Washington State Department of Health: K-12 Schools 2020-2021 Guidance*” and “*Washington State Department of Health Tools to Prepare for Provision of In-Person Learning among K-12 Students at Public and Private Schools during the Covid-19 Pandemic*.” These guidance documents required that 1) persons must maintain six feet of physical distance while in school facilities, and 2) school districts must utilize small cohorts of students to reduce the risk of coronavirus transmission. (*Id.*)

30. It must be recognized that the unprecedented impacts of the Covid-19 public health emergency and resulting legal mandates prohibit schools from providing in-person learning unless DOH guidelines for social distancing and proper hygiene practices are followed at all times. Special education services require multiple staff to be in direct physical contact with students likely multiple times each day. Here, the District formulated the Reopening Plan to comply with guidance from the DOH, DOE, and OSPI, and to meet the individual needs of all students to the maximum extent possible through a combination of remote and in-person educational opportunities. The purpose of the District’s Reopening Plan is simple: reduce the risk of Covid-19 virus transmission while allowing students to participate in the general education and special education environments to the maximum extent possible.

31. The issue, then, is whether the special education services provided to this Student satisfied the District’s obligation to implement the Student’s IEP, and if not, whether any failure to implement the IEP was a material failure. See *Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811 (9th Cir. 2007).

32. The District was required to provide special education services to the Student when it was providing educational services to other students. Here, the District did not provide any educational services to students from March 12, 2020 through March 20, 2021, and from June 19, 2020, through September 8, 2020. Therefore, the District’s failure to provide the Student with special education services during this period is not a violation of the IDEA. Also, the Student returned to full-time, in-person attendance at the District and received the services called for in the March 20, 2020, IEP and October 27, 2020, IEP from October 1, 2020 and thereafter. Therefore, the District did not fail to materially implement the Student’s IEPs during that period.

33. However, the District was required to provide the Student with special education services from March 23, 2020, through June 19, 2020, and from September 8, 2020, through September 30, 2020. During these periods the District offered the Student remote, on-line only instruction. The record shows that the Student’s ability to learn remotely is severely limited such that the Student could not access special education services, and the Parent was not able to use the materials provided to assist the Student with accessing her education. As a result, it must be concluded that the District failed to materially implement the Student’s February 24, 2020, and March 20, 2020, IEPs between March 23, 2020 and June 19, 2020, and from September 8, 2020, through September 30, 2020.

34. This is not to say, however, that the District did not implement the Student's IEPs to the maximum extent possible as required by OSPI Guidance. Regardless of the challenges presented by the Covid-19 public health emergency, the District swiftly crafted the Continuous Learning Plan, developed on-line methods to deliver SDI and related services to the Student, and provided the Parent with a number of special education resources for the period of March 23, 2020, through September 30, 2020. Ms. Waite frequently contacted the Parent and provided materials and lessons through the Schoology platform. Ms. Waite modified the Student's general education curriculum, and provided lessons and materials by personally delivering them to the Student's home. The restrictions on in-person learning due to the Covid-19 public health emergency placed all school districts in a difficult position, and the District in this case was no exception.

35. While the Parent's and the District's frustration is understandable, given the unprecedented public health emergency and the District's provision of on-line instruction and physical materials for the Student, it cannot be said that the District failed to implement the Student's IEP to the maximum extent possible between March 13, 2020, and September 30, 2020. However, the District did fail to implement the Student's IEP because the Student could not access special education services via the means available, and therefore the failure was material. The Parent, then, has carried her burden and shown that the District violated the IDEA by failing to materially implement the Student's February 24, 2020, and March 20, 2020, IEPs between March 13, 2020, and June 19, 2020, and September 8, 2020, through September 30, 2020.

The District Did Not Fail to Provide the Student with the Supplementary Aids and Services of a Full Time Paraeducator.

36. In issues 6 and 7, the Parent asserts that the District failed to implement the Student's IEPs because 1) the District provided "full-time" paraeducators instead of "1:1 paraeducators" and 2) the Student was left alone without paraeducator support on November 4, 2020, and November 11, 2020. Again, the Parent is essentially arguing that the District failed to implement the Student's IEP in regards to providing paraeducator support, and as a result the Student was denied a FAPE. It appears that the Parent is drawing a distinction between a 1:1 paraeducator and a full-time paraeducator, and argues that the Student should have a 1:1 paraeducator at all times, regardless of whether the Student is receiving SDI, related services, or supplementary supports and services.

37. However, the Student's IEPs required that the Student receive full-time paraeducator support as a supplemental service for 348 minutes per day in the general education and special education environments to assist with [REDACTED]. The Student's IEPs also allowed that paraeducators could work with the Student in small groups, whole groups, or 1:1, to deliver SDI in the general education environment and special education environment. Thus, the Student was to receive paraeducator support as a supplemental service, but not necessarily on a one to one basis for delivery of all SDI. Importantly, Ms. Waite, Ms. Croissant, Ms. Eichwald, and Ms. Doran, all testified that the Student received the required 348 minutes per week of paraeducator services and supports as required by the Student's IEPs, and paraeducator minutes designated for delivery of SDI in the general education environment. The Parent has not identified any instance where the Student did not receive the paraeducator minutes required by the Student's IEPs.

38. The District was only required to provide the paraeducator supports and services required by the Student's IEP. While the Parent would like the Student to receive 1:1 paraeducator support at all times, the Parent has not shown that the District failed to provide a full-time paraeducator for the Student as required by the Student's IEPs. As a result, the District did not fail to materially implement the Student's IEPs.

39. Related to the Parent's claim that the Student should have received a "1:1 paraeducator" is the Parent's claim that the Student was left alone without paraeducator support on two occasions and therefore the District failed to materially implement the Student's IEPs. The general supervision of students on a school campus does not implicate the provisions of the IDEA, and therefore it could be concluded that the circumstances presented by these two events implicate general supervision of the Student, not the delivery of SDI, related services, or supplemental supports and services. Therefore, the tribunal would not have jurisdiction over this claim per WAC 392-172A.

40. Even so, the October 27, 2020, IEP required that the Student receive full-time paraeducator supports and services for [REDACTED] and paraeducator support for delivery of SDI in the general education environment. Arguably, the Parent has claimed that the Student did not receive those services during the November 4, 2020, and November 11, 2020, incidents. However, the testimony of Ms. Doran, Ms. Rodenberg, and Ms. Waite shows that the Student was under the supervision of three paraeducators and Ms. Waite on November 4, 2020, when she wandered into the hallway from room 105. Ms. Waite, Ms. Rodenberg, and Ms. Doran all observed the Student during the incident, and Ms. Waite safely returned the Student room 105 without incident. Regarding the November 11, 2020, incident on the playground, Ms. Croissant testified that she was present within steps of the Student and immediately assisted the Student when the accident occurred. Ms. Waite also testified she was present and immediately reacted by intervening.

41. While the Parent's concern for her child's safety is certainly understandable, she has not met her burden and shown that the District failed to provide a paraeducator to the Student during either the November 4, 2020, or November 11, 2020, such that a material failure to implement the Student's IEP occurred.

The District Did Not Fail to Train the Paraprofessionals Assigned to the Student

42. The Parent asserts that the paraeducators that were assigned to the Student were not "trained" because they did not read the Student's IEPs. School districts are required to employ appropriately certificated teachers for the provision of special education services. WAC 392-172A-02090. Similarly, the same regulation provides that paraprofessional staff and aides:

Paraprofessional staff and aides shall present evidence of skills and knowledge established under the rules of the professional educator standards board, necessary to meet the needs of students eligible for special education, and shall be under the supervision of a certificated teacher with a special education endorsement, or a certificated educational staff associate or licensed staff.

Id.

43. It is important at the outset to note that WAC 392-172A- 02090(4) does create any right of action on behalf of an individual student or class of students to challenge the credentials required of persons who teach special education or general education. The Parents may file a state citizen complaint with the Office of Superintendent of Public Instruction to address this issue. (WAC 392-172A-05025 through 05040.)

44. Even so, the Parent asserts that because paraeducators did not read the Student's IEP, even though they have access, the paraeducators are not sufficiently trained. However, each paraeducator testified that they have years of experience, that they are trained to specifically support this Student with her individual needs, and that they receive daily instruction from Ms. Waite, the supervising special education teacher. While the Parent's desire for the paraeducators to familiarize themselves with the terms of the Student's IEP is understandable, it cannot be said that the paraeducators lacked the training and experience to assist and support the Student as required. The Parent, then, has not shown that the District failed to either train or supervise the paraprofessionals assigned to the Student such that a violation of the IDEA occurred.

The District was Not Required to Provide a [REDACTED]

45. The Parent has asserted in issues 9 and 10 that the Student's IEPs were not reasonable or appropriate because the District did not provide the Student with a [REDACTED]

[REDACTED] was not appropriate for the Student.

46. When determining whether an IEP is appropriate, the "question is whether the IEP is reasonable, not whether the court regards it as ideal." *Rowley*, U.S. at 206-07. The determination of reasonableness is made as of the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is "a snapshot, not a retrospective." *Id.* In developing a Student's IEP, WAC 392-172A-03110(1) requires the IEP team to consider:

- (a) *The strengths of the student;*
- (b) *The concerns of the parents for enhancing the education of their student;*
- (c) *The results of the initial or most recent evaluation of the student; and*
- (d) *The academic, developmental, and functional needs of the student.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Id.

The Student Does Not Qualify for a [REDACTED]

47. It is not disputed that the Student's IEPs did not provide for a [REDACTED]. The District correctly points out that there is no evidence that the Parent requested a [REDACTED] during the development of the Student's IEPs, or identified that the Student has a [REDACTED]

[REDACTED]

48. Based on the record, then, it is concluded that the Parent has not met her burden and has not shown that the Student's IEPs were unreasonable or inappropriate because the Student did not receive a [REDACTED]

[REDACTED] is Not Appropriate for the Student

49. The Parent asserts that the District did not consider or provide instruction in [REDACTED]

50. Conversely, the District has provided evidence that shows the IEP Team considered [REDACTED]. In the October 1, 2019, Reevaluation, the Student was found to qualify for services in the area of [REDACTED]

[REDACTED]

51. The evidence presented, then, shows that the Parent has not met her burden and has not shown that the Student's IEPs were inappropriate because they did not provide the Student with [REDACTED]. As a result, it is concluded that the District did not violated the IDEA and did not deny the Student a FAPE by declining to provide the Student with [REDACTED].

The District's Failure to Perform a Functional Behavioral Assessment is Not a Violation of the IDEA

52. In issue 11 the Parent asserts that a comprehensive evaluation of the Student, including an FBA, is required “to determine whether the Student’s lack of engagement behaviors require a Behavior Plan to assist the Student to have access to an appropriate education.” The Parent’s claim, then, is limited to the Parent’s assertion that the District must perform an FBA to determine whether a Behavioral Intervention Plan should be developed.

53. In the case of a child whose behavior impedes the child’s learning or that of others, the IEP team shall consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i). A functional behavior assessment is one type of behavioral intervention or strategy that helps identify causative factors and objectionable behaviors. *J.L. v. Manteca Unified Sch. Dist.*, 2016 U.S. Dist. LEXIS 77441 (E.D. Cal. June 14, 2016); see also *S.J. v. Issaquah Sch. Dist.*, 2007 U.S. Dist. LEXIS 67735 (W.D. Wash. Sept. 12, 2007) (a functional behavior assessment is required only when a student has been removed from her current placement). As the Ninth Circuit recently held in *Butte Sch. Dist. No. 1 v. C.S.*, 817 F. App’x 321 (9th Cir. 2020):

The IDEA only requires an FBA when a child is removed from his current placement due to problem behaviors. 20 U.S.C. § 1415(k)(1)(D)(ii). For other students with disability-related behavioral needs, an IEP need only include (1) “measurable annual goals” developed to “enable the child to be involved in and make progress in the general education curriculum;” and (2) how “progress toward meeting the annual goals . . . will be measured.” 34 C.F.R. § 300.320(a)(2)(i), (3)(i).

Id. at 326. Here, the Student is eligible for SDI in the areas of social / emotional behavior and the Student receives SDI in this area as per her IEP. Also, the Student has not been removed from her current placement due to problem behaviors. Therefore, the District is not required to conduct an FBA of the Student.

54. Regardless, on October 27, 2020, the District agreed to perform an FBA, but denied the Parent’s request to contract with an outside provider. The only reason the District has not performed the FBA is because the Parent has not provided consent to an FBA performed by the District’s behavioral specialist. The District is correct that FBAs are evaluations and, therefore, require parent consent. See WAC 392-172A-03000(3); *Letter to Christiansen*, 48 IDELR 161 (OSEP 2007); *Questions and Answers on Discipline Procedures*, 52 IDELR 231 (OSERS 2009). The Parent admitted that she has refused to consent to the FBA because she does not agree that the District’s behavioral specialist is qualified.

55. It cannot be concluded that the District is required to perform an FBA when the Parent has refused consent and the Student’s placement has not changed due to problem behaviors. As a result, no violation of the IDEA has occurred. While the Parent may have concerns about the District’s ability to perform an appropriate FBA, those concerns are speculative. Notably, if the District completes an FBA, the Parent has the option to request an independent FBA by an outside provider if the Parent does not believe the FBA was sufficiently comprehensive or appropriate. See *D.S. v Trumbull Bd. of Education*, 77 IDELR 122 (2nd Cir. 2020)(concluding that an FBA is an

evaluation and therefore a parent can request an IEE.). Given these circumstances, then, it is concluded that the Parent has not met her burden and has not shown that the District failed to perform an FBA of the Student such that a violation of the IDEA has occurred. The Parent, then, is not entitled to any requested relief.

The Parent has not Shown that the Student’s IEPs are Inappropriate or Not Reasonably Calculated in the Areas of Academics and Social / Emotional Behavior

56. The Parent’s final claim is a generalized assertion that the Student is not progressing in academics and social / emotional behavior. Essentially, the Parent asserts that the Student’s IEPs do not contain appropriate goals and are not reasonably calculated to enable the Student to make progress appropriate in light of the Student’s circumstances. The District argues that the Parent’s claims are overly broad and that she has failed to meet her burden. The District also asserts that any lack of progress is directly related to the Covid-19 public health emergency school closure and the Parent’s demands to place the Student in the general education environment a majority of the time.

57. An IEP must contain a statement of a student’s present levels of academic and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum. WAC 392-172A-03090(1)(a); 34 § CFR 300.320(a)(1). Present levels must include baseline measurements for goals. *Northshore Sch. Dist.*, 114 LRP 2927 (SEA WA 2013).

58. An IEP must contain a statement of annual goals, including academic and functional goals designed to meet the student’s needs that result from their disability to enable them to be involved in and make progress in the general education curriculum and meet each of a student’s other educational needs that result from the student’s disability. WAC 392-172A-03090(1)(b)(i); 34 § CFR 300.320(a)(2). The IDEA does not specify the number of goals that must be included in an IEP, but there should typically be at least one goal for each area of need. See, e.g., *Bellflower Unified Sch. Dist.*, 54 IDELR 66 (SEA CA 2010) (IEP deficient because it did not contain goals to address student’s deficits in attending to group instruction); *Flagstaff Arts and Leadership Academy*, 113 LRP 27180 (SEA AZ 2013) (IEP deficient because it failed to provide goals to properly address basic reading, reading fluency, life skills, and other areas of need).

59. There must be a relationship between the present levels of performance and the goals and objectives. *Seattle Sch. Dist.*, 34 IDELR 196, 34 LRP 226 (SEA WA 2001).

60. An IEP must also include a description of:

(i) How the district will measure the student's progress toward meeting the annual goals described in (b) of this subsection; and

(ii) When the district will provide periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards);

The regulations do not specify the exact content of the reports, or the remedy for failure to issue periodic reports of progress toward IEP goals.

61. The March 2020 progress reports show that between October 31, 2019, and March 12, 2020, the Student was making progress towards the academic and social / emotional behavior goals in the October 31, 2019, IEP, which are the same goals in the February 24, 2020, and March 20, 2020, IEPs. The Parent has not specified how the IEPs are not reasonably calculated to enable the Student to make progress, or that the academic and social / emotional goals in the IEPs are inappropriate. Further, the October 31, 2019, IEP, February 24, 2020, IEP, and March 20, 2020, IEP were not reviewed by either Dr. Hemmerling or Tina Jacobs¹⁸ (the Parent's other expert witness), so there is no testimonial evidence that shows that the academic or social / emotional behavior goals were not measurable or otherwise inappropriate. Thus, the Parent has not presented any evidence that when the March 12, 2020, progress monitoring was performed, the October 31, 2019, IEP, February 24, 2020, IEP, and March 20, 2020, IEPs were anything other than appropriate and reasonable in light of the Student's circumstances.

62. The Parent has also not identified specifically how the October 27, 2020, IEP was not reasonably calculated or otherwise inappropriate. The October 27, 2020, IEP contains the March 12, 2020, progress monitoring data. Certainly, the Covid-19 public school closure impacted the ability of the District's personnel to obtain progress monitoring data on the Student between March 13, 2020 and September 2020, but Ms. Waite was able to obtain progress monitoring data in the areas of academic and social / emotional behavior in September and October 2020. This data was used to develop the October 27, 2020, IEP goals. Thus, the IEPs at issue included available progress monitoring data and the goals were developed based on this data.

63. This case, however, presents a unique circumstance in that the IEP Team was faced with establishing academic and social / emotional behavior goals based on the Student's placement in the general education environment. The February 24, 2020, Resolution Agreement resulted from the Parent's request to place the Student in the general education environment a majority of the time and use an "exposure learning model" based on a modified grade level curriculum. Even though the District personnel disagreed with the placement of the Student, the District developed a modified grade level curriculum with accompanying goals that could be measured by the assessment tools available. The Parent has not presented any evidence that the District could have developed other goals or other means of measuring the Student's progress given the placement of the Student in the general education environment.

64. Importantly, Ms. Waite and Dr. Hemmerling agreed that because the Student is placed in the general education environment a majority of the time, the goals in the February 24, 2020, March 20, 2020, and October 27, 2020, IEPs were not reasonably calculated to allow the Student to make progress and were not appropriate for the Student. None of the witnesses recommended placement of the Student in the general education environment a majority of the time because the placement emphasizes exposure to peers at grade level with whole group instruction, instead of the individualized "mastery of skills model" using targeted instruction in the special education environment. All of the witnesses agreed that the Student's goals should not be based on the Student's ability to progress towards a modified grade level curriculum via whole group instruction in the general education environment.

¹⁸ Tina Jacobs is a special education teacher at the Bethel School District and has twenty years of teaching experience. Ms. Jacobs has a degree in English language arts and an endorsement in reading.

65. Beginning in October 2018, Ms. Waite and the other District members of the IEP Team recommended that the Student participate a majority of the time in the Options Program special education program where SDI could be delivered with fidelity. This placement allows the IEP Team to develop measurable goals and deliver targeted instruction that is reasonably calculated and appropriate for the Student to make progress in the areas of academics and social / emotional behavior.

66. Ultimately, it must be concluded that the October 31, 2019, February 24, 2020, March 20, 2020, and October 27, 2020, IEPs are not reasonably calculated to allow the Student to make progress in light of her circumstances because the Student is placed in the general education environment a majority of the time as the Parent requested. However, the District was bound by the compromises with the Parent and the February 24, 2020, Resolution Agreement. Therefore, the District was required to develop measurable IEP goals that allowed the Student to progress in the general education environment. The record shows that under these circumstances Ms. Waite developed three IEPs that contained present levels of performance, instruction based on modified grade level curriculum, and measurable academic and social / emotional goals that reflected the Student's placement in the general education environment. The Parent has not shown otherwise.

67. Under these specific circumstances, then, it is concluded that the Parent has not carried her burden and has not shown that the October 31, 2019, February 24, 2020, and March 20, 2020, and October 27, 2020, IEPs were inappropriate or not reasonably calculated to allow the Student to make progress given her unique circumstances.

Remedies

68. The Parent seeks compensatory education for the period of March 23, 2020, through June 19, 2020, and from September 8, 2020, through September 30, 2020. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), *cited with approval in R.P. v. Prescott Unif'd Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011). Compensatory education is not a contractual remedy, but an equitable one. "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994). A hearing officer may fashion individualized relief for students seeking compensatory education. As noted in *R.P. v. Prescott*:

Courts have been creative in fashioning the amount and type of compensatory education services to award. See, e.g., Ferren C. v. Sch. Dist. of Phila., 612 F.3d 712, 718-19 (3d Cir. 2010) (court can order school to provide annual IEPs to student who had aged out of a statutory right to a FAPE); M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd., 553 F.3d 315, 324-26 (4th Cir. 2009) (court can order that private school tuition be reimbursed); Park, ex rel. Park v. Anaheim Union High Sch. Dist., 464 F.3d 1025, 1034 (9th Cir. 2006) (court can order additional training for a child's teachers).

631 F.3d at 1126.

69. The District has argued that the Parent is not entitled to compensatory education services until all students return to the District for in-person instruction and the District has the opportunity to provide the Student with recovery services and calculate the recovery services based on the Student's progress. However, the Parent has requested compensatory education services and there is nothing that prevents the award of compensatory education services when a material failure to implement the IEP has been determined as the result of a due process hearing.

70. During the weeks at issue, the Student did not receive the following service minutes in the February 24, 2020, and March 20, 2020, IEPs during the period of March 23, 2020, through June 19, 2020, and from September 8, 2020, to September 30, 2020 (a period of 17 week or 4 months):

Related Services OT Fine Motor Special Education: 45 minutes per month x 4 months = 180 minutes

Related Services OT Fine Motor General Education: 45 minutes per month x 4 months = 180 minutes

Related Services PT Gross Motor: 90 minutes per month x 4 months = 640 minutes

Related Services Communication: 1 hour 40 minutes per week x 17 weeks = 1,700 minutes

SDI Orientation and Mobility: 40 minutes per month x 4 months = 160 minutes

SDI Social / Emotional Behavior General Education: 75 minutes per week x 17 weeks = 1275 minutes

SDI Communication Special Education: 90 minutes per month x 4 months = 360 minutes

SDI Communication General Education: 90 minutes per month x 4 months = 360 minutes

SDI Reading: 150 minutes per week x 17 weeks = 2550 minutes

SDI Math: 150 minutes per week x 17 weeks = 2550 minutes

SDI Written Language: 100 minutes per week x 17 weeks = 1700 minutes

SDI Adaptive Behavior: 300 minutes per week x 17 weeks = 5100 minutes

SDI Social / Emotional Behavior Special Education: 75 minutes per week x 17 weeks = 1275 minutes

Supplemental Aides and Services Vision: 20 minutes per week x 17 weeks = 340 minutes

Supplemental Aides and Services Communication: 10 minutes per week x 17 weeks = 170 minutes

The Student, then, did not receive a total of 18,540 service minutes.

71. Regarding paraeducator supplemental aids and services, because the Student was not attending school in person and other students were also not attending school in person, the Student did not require paraeducator supplemental aids and services for [REDACTED]

[REDACTED] Given the unique circumstances presented by the Covid-19 school closure, it is concluded that the Student is not entitled to compensatory education for

these service minutes for the period of March 23, 2020, through June 19, 2020, and September 8, 2020, through September 30, 2020 due to a lack of in person school attendance for any student.

72. It is relevant that the District designed and implemented the October 27, 2020, IEP to include a substantial increase in service minutes for the Student. While the October 27, 2020, IEP does not specify that the increase in service minutes for the Student is intended to be "recovery services," the fact that the District has implemented additional service minutes is relevant to calculating total compensatory education award for this student.

73. A review of the October 27, 2020, IEP shows that from October 28, 2020, and for the 26 weeks thereafter, the District increased the Student's service minutes in each area of SDI by an average of approximately 50%, except for Vision and Adaptive Behavior which increased 25% and reading which remained the same. The District did not increase the Student's related services minutes for PT, OT, and communication. The District increased the Student's supplemental aids and supports minutes by 25% in the areas of communication and Vision.

74. The limited school day schedule must also be accounted for when crafting an award of compensatory education because ultimately there is only so much time that can be dedicated to providing the Student with compensatory education services and realistically continuing to educate the Student as per the October 27, 2020, IEP.

75. Given these circumstances the Student's compensatory education award should be reduced by the increased service minutes provided by the October 27, 2020, IEP, over a period of 26 weeks, and the ability of the Student to participate in compensatory education during the school day while attending in person. Therefore, the Student is awarded compensatory education for the areas that were not increased in the October 27, 2020, IEP, and that can be reasonably provided to the Student while maintaining the provision of services in the October 27, 2020, IEP. The Student is awarded the following compensatory education:

Related Services OT Fine Motor Special Education: 90 minutes per month for two months by the District's OT

Related Services OT Fine Motor General Education: 90 minutes per month for two months by the District's OT

Related Services PT Gross Motor: 90 minutes per month for one month by the District's PT

SDI Reading General Education Environment: 15 minutes per week for 8 weeks by the District's paraeducator

ORDER

Based on the findings and conclusions above, it is hereby ordered that the District did not violate the IDEA and did not deny the Student FAPE, because:

1. The District did not prevent the Parent from meaningfully participating in, or predetermine the outcome of, the September 8, 2020, IEP Team meeting;

2. The District's evaluation of the Student is appropriate and the Parent are not entitled to an IEE at public expense;
3. The District did not fail to provide the Student with the supplementary aids and services of a full time paraeducator;
4. The District did not fail to train the paraeducators assigned to the Student;
5. The District was not required to provide a dedicated 1:1 intervener or [REDACTED];
6. The District's failure to perform the functional behavioral assessment is not a violation of the IDEA; and
7. The Parent has not shown that the Student's IEPs are inappropriate or not reasonably calculated in the areas of academics and social / emotional behavior.

IT IS FURTHER ORDERED, that the District did violate and denied the Student FAPE by failing to materially implement the Student's February 24, 2020, and March 20, 2020, IEPs from March 23, 2020, through June 19, 2020, and September 8, 2020, and September 30, 2020. Therefore, the Parent is entitled to compensatory education as follows:

Related Services OT Fine Motor Special Education: 90 minutes per month for two months by the District OT

Related Services OT Fine Motor General Education: 90 minutes per month for two months by the District OT

Related Services PT Gross Motor: 90 minutes per month for one month by the District PT

SDI Reading General Education: 15 minutes per week for 8 weeks by the District paraeducator.

Served on the Date of Mailing.



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.

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



John Yellowlees
Peninsula School District
14015 62nd Avenue NW
Gig Harbor, WA 98332

Helen Caldart
Special Education Advocates League, SEAL
3706 64th St E
Tacoma, WA 98443

Carlos Chavez
Pacifica Law Group LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101

Dated April 21, 2021 at Seattle, Washington.

Representative
Office of Administrative Hearings
600 University Street, Suite 1500
Seattle, WA 98101

cc: Administrative Resource Services, OSPI