

**MAILED**

Feb 03, 2022

OAH – SEATTLE

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

IN THE MATTER OF:

OSPI CAUSE NO. 2021 SE 0117

OAH DOCKET NO. 09 2021 OSPI 01418

SUMNER BONNEY LAKE SCHOOL DISTRICT

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

A due process hearing in the above entitled matter was held before Administrative Law Judge (ALJ) Dana Diederich by video conference on November 18 and 19, 2021. The Parents of the Student whose education is at issue<sup>1</sup> appeared and were represented by Shannon McMinimee, attorney at law. The Sumner Bonney Lake School District (District) was represented by Susan Winkelman, attorney at law. Karen Finigan, Executive Director of Special Services for the District also appeared. The following is hereby entered:

**STATEMENT OF THE CASE**

**Procedural History**

The Parents filed a Due Process Hearing Request (Complaint) with the Office of Superintendent of Public Instruction (OSPI) on September 30, 2021. The Complaint was assigned Cause No. 2021 SE 0117 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered October 1, 2021, which assigned the matter to ALJ Dana Diederich. The District filed its Response to the Complaint on October 13, 2021.

A prehearing conference was held on November 4, 2021, and a prehearing order was entered that same date setting the hearing for November 18 and 19, 2021, and stating the issues for hearing.

**Due Date for Written Decision**

As set forth in the prehearing order dated November 4, 2021, the due date for a written decision in this matter is thirty days after the record of the hearing closes. The record of the

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<sup>1</sup> In 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," "Father," and/or "Student."

hearing closed on January 10, 2022, when the parties submitted<sup>2</sup> post hearing briefs. Accordingly, the due date for a written decision is February 9, 2022.

### **EVIDENCE RELIED UPON**

#### **Exhibits Admitted:**

District's Exhibits: D1, D4 D8, D9 (page 3 only), D11 D12, D14 D15; and

Parents' Exhibits: P1 P25.

#### **Witnesses Heard (in order of appearance):**

Karen Finigan, Executive Director of Special Services in the District;  
Audra Walters, Director of Special Services in the District;  
Summer Krook, Behavior Specialist in the District;  
Steve Gill, School Psychologist in the District;  
Father of the Student; and  
Mother of the Student.

#### **Post-Hearing Briefs**

The parties filed their post hearing briefs on January 10, 2022.

### **ISSUES**

As set forth in the Prehearing Order dated November 4, 2021, the issues heard in the due process hearing were:

1. Whether the District failed to provide the Student with a free appropriate public education (FAPE) since his enrollment in the District by failing to offer him comparable services to what is called for in his last Individualized Education Program (IEP) and Interim Educational Placement.
2. Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student with FAPE by:

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<sup>2</sup> The Parents' closing brief was filed at 5:33 pm on January 10, 2022. Per the order date January 6, 2022, closing briefs were due by 5:00 pm on January 10, 2022. Because the brief was filed late, the District's attorney was given until January 18, 2022, to submit any objection to the undersigned ALJ considering the Parents' closing brief. No such objection was submitted. Because the Parents' closing brief was filed only 33 minutes after the deadline, and the District did not file an objection, there is no evidence that the late submission prejudiced the District. As such, the Parents' closing brief was considered by the undersigned ALJ.

- i. Refusing to hold an IEP team meeting for the Student and instead insisting on holding a meeting with its special education administrative staff only to discuss an educational placement for the Student and the Parents' request for a reevaluation;
  - ii. Refusing to take into consideration the Independent Educational Evaluation (IEE) reports and the Student's Seattle Children's Hospital records when provided by the Parents;
  - iii. Failing to timely acknowledge the Parents' request for a special education eligibility reevaluation;
  - iv. Failing to timely act upon the Parents' request for a special education eligibility reevaluation; and
  - v. Attempting to improperly dictate the scope of the Parents' consent for a special education eligibility evaluation.
3. And, whether the Parents are entitled to their requested remedies:
- i. Declaratory relief finding that the District violated the IDEA and that the Student was denied FAPE by the District's actions.
  - ii. Compensatory education and supplemental services for the Student to obtain the educational benefit that he would have received but for the District's violations of the IDEA.
  - iii. An Order directing the District to timely complete a special education eligibility reevaluation.
  - iv. An IEP moving forward that takes into consideration the evaluative data and recommendations from the IEE reports as well as information from the Student's Seattle Children's Hospital records.
  - v. Or other equitable remedies, as appropriate.

### **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.

## Background

1. The Student was first evaluated for special education eligibility by the [REDACTED] [REDACTED] in June 2010. He was found eligible under the category of Developmental Delay. D1p5.<sup>3</sup>
2. The Student moved to the [REDACTED] in the fall of 2011. D1p5. The Student was reevaluated in June 2013 and his eligibility category was changed to Health Impairment due to a recent diagnosis of attention deficit hyperactivity disorder. *Id.* at 6. The Student was reevaluated again in May 2016 by [REDACTED] *Id.*
3. In January 2017, the Student was evaluated at Seattle Children’s Hospital at the Parents’ request and was diagnosed with, “Autism Spectrum Disorder, without intellectual impairment and without language impairment.” D1p6.
4. At some point after the 2016 reevaluation, the Student moved to the [REDACTED] [REDACTED] but returned to the [REDACTED] in the Fall of 2017. D1p6.
5. During the 2017 2018 school year, the Student was in fifth grade. He initially attended general education classes, but after an incident where he overheard students calling him “weird” the Student began refusing to attend general education classes. T465.<sup>4</sup>
6. During the 2018 2019 school year, the Student continued to exhibit school refusal behaviors and attended general education classes on only a few occasions. T467. He spent the majority of his time in the contained learning center, which was a special education setting. *Id.*
7. [REDACTED] again reevaluated the Student and held a reevaluation team meeting on March 6, 2019. D1. The Parents attended the meeting along with district psychologist Janae Neumeier; general education teacher Annie Garmey; special education teacher Pati Miller; speech language pathologist Michelle Smith; occupational therapist Joan Ottinger; and district representative David Uberti. D1p1. The Student was found eligible for special education under the category of Autism. D1p6. The evaluation team recommended the Student receive specially designed instruction (SDI) in social/emotional/behavioral, adaptive, and study skills, and that he receive related services in communication and occupational therapy and supplementary aids and services in the area of communication. D1p7.

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<sup>3</sup> Citation to the exhibits of record is by exhibit number and page number, e.g. D1p5 is a citation to District exhibit 1 at page 5.

<sup>4</sup> Citation to the transcript is by the letter “T” followed by the transcript page number.

8. A prior written notice (PWN) was issued on March 6, 2019, proposing to change the Student's eligibility category to Autism. The PWN indicated the action would be initiated on March 11, 2019. D1p27.

9. The Student was in seventh grade during the 2019 2020 school year and attended Lake Tapps Middle School. T468, 427. At the start of the school year, the Student was not participating in any general education classes due to his school refusal behaviors. T446. He attended some special education classes and attended lunch with general education peers. T446, 468.

10. In November 2019, the Student eloped from school. T427. [REDACTED] *Id.*; T468 69. After this incident, the Student only attended school on a few occasions before refusing to attend school all together after January 15, 2020. T445, 458, 470.

11. [REDACTED] created a Behavioral Intervention Plan (BIP) for the Student on January 29, 2021. P2. It listed only one target behavior, which stated, "When presented with a task or setting that [the Student] perceives as overwhelming or stressful, he often displays resistant/refusal behaviors to avoid the given setting, or the task within that setting." P2p2.

12. [REDACTED] stopped in person learning for all students due to COVID 19 on March 13, 2020. D4p5.

13. In May 2021, while the Student was still enrolled in [REDACTED] the Parents met over Zoom with Traci Donohue and Audra Walters,<sup>5</sup> the Directors of Special Services for the District, because [REDACTED] had notified the District that the Parents were interested in enrolling the Student there for the 2021 2022 school year. T45, 148, 200, 203, 206. [REDACTED] only goes up to eighth grade. The Student would be in ninth grade for the 2021 2022 school year so he needed to enroll in a new school district. T43. The Parents and the Directors discussed the difference between the two high schools in the District, Bonney Lake High School and Sumner High School and the Parents shared their concerns about the Student's difficulty attending school and history of elopement. T206, 428, 473. The meeting lasted roughly thirty minutes. T207, 428.

### **August 2021 IEP Amendment**

14. [REDACTED] issued a PWN on August 9, 2021, proposing to amend the Student's IEP to include Extended School Year Services (ESY) as a need. D4p16. Another PWN was issued

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<sup>5</sup> Ms. Walters has been a Director of Special Services in the District since 2017. She has bachelor's degrees in criminal justice and education and a master's degree in educational administration. T216-17. She has general education and special education teaching certificates and an administrative credential. *Id.*

the same date proposing ESY services for the Student to total 180 minutes between August 12, 2021, and August 27, 2021. D5p4.

15. ██████ held an IEP team meeting on August 11, 2021, to amend the Student’s IEP. D4. The amended IEP indicated the Student was eligible for ESY services. *Id.* at 15. The team determined that the Student needed ESY services in the area of social/emotional/behavior to maintain his emerging skills in that area. D5p3. The IEP also included the following services matrix;

**Services 08/12/2021 - 01/25/2022**

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
<b>Related</b>							
No	Communication	Speech and Language Pathologist	Speech Language Pathologist	20 Minutes / 1 Times Weekly	Special Education	08/12/2021	01/25/2022
No	Occupational Therapy	Occupational Therapist	Occupational Therapist	30 Minutes / 1 Times Monthly	Special Education	08/12/2021	01/25/2022
<b>Special Education</b>							
No	Adaptive Behavior	Special Education Teacher	Special Education Teacher	20 Minutes / 5 Times Weekly	Special Education	08/12/2021	01/25/2022
No	Social/Emotional/Behavior	Special Education Teacher	Special Education Teacher	20 Minutes / 5 Times Weekly	Special Education	08/12/2021	01/25/2022
No	Study Skills	Special Education Teacher	Special Education Teacher	20 Minutes / 5 Times Weekly	Special Education	08/12/2021	01/25/2022

**Total minutes per week student spends in school:** 1670 minutes per week  
**Total minutes per week student is served in a special education setting:** 327.5 minutes per week  
**Percent of time in general education setting:** 80.39% 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	Paraeducator Support	Paraeducator	Special Education Teacher	264 Minutes / 5 Times Weekly	General Education	08/12/2021	01/25/2022
No	Paraeducator Support	Paraeducator	Special Education Teacher	30 Minutes / 5 Times Weekly	General Education	08/12/2021	01/25/2022

D4p13. This IEP was effective until January 26, 2022. D4p1.

16. Another PWN was issued on August 11, 2021, indicating the Student’s ESY services would be provided by the Student’s outside provider, Dr. Enns. D6p3. It noted that the IEP team would support the Student’s transition to high school once the family decided where the Student would enroll for high school. *Id.*

**Enrollment in the District**

17. The Parents decided to enroll the Student in the District for his ninth grade year, which started in the fall of 2021. T429.

18. On September 1, 2021, Parents’ counsel emailed the District’s counsel informing him that the Student would soon be enrolling in the District. P1p1. Parents’ counsel noted that

the Student has exhibited school refusal going back to November 2019 and has been diagnosed with Autism Spectrum Disorder, Attention Deficit Hyperactivity Disorder, Anxiety Disorder, Post Traumatic Stress Disorder, a Specific Learning Disorder with impairment in reading, and a motor coordination disorder. *Id.* She also noted the Student has a history of elopement. *Id.* Parents' counsel stated that ██████████ would be making a referral for special education reevaluation for the Student, if it had not done so already, and stated that she was also requesting a reevaluation on the Parents' behalf. *Id.* Parents' counsel asked that the District consider the records attached to the email, which included an Independent Educational Evaluation (IEE) from Dr. Lionel Enns, two IEEs from Seattle Therapy Skills for Life, and medical records from Seattle Children's Hospital. P1. She further noted that the Student refused to engage in the ESY program offered by ██████████ but was participating in services through a private provider, Under One Roof. She requested that the District make an interim placement for the Student pending completion of the reevaluation that provided the Student with academic services from Brock's Academy<sup>6</sup>, as well as ABA services in the home from Basics NW with remote occupational therapy and speech language services. *Id.*

19. In addition to the IEEs and medical records, Parents' counsel attached a settlement agreement entered into by the Parents and ██████████ dated March 31, 2021. In it, ██████████ agreed to an interim educational placement for the Student which stated:

**3. Interim Educational Placement.**

During the time between execution of this Agreement and the IEP team meeting referenced below, the Student will continue participation in remote instruction with Patti Miller (DSD Special Education Teacher), the District will offer the Student occupational therapy and speech language pathology services as outlined in the current IEP, and the Student will receive one hour per week of services from any provider or combination of providers at Under One Roof Psychological Services. A large focus of the work of Under One Roof will be to address the behavioral/social emotional barriers to access to education, which are school phobia and anxiety, where his ASD causes him to perseverate on his phobia and anxiety. This is intended to supplement, not supplant, the adaptive/behavioral/social emotional services called for in the Student's current IEP. It is expected that the Student's IEP team will continue to meet to discuss if he is able to access services and to address Extended School Year (ESY) services.

P1p30. The settlement agreement further stated that ██████████ would hold an IEP team meeting "no later than June 21, 2021." P1p31.

20. The District's counsel replied to Parents' counsel's email on September 1, 2021, stating "Received and forwarding." P1p2. He also asked where the Student would be attending high school. *Id.* Parents' counsel responded initially that the Parents were seeking enrollment at Sumner High School, then quickly replied to say the family actually decided on Bonney Lake

<sup>6</sup> No testimony was provided regarding "Brock's Academy" or "Basics NW." Based on the context of the email, it is assumed these are private service providers not affiliated with the District.

High School. P1p7. District's counsel replied asking if the Parents had enrolled the Student and the Parents' counsel replied that they had. P1p14.

21. The District verified the Student's application for enrollment on September 2, 2021. D7. It listed the Student's expected start date as September 7, 2021, at Bonney Lake High School. *Id.*

22. The District's counsel emailed the Parents' counsel on September 3, 2021, stating that the District was interested in getting more information from the Parents. P1p18. He also noted the Student was not due for a reevaluation until March, and that the District would prefer to get the Student into school and then determine the next steps about the request for reevaluation. *Id.*

23. Parents' counsel replied to the September 3, 2021, email on the same date stating that the Student would not leave his house so the District would never be able to reevaluate the Student if it waited for him to start attending school. P1p23. She stated the Student had engaged in school refusal since November 2019 and the Parents continued to request the District move forward with a reevaluation that considered the IEE reports and records from Seattle Children's Hospital. *Id.*

24. September 7, 2021, was the first day of school in the District for the 2021 2022 school year. D14p1.

25. On September 7, 2021, the Mother had a brief phone conversation with Karen Finigan,<sup>7</sup> the Executive Director of Special Services in the District. T40. Ms. Finigan oversees all special education staff and programming in the District. T40. Ms. Finigan expressed to the Mother during this meeting that the District would not honor the interim educational placement from the settlement agreement created between the Parents and ██████████ but stated the District would implement the August 2021 IEP from ██████████ T60, 77, 125 26, 488. The Mother expressed that she did not think the Student would be able to make it into a school building due to his school avoidance issues. T477. The Mother then stated she would like to talk with her attorney and the conversation ended. T60, 129.

26. On September 7, 2021, Ms. Finigan emailed the Mother stating, "It was nice talking with you on the phone today as we work together to develop a plan for [the Student]. Since you were wanting to talk with your attorney, let me know when we can schedule a time to talk further." D9p3. Ms. Finigan went on to offer specific dates and times and noted she would

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<sup>7</sup> Ms. Finigan has a bachelor's degree in education and a master's degree in emotional and behavioral disabilities. T42, T113-14. She has a Washington State special education K through 12 certification and K through 8 elementary certification. T42. She also has a Washington State administrative credential in Program Administration. *Id.*



be available to set up a Zoom meeting and the Parents' attorney was welcome to attend the meeting. D9p3.

27. The Mother responded to Ms. Finigan's email the same date stating she would get back to her on a date for the meeting and that she had received a call from the District regarding the Student being absent from school. D9p3. The Mother asked Ms. Finigan if there was a plan so that the Student would not be marked absent every day. *Id.* Ms. Finigan replied to the Mother's email on September 8, 2021, stating she had spoken with the attendance secretary and that the Student would not be marked absent while the team determined the next steps for the Student. *Id.*

28. Parents' counsel emailed the District's counsel in the evening of September 7, 2021, P4p1. She included sections of the Student's last IEP and reiterated that the Student had not regularly attended school for the past two years due to school phobia. *Id.* She noted that the Student had eloped from his last school and the incident required the involvement of the county sheriff, and that since the COVID 19 school shutdowns, the Student had only minimally participated in remote special education classes with help from his Mother. *Id.* Parents' counsel provided information related to the interim educational placement the Student had been in at [REDACTED] which involved remote instruction from a special education teacher, occupational therapist, and speech language pathologist, as well as one hour per week of services from Under One Roof Psychological Services. P4p2. Parents' counsel requested that the comparable services being offered to the Student by the District include the psychological services he was currently receiving from Under One Roof. *Id.* She also restated that the Parents were requesting a special education reevaluation for the Student pursuant to WAC 392 172A 03015, and the Parents were requesting that the District consider as part of the reevaluation the existing evaluation data from the IEE reports funded by [REDACTED] and the records from Seattle Children's Hospital. *Id.* These records and IEE reports were attached to the email. *Id.* at 4. Parents' counsel stated that the Parents wanted an interim placement for the Student pending completion of the reevaluation that included academic services from Brock's Academy, ABA services from Basics NW, and remote occupational therapy and speech language pathology services. P4p3. She noted that she would be participating along with the Parents in any meetings and the meetings would need to be remote due to COVID 19 concerns. *Id.* She also asked that Dr. Enns be invited to the meeting being arranged by Ms. Finigan so he could explain the Student's complex needs and his recommendations for the Student. *Id.*

29. On September 13, 2021, a meeting was held between the Parents, Ms. Finigan, Ms. Walters, and counsel for the District and Parents. T135 36. The purpose of the meeting was to discuss the Student starting school and what his "like like placement"<sup>8</sup> would be. T130.

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<sup>8</sup> Parties used the term "like-like placement" and "comparable services" interchangeably throughout the record. Both terms refer to the services the District provides to special education students who enter the District from another district. The District looks at the number of services minutes, the type of placement the student was

The meeting started with the Mother providing information about the Student, his educational history, and his specific school challenges. T136, 163, 219, 477 78. The Parents explained that the Student had difficulty accessing his education and had not attended school in a general education environment since elementary school. T173, 220 21, 226, 431. The Parents also informed the District about the Student's past issues with elopement from school. T221. The District explained during the meeting that the District would implement the August 2021 IEP from [REDACTED] and the Student could attend in person at Bonney Lake High School or do remote general education through Edmentum<sup>9</sup> with SDI provided by District staff remotely by Zoom. T79, 126, 136, 219, 431. The Parents explained that they did not think either option would work due to the Student's school refusal behaviors and because the Student had not attended general education classes for several years. T447. They also expressed that the Student could not do an online program without significant support. T478. The District also discussed doing a special education reevaluation and a functional behavioral assessment (FBA) in the Student's home. T142, 164, 220, 221, 480.

30. The District did not propose a specific daily schedule during this meeting because it was waiting to see whether the Parents wanted the Student to attend school in person or remotely via Edmentum. T73. The District left the meeting assuming they would hear from the Parents about whether the Student would prefer the in person or remote option. T150. Both the District and the Parents left the meeting knowing the school psychologist, Steve Gill,<sup>10</sup> would reach out to the Parents to begin the reevaluation. T150, 227, 480. The District believed the Student needed a reevaluation because the IEE providers were recommending an educational placement significantly different from the placement described in the August 2021 IEP. They wanted to do a reevaluation before making a significant change to the Student's placement. T164 65.

31. The Mother and Mr. Gill spoke on the phone either late on September 13, 2021, or early on September 14, 2021, to have an initial conversation about the Student's reevaluation. T278, 384 85, 386 87. The Mother provided information about the Student's experience in his prior school district and explained she wanted the Student reevaluated because she believed he needed a new educational placement. T304 05.

32. On September 14, 2021, Mr. Gill emailed the Mother thanking her for the "great chat." D12p1. He stated that he would call her again the following week and would answer any

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previously in, and the percentage of time in general education to determine a Student's "like-like placement." T131.

<sup>9</sup> Edmentum is an online platform the District contracts with that provides remote general education curriculum instruction to students in the District. T74, 136. Edmentum has its own teachers who provide instruction.

<sup>10</sup> Mr. Gill has worked as a school psychologist for the District for eleven years. T278. He has a bachelor's degree in teaching of math and traffic safety and a master's degree in school psychology. T279. He holds an educational staff associate certificate in Washington State. *Id.*

questions she had by email, as well. *Id.* The Mother replied the same day stating she would let him know if she had any questions. *Id.*

33. On September 15, 2021, Parents' counsel emailed Ms. Finigan, Ms. Walters, and the District's counsel to follow up on the September 13, 2021 meeting. D12p4. Parents' counsel stated that the Parents wanted to complete rating scales related to the Student's adaptive skills and suggested the Adaptive Behavior Assessment Third Edition (ABAS 3) or the Vineland Adaptive Behavior Scales Third Edition (Vineland 3) be the tool used. *Id.* She also stated that the Parents believed there was sufficient evaluative data from the IEEs and the Student's recent medical records to complete a reevaluation in all other areas without further assessments. *Id.* She further stated that the Parents looked forward to receiving the consent paperwork, learning what the proposed services would be for the Student until the reevaluation could be completed, and hearing more about doing an FBA for the Student. *Id.*

34. Parents' counsel emailed District counsel, Ms. Finigan, Ms. Walters, and Mr. Gill on September 20, 2021, stating that she understood from the Parents that Mr. Gill had concerns about assessing the Student's adaptive skills due to his autism diagnosis. P14p3. She conveyed that the Parents still wanted the Student assessed in that area and felt it was necessary to gain a complete picture of his disabilities. She reiterated that the ABAS 3 or Vineland 3 would be appropriate tools. *Id.* She ended the email stating she looked forward to receiving a PWN outlining the District's proposal for comparable services and the reevaluation consent form. P14p4.

35. Mr. Gill emailed the Mother on September 20, 2021, stating that he understood the Parents were concerned about the Student's adaptive behaviors and he could easily provide rating scales in that area for them to complete. D12p3.

36. Parents' counsel replied to this email on September 20, 2021, stating the Parents looked forward to getting the rating scales to complete regarding the Student's adaptive skills. D12p3. She again suggested using the ABAS 3 or Vineland 3, but noted if there was an alternative test Mr. Gill thought would be better, he should send that as well. *Id.*

37. On September 27, 2021, Parents' counsel emailed the District stating that the Mother was dealing with serious health issues and requesting that any communication go through the Father. D12p8. She also noted that the Father has limited cell phone and Wi Fi coverage while at work and asked that communication be via email and the Father would do his best to respond quickly.<sup>11</sup> *Id.* She went on to request that the consent form for the reevaluation be sent via email so she could work with the Parents to get it returned as soon as possible, noting the Parents are "quite anxious for this reevaluation to get underway." *Id.*

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<sup>11</sup> The Father works as a [REDACTED]. T423-24.

38. Ms. Finigan replied to this email on September 27, 2021, stating that the school psychologist would email the Father and set up a time “to meet the student and then ensure informed consent” regarding the reevaluation. D12p8.

39. Parents’ counsel replied to Ms. Finigan’s email the same date asking when the school psychologist was planning to meet with the Student and asking if he had been vaccinated against COVID 19. D12p7. She also stated that “[t]he Parents do not need a meeting to provide informed consent. They just need the paperwork, and if they have any questions, they will ask for a meeting.” *Id.*

40. Ms. Finigan replied to Parents’ counsel stating that the school psychologist is vaccinated and he would email the Father to set up a meeting with the Student. D12p7. She also stated the school psychologist could come in early to call the Father, discuss consent, and set up a time for the meeting with the Student. *Id.*

41. Parents’ counsel again replied to Ms. Finigan on September 27, 2021, asking her to send the reevaluation consent paperwork as getting the reevaluation started was the Parents’ priority. D12p6. She again stated that the Parents did not need a meeting to provide informed consent and would ask for a meeting if they had any questions. *Id.* Parents’ counsel sent another email several minutes later stating that the Father leaves for work between 2:30 and 4:30 a.m. each day, so an early morning phone call would not work and the Student does not engage any time before 11 a.m. due to issues sleeping at night. D12p6. She stated that Mr. Gill should plan to come meet the Student outdoors in the late afternoon and he would need to be masked and stay six feet away from the Student. *Id.* Parents’ counsel went on to state that if the school psychologist had any contact with someone who had COVID 19, he would not be able to come to the Parents’ house unless he first quarantined for 14 days. *Id.*

42. On September 28, 2021, Mr. Gill emailed the Parents regarding obtaining their consent for the Student’s reevaluation. D11p1 2. Mr. Gill noted that he normally starts with a five to ten minute conversation with parents to discuss the plan for the evaluation and to discuss which boxes should be checked on the consent form. D11p2. In regard to the evaluation plan, Mr. Gill stated, “For example, unless you see it otherwise, the plan is to use the past evaluations to summarize both cognitive and academic function. I will ask for updated rating scales for adaptive and social/emotional/behavioral concerns.” D11p2. He also noted he would like to meet with the Student to talk and do certain activities and noted that he would wear a medical grade N95 mask when interacting with the Student to reduce COVID 19 risks. He attached the proposed consent document for the Parents to review. *Id.* The proposed consent form checked the boxes for review of existing data, social/emotional, behavior, academic, observation, medical physical, general education, adaptive, cognitive, communication, and other: occupational therapy. D11p3. It also noted that the reevaluation was requested by the Parents to “examine IEE documentation.” *Id.*

43. The Parents' attorney emailed Mr. Gill, Tracy Pitzer, Ms. Finigan, and the District's counsel on September 28, 2021. D11p5. She stated that the box for fine motor should have also been checked and noted that the Parents did not think further assessments were needed in any areas other than adaptive because the other areas were recently assessed by private providers. *Id.* She asked that the District use the "ABAS 3 and/or Vineland 3" to assess the Student's adaptive skills and asked why Mr. Gill was proposing the Parents submit updated rating scales for the Student in the area of social/emotional/behavioral given that a "BASC 3" was performed by a private provider less than six months ago. *Id.* Parents' counsel stated that any meeting between Mr. Gill and the Student would need to be arranged through the Father, would need to be in the afternoon or evening, and Mr. Gill would need to adhere to the Parents COVID 19 precautions. *Id.* Finally, Parents' counsel noted that all communication should go to the Father and not the Mother due to the Mother's current health concerns. *Id.*

44. Attached to the email from Parents' counsel was the consent form signed by the Mother and dated September 28, 2021. D11p7 8. In addition to her signature, she had checked the box for "Fine Motor" and noted that the reason the Parents were requesting the evaluation was that "[t]he Student has not attended school in person since 2019 and has recently moved into the school district as his home district does not offer a high school. Additionally, his home district funded an Independent Educational Evaluation (IEE) at public expense, and the Parents want those taken into consideration along with his Seattle Children's Hospital records." D11p7. On the second page of the form, the Parents suggested the Student be assessed in the area of adaptive skills and in the comments stated "We do not believe that any direct assessments of [the Student] are necessary other than in the area of adaptive skills, given the recent completion of an IEE at public expense (the reports from the attached are attached [sic]) and [the Student's] unwillingness to engage in direct assessments." D11p8.

45. Ms. Finigan responded to the email from Parents' counsel on September 29, 2021, stating that the consent form had been altered and that the Parents and school psychologist should determine together if any changes need to be made to the form. Then changes should be made in the District's system and a new form would be sent to the Parents for signature. D11p11. She stated, "The District does not agree with your unilateral changes to the document and, therefore, we reject your version of the consent form." *Id.* Ms. Finigan then stated they would "continue to pursue informed consent through a discussion with the parent..." *Id.* She went on to state that it is the District's decision to determine what assessments are necessary and appropriate and all independent evaluations provided would be considered. *Id.* She stated that Mr. Gill would follow up with the Father to find a time and place to meet with the Student. *Id.*

46. The District did not accept the consent form signed by the Mother because they wanted to ensure that the Parents and school psychologist had the same understanding of what the reevaluation would entail. T104 05. They also wanted to ensure that the version signed by

the Parents was the same version that was generated in their online program for the purposes of maintaining accurate records. T145 46.

47. The District did not seek the Parents' consent to do an FBA. T86.

48. Parents' counsel responded to Ms. Finigan's September 29, 2021 email several minutes after it was sent stating that the Student would not go to the District for any assessments and that any meeting with Mr. Gill would need to be remote due to COVID 19 concerns. D11p10. Counsel reiterated that the District had the Parents' consent and that the Parents have "elected to have counsel to represent their interest because it seems like the [District] is dragging its feet on doing this reevaluation." D11p10. She further stated she looked "forward to meeting to review the reevaluation within the next 35 school days." *Id.*

49. Parents' counsel sent another email later on September 29, 2021, to Ms. Finigan, Mr. Gill, Ms. Walters, and the District's counsel. D11p9. Attached to the email were all of the IEE reports and medical records related to the Student as well as the signed consent form with the changes made by the Parents. D11p9. Parents' counsel reiterated that the Parents had provided consent for the reevaluation and that they would try to get the Student to engage in a Zoom session with Mr. Gill. *Id.* However, Parents' counsel noted that the Student's school refusal behaviors might make that difficult. *Id.*

50. The Parents filed the Complaint in this matter on September 30, 2021.

51. On September 30, 2021, Mr. Gill emailed the Parents and Ms. Finigan. D11p14. He stated that he believed parties could clear up any issues related to the consent form in a five to ten minute conversation and posed some questions to the Parents related to the changes made to the consent form. D11p14 15. He also asked if the Parents would be available the following Monday to talk for a few minutes. D11p15.

52. Parents' counsel responded later in the day on September 30, 2021, and provided answers to the questions posed by Mr. Gill. D11p16 17. She also stated that the Parents did not believe a call was necessary and they wanted the District to move forward with the reevaluation, but if a call was needed, they would need to find a time that worked for the Parents when the Student would not be around to overhear the conversation. D11p18.

53. On October 4, 2021, Mr. Gill sent an email to the Father with the subject line of "Instead of meeting for Consent." D12p11. He stated that he was putting information in the email that would normally be covered during a phone conversation and he asked the Parents to respond where needed. *Id.* He specified that the Parents could consult their counsel as needed but the responsive email needed to come from the Parents' email address. *Id.* Mr. Gill provided a summary and overview of all areas that would be assessed in the reevaluation and asked the Parents for specific feedback regarding each area. *Id.* He noted he would send

an updated consent form in a separate email along with proposed dates for a Zoom meeting. D12p12.

54. The Parents' counsel replied to Mr. Gill's email that same day and provided responses to the questions posed regarding each area of the reevaluation. D12p14 15.

55. On October 4, 2021, Mr. Gill emailed the Father stating that he would need two to three Zoom meetings with the Student to complete his portion of the reevaluation. He noted some other individuals might observe the meetings and it would be "very low key." D12p9. Mr. Gill asked if the next Monday, Tuesday, or Wednesday in the afternoon would work for the Father. *Id.*

56. On October 4, 2021, Mr. Gill sent an email to the Father, Ms. Finigan, and Ms. Walters that included an updated consent form with Fine Motor added. D11p19. He asked the Father to sign and return the document and stated that the Father could write on the document but asked that he not alter the document electronically. *Id.*; T381 82.

57. On October 5, 2021, the Father emailed the signed consent form back to Mr. Gill. P9p1.

58. On October 6, 2021, Mr. Gill emailed the Father asking if there were any early to mid afternoons available the following Monday through Wednesday to schedule the first Zoom meeting with the Student. D12p23. He noted that the meeting could be done with two people from the District or it could be recorded so others in the District could watch it later and make observations about the Student. *Id.*

59. On October 6, 2021, Mr. Gill again emailed the Father and asked him to provide further information for the Student's reevaluation. D12p16. He specifically asked if there were any parts of the Student's previous evaluations that the Parents did not think accurately represented the Student and asked if there was any information missing from the previous evaluations that Parents felt should be included. *Id.*

60. On October 8, 2021, Parents' counsel replied to Mr. Gill and stated that the Parents disagreed with the entirety of the Student's last special education evaluation that was done by [REDACTED] D12p19. She noted there were some factual errors in the records from Seattle Therapy Services, but that the historical information from Dr. Enns and the Seattle Children's Hospital records were accurate. *Id.* She went on to state that the Parents felt Dr. Enns' report fully captured the Student other than with regard to his adaptive needs. *Id.*

61. On October 8, 2021, Parents' counsel also replied to Mr. Gill's October 6, 2021 email about scheduling a Zoom meeting with the Student. D12p22. She noted that having multiple people on the Zoom call would not work for the Student and noted that the Parents were not able to force the Student to participate in a Zoom call. *Id.* She also noted that if the District

wanted to do any in person meeting with the Student, they would need to adhere to the Parents' COVID 19 protocols. *Id.* Parents' counsel also offered to provide releases if the District wanted to communicate with any of the IEE providers. D12p22.

62. On October 11, 2021, Mr. Gill emailed the Father requesting clarification on some of the statements made in Parents' counsel's email stating they disagreed with the entirety of the Student's last special education evaluation. D12p24. Specifically, Mr. Gill wanted to know what parts of the previous evaluation the Parents disagreed with and what factual errors were in the Seattle Therapy Services reports. D12p25. He also stated he would mail the Vineland 3 to the Parents' home and requested they email a narrative of their concerns regarding the Student's adaptive functioning. *Id.*

63. Parents' counsel replied to Mr. Gill's email later in the day on October 11, 2021. D12p26. She stated that the Parents did not believe the last reevaluation "appropriately determined [the Student's] disabilities [sic] and the nature and extent of the special education and related services that he needs." *Id.* She also provided a lengthy bullet point list of the specific aspects of the evaluation the Parents disagreed with. *Id.* Parents' counsel also explained the specific factual errors in the Seattle Therapy Services reports including reference to the pages of the reports where the error appeared. D12p27.

64. On October 11, 2021, Mr. Gill also emailed the Father regarding setting up a Zoom meeting with the Student. D12p32-33. He indicated that it did not appear an in person meeting was viable and stated they could either have two people on the Zoom meeting with the Student or record the Zoom meeting for others to watch at a later time. D12p32. He asked if the upcoming Wednesday or the following Monday, Tuesday, or Wednesday in the early afternoon would work for the family. *Id.* He specified that the meeting would need to take place before 2:30 p.m. *Id.*

65. Parents' counsel replied to the email stating, "It is unfortunate that the [District] is unwilling to comply with the DOH guidelines that would allow for in person interactions. To be clear, that is a choice that the [District] is making, not the parents." D12p31. She then asked how the District planned to get the Student to engage with people he did not know over Zoom. *Id.* at 32.

66. On October 14, 2021, the District's counsel replied to Parents' counsel's email regarding setting up a Zoom meeting with Mr. Gill. D12p30. District's counsel stated that in person assessments were available and Zoom was offered based on the indication from the Parents that in person assessments at the District locations were not an option. She stated the evaluators needed to meet with the Student to complete the evaluation and may need to meet or speak with the Parents for additional input. *Id.* She stated that Mr. Gill had offered multiple dates for Zoom meetings and not received a response, and requested the Parents work directly with the evaluators to get the meetings scheduled. *Id.* She requested that



Parents' counsel not communicate directly with District staff and that the Parents respond to emails from the evaluators. *Id.*

67. Parents' counsel replied to the email from District counsel later in the day on October 14, 2021. She stated that the Student would not come into the District high school building due to school refusal and school phobia. *Id.* She stated the family was open to observations in person at their home as long as COVID 19 protocols were followed. *Id.* She also stated that the Parents wanted information from Mr. Gill regarding how he would engage with the Student over Zoom because the Student is a large teenage boy and the Parents could not physically force him to sit on a Zoom call. *Id.* Parents' counsel stated that the Mother has serious health concerns and the Father works unusual hours, which is why they have asked that communication go to Parents' counsel and the Father. *Id.* She also stated she would continue to respond to Mr. Gill based on the Parents' difficulties communicating due to illness and work schedule. D12p30.

68. On October 15, 2021, Parents' counsel emailed District's counsel requesting that the District send the adaptive rating scales to the Parents so the scales could be completed. P13p1.

69. On October 18, 2021, Mr. Gill emailed the Father stating that the emails he received from the Parents' counsel were indicating that the family is open to bringing the Student to a District building for observations. D12p35. He then suggested dates and times for a phone meeting to clear up some questions he still had for the Parents. *Id.* He asked the Father to reply from his own email address with a paragraph of parent input regarding the Student's adaptive behavior concerns. *Id.* He also indicated he was mailing the Vineland 3 form that day and asked the Father to complete it independently. *Id.*

70. Parents' counsel replied to Mr. Gills email later in the day on October 18, 2021, stating the Student had been school resistant and school phobic since November 2019, but the Parents were open to having the Student observed in person in the home as long as the observer quarantined for fourteen days if they had been exposed to someone with COVID 19 or were suspected of having COVID 19. D12p34. She noted the Parents were also willing to have the Student observed remotely. She stated the Parents were waiting for Mr. Gill to answer their questions about how he would build rapport and engage with the Student in the remote setting. She stated that if he was not going to answer the question, "just tell [the Parents] a time to turn on the computer and they will do it." D12p34.

71. On October 20, 2021, Mr. Gill emailed the Father apologizing for any miscommunication about conducting in person testing at a District location. D12p36. He stated that in person observation at the family home was not being pursued due to Parents' concerns about COVID 19. He stated that he wanted to communicate directly with the Parents to clear up confusion and listed specific questions he had. D12p36 37. Mr. Gill stated he would let the Student

talk about whatever he wanted during the first Zoom meeting to make him comfortable and engaged and suggested he talk with the Parents to brainstorm other ideas to help engage the Student. D12p37. Mr. Gill also stated that he really needed written input from the Parents on the Student's adaptive behavior concerns and provided times when he would be available the following week for a meeting. *Id.*

72. On October 20, 2021, Ms. Finigan emailed the Parents to clarify the services being offered by the District. She noted there were two options for the Student: (1) "In Person implementation of August 2021 IEP at BLHS (Case Manager, would be Tracy Brennan, OT would be Wes Johnson, SLP would be Julie Hollenbeck)." Option (2) was "Virtual implementation through Edmentum Academy. SDI would be via Zoom with a Special Education Distance Learning Teacher[]." D8p1. The email also included a link to the Edmentum website. *Id.* Ms. Finigan noted that the Student's schedule would be determined after one of the two options was selected, and she offered to meet with the Parents by Zoom if they had specific questions. Ms. Finigan went on to state that the District had offered a reevaluation and an in home FBA but that the District needed dates and times when the Parents would bring the Student in to the District or when a Zoom call could be set up with the evaluators. *Id.* The email included a link to the procedural safeguards. *Id.*

73. Attached to the October 20, 2021 email was a PWN dated September 7, 2021, which proposed that the District would implement the Student's August 2021 IEP from [REDACTED] until the District could complete a reevaluation of the Student and develop a new IEP. D8p3. It noted the services could be provided either in person at Bonney Lake High School or virtually through Edmentum with Zoom SDI support. *Id.* The PWN did not indicate a date on which the action would be initiated. *Id.* The PWN had not been sent to the Parents prior to the October 20, 2021 email. T54, 215.

74. The Parents believed they were responding to all requests for information from the District and felt they were not getting adequate information from Mr. Gill regarding how he would engage the Student on a Zoom call. T433 36. The District felt that the Parents were not being responsive regarding the District's requests to set up the Zoom meeting with the Student and to obtain additional information from the Parents. T402.

75. On October 25, 2021, Mr. Gill emailed the Father a PWN indicating that the District was not continuing with the reevaluation process. He also stated they were open to discussing this again in the future. P16p1. The PWN stated the District was refusing to continue the reevaluation because the evaluation team had not been able to work with the family and Student. P16p2. It noted the team had sent multiple emails requesting a time to talk to the Parents and meet with the Student but no times were provided. *Id.* It also stated there was no response to multiple email requests for parental input regarding adaptive behavior concerns. *Id.* It further stated, "The district is willing to examine the option of starting the re

evaluation process again in the future, if a plan can be constructed to provide access to the family and student as needed to complete the re evaluation process.” *Id.*

76. Because District outgoing mail goes from the school building to the District office before going to the post office, it often takes longer than normal for District mail to be delivered to its recipient. T333. Mr. Gill assumed the Parents had received the Vineland 3 forms and failed to return them. T418. He did not inquire whether the Parents had actually received the Vineland 3 forms, and he was not aware of the delay in mail until after the reevaluation was terminated. T333, 345 46.

77. Parents’ counsel replied to Mr. Gill’s email on October 26, 2021, requesting that several sections of the October 25, 2021 PWN be corrected as the Parents felt it contained misleading information. P19p1 2, T347 49.

78. On October 26, 2021, Parents’ counsel sent a second email to Mr. Gill restating that communication should go through the Father because the Mother has serious health issues and that the Father has limited Wi Fi during his work hours but would reply as soon as possible. D12p38. She also stated that the Parents have the right to engage counsel to communicate with the District as needed and that any email sent by counsel is in furtherance of her representation of the Parents and should be treated as a response from the Parents. *Id.* Parents’ counsel provided copies of WAC 392 172A 03015 and 03025 related to reevaluations and stated that the Parents were asking the District to review the attached evaluations and information provided by the Parents. D12p39. Attached to the email were the three IEEs, records from Seattle Children’s Hospital, the Student’s most recent BIP, and the Vineland 3 completed by the Parents. *Id.* Parents’ counsel also attached the Student’s education records from [REDACTED] and the completed consent form previously provided to the District. *Id.* She noted in the email that the Parents had only received the Vineland 3 in the mail on Saturday, October 23, 2021. *Id.* Finally, she stated that if the District believed any additional assessments were needed, the Parents looked forward to hearing how the District planned to engage the Student in those assessments given the Student’s school phobia. D12p40.

79. Parents’ counsel emailed Mr. Gill and District counsel again later on October 26, 2021, to address “inaccurate and misleading information” from the email sent by Mr. Gill on October 20, 2021. P17. She attached the Parents completed Vineland 3 rating scales and stated the Parents had not received them until Saturday, October 23, 2021. *Id.*

80. On November 2, 2021, Parents’ counsel emailed District counsel in response to Ms. Finigan’s October 20, 2021 email that discussed placement for the Student and attached a PWN. P18p1. Parents’ counsel noted that the PWN was “concerning” because it was not accurately dated and did not have an implementation date. *Id.* She also asked who at the District would be implementing the Student’s BIP. She requested an IEP team meeting be

scheduled as soon as possible to discuss the provision of educational services to the Student. *Id.*

81. On November 10, 2021, Mr. Gill emailed the Father proposing a Zoom meeting be held on November 15 or 16 at 11 a.m. D12p42. He stated the Father was welcome to invite his counsel to the meeting, but noted any final answers must come from the family. *Id.* He noted the reason for the first meeting would be to discuss the scope of a new reevaluation. If the first meeting went as planned, Mr. Gill stated he would send out a reevaluation consent document and the second meeting could be an interview for the reevaluation. *Id.* He further stated that this second meeting may involve other team members and parties may need to discuss setting up additional Zoom meetings at that time. *Id.*

82. On November 10, 2021, Mr. Gill again emailed the Father and requested he provide a written statement regarding the Parents' concerns about the Student's adaptive behavior skills. D12p43. He stated it would be helpful to have this prior to the upcoming meeting. *Id.*

83. As of the date of the hearing, the District had restarted the reevaluation process and the Parents had signed a new consent form. T407.

84. As of the date of the hearing, the Student had not attended any in person or remote classes at Bonney Lake High School or through Edmentum. T76, 211.

85. District staff never told the Parents that the Student's IEEs would not be considered. T404 05, 453 54, 499 500

## CONCLUSIONS OF LAW

### **Jurisdiction and Burden of Proof**

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392 172A Washington Administrative Code (WAC).

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. See *Schaffer v. Weast*, 546 U.S. 49 (2005). As the Parents are the party seeking relief in this case, the Parents have the burden of proof. Neither the IDEA nor OSPI regulations specify the standard of proof required to meet a party's burden of proof in special education hearings before OAH. Unless otherwise mandated by statute or due process of law, the U.S. Supreme Court and Washington courts have generally held that the burden of proof to resolve

a dispute in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 98 102, 101 S. Ct. 999 (1981); *Thompson v. Department of Licensing*, 138 Wn.2d 783, 797, 982 P.2d 601 (1999); *Hardee v. Department of Social & Health Services*, 172 Wn.2d 1, 256 P.3d 339 (2011). Therefore, the Parents' burden of proof in this matter is preponderance of the evidence.

## The IDEA

3. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982), 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.

*Id.* 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" that provides "some educational benefit" to the Student. *Id.* at 200 01.

4. The Supreme Court clarified the substantive portion of the *Rowley* test quoted above: To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . [H]is educational program must be appropriately ambitious in light of his circumstances . . .

*Andrew F. v. Douglas County Sch. Dist. RE 1*, 580 U.S. \_\_\_, 137 S. Ct. 988, 999 1000 (2017).

5. The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact specific inquiry that must focus on the unique needs of the student at issue. As the U.S. Supreme Court has made clear, "A focus on the particular child is at the core of the IDEA," and an IEP must meet a child's "unique needs." *Andrew F.*, 137 S. Ct. at 999 (emphasis in original). "An IEP is not a form document" and the "essential function of an IEP is to set out a plan for pursuing academic and functional advancement." *Id.* "Above all, an IEP team is charged with developing a 'comprehensive plan' that is 'tailored to the unique needs of a particular child.'" *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 at \*21

(W.D. Wash. May 8, 2019), *aff'd sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 2022 U.S. App. LEXIS 907 (9<sup>th</sup> Cir. 2022) (quoting *Endrew F.*, 137 S. Ct. at 994).

6. Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

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

20 USC §1415(f)(3)(ii); see WAC 392 172A 05105(2); 34 CFR §300.513.

7. Thus, not every procedural violation of the IDEA is sufficient to support a finding that the child in question was denied FAPE. *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1129 (9<sup>th</sup> Cir. 2003)(quoting *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 887, 892 (9<sup>th</sup> Cir. 2001)).

**Whether the District failed to provide the Student with a free appropriate public education (FAPE) since his enrollment in the District by failing to offer him comparable services to what is called for in his last Individualized Education Program (IEP) and Interim Educational Placement**

8. The Parents argue that the District failed to offer comparable services to the Student upon his enrollment in the District because it did not issue a PWN outlining the two options available to the Student until October 20, 2021. They also argue that the services offered by the District were not comparable to the services he was receiving in his previous school district.

9. Washington law specifies the manner in which a school district must handle the transfer of a student eligible for special education within the state of Washington:

If a student eligible for special education services transfers from one school district to another school district within Washington state and had an IEP that was in effect in the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

- (a) Adopts the student's IEP from the previous school district; or

(b) Develops and implements a new IEP that meets the applicable requirements in WAC 392 172A 03090 through 392 172A 03110.

WAC 392 172A 03105(4).<sup>12</sup>

10. A district must provide a PWN to the parents of a child eligible or referred for special education a reasonable time before it proposes to initiate or change the identification, evaluation, or educational placement of the student, or the provision of FAPE to the student, or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. WAC 392 172A 05010; 34 CFR 300.503(a).

11. The District did not provide a PWN to the Parents indicating the type of comparable services being proposed for the Student until October 20, 2021, a month and a half after the school year started. However, the District did communicate to the Parents both during a phone call on September 7, 2021, and during a Zoom meeting on September 13, 2021, that it would implement the August 2021 IEP as written. By doing so, the District clearly communicated its offer of comparable services to the Parents prior to issuing the PWN. Moreover, the Parents have provided no authority to indicate that the offer of comparable services needed to be provided in a PWN. The District was not proposing to initiate or change the identification, evaluation, or educational placement of the Student.

12. The real issue appears to be the disagreement between the parties as to what constituted comparable services for the Student. The District argues it could have provided comparable services by implementing the August 2021 IEP. The Parents argue that the District should have provided services comparable to those in the interim placement as outlined in a settlement agreement entered into with ██████████ as that was the Student's placement before entering the District.

13. The WAC is clear that a district must provide "services comparable to those described in the student's IEP." WAC 392 172A 03105(4). The August 2021 IEP was the latest IEP created for the Student and it was effective through January 2022. As such, the District offered to implement this IEP as comparable services. The settlement agreement stated the interim placement was only in effect until a new IEP team meeting could be held, which would be no later than June 21, 2021. No evidence was provided regarding whether an IEP team meeting was held by June 21, 2021, but it is clear from the record that the Student's IEP was amended in August 2021. The Parents provide no authority to support their argument that the earlier interim educational placement should dictate comparable services for the Student in the fall of 2021 rather than the more current IEP. Further, to the extent that the Parents are arguing the interim educational placement was the Student's actual educational

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<sup>12</sup> Sections of WAC 392-172A were amended effective October 15, 2021. Citations in this order are to the version of the WAC in effect as of the date the Parents filed the Complaint. However, the analysis of the issues would not differ under the amended WACs.

placement up until he entered the District, no evidence was provided to support this finding. No testimony was provided to indicate what services, if any, the Student was receiving prior to entering the District.

14. The Parents have not proven that the District failed to offer comparable services by offering to implement the August 2021 IEP. As such, they have not met their burden in regard to this issue.

**Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student with FAPE by refusing to hold an IEP team meeting for the Student and instead insisting on holding a meeting with its special education administrative staff only to discuss an educational placement for the Student and the Parents' request for a reevaluation**

15. The Parents argue that the District erred by failing to hold an IEP team meeting for the Student and instead holding a meeting to discuss comparable services with District administrative staff.

16. There is no evidence in the record that the Parents requested an IEP team meeting prior to the filing of the Complaint or that the District refused such a request. Also, there is no evidence in the record that the District insisted the September 13, 2021 meeting only involve special education administrative staff rather than the IEP team.

17. Further, the Parents have provided no authority indicating that the District had any obligation to hold an IEP team meeting prior to the filing of the Complaint. The Student's IEP was valid until January 2022 and the District was in the process of doing a reevaluation of the Student.

18. The Parents have not proven a violation in regard to this issue.

**Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student with FAPE by refusing to take into consideration the Independent Educational Evaluation (IEE) reports and the Student's Seattle Children's Hospital records when provided by the Parents**

19. The Parents argue that the District violated the IDEA by failing to properly consider the IEE reports and Seattle Children's Hospital records provided by the Parents in determining whether to adopt the Student's August 2021 IEP or create a new IEP. They argue that because the District never actually made such a determination, it shows the District failed to properly consider the records.

20. Under WAC 392 172A 05005(5), the results of an IEE must be considered by the school district "in any decision made with respect to the provision of FAPE to the student." A



school district must also consider evaluations and other information provided by Parents as part of a reevaluation. WAC 392-172A-03020(2)(a); WAC 392-172A-03025(1)(a).

21. The District did not determine whether to adopt the Student's August 2021 IEP or draft a new one, but it did agree to reevaluate the Student to determine whether a new IEP placement was appropriate. No one from the District told the Parents that the IEE reports or medical records would not be considered, and the reevaluation consent form noted that one reason for the reevaluation was to examine the IEEs. Further, the reevaluation only included new assessments in the area of adaptive skills, implying that the IEEs would be relied upon heavily to inform the other areas of the reevaluation. The school psychologist also asked the Parents multiple questions about the IEEs, further indicating that the District was considering them.

22. The Parents have not shown that the District failed to consider the IEE reports or hospital records provided by the Parents. As such, they have not proven a violation in regard to this issue.

**Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student with FAPE by failing to timely acknowledge the Parents' request for a special education eligibility reevaluation and by failing to timely act upon the Parents' request for a special education eligibility reevaluation**

23. The Parents allege that the District violated the IDEA by failing to timely acknowledge their request for a reevaluation and by unnecessarily delaying the reevaluation once it was initiated.

24. The Parents do not explain what they mean by "acknowledge." As the District points out in its closing brief, while there is a requirement that a school district document a parent's request for an initial evaluation and make a determination whether to evaluate within twenty five school days, there is no similar requirement for reevaluation requests. *Compare* WAC 392 172A 03005(2) to WAC 392 172A 03015. Regardless, even if the twenty five day requirement applied to reevaluation requests, the District agreed to do the reevaluation well within that timeframe.

25. The Parents requested a reevaluation by email to the District's counsel on September 1, 2021. The school year began on September 7, 2021, and the Parents were aware by September 13, 2021, that a reevaluation of the Student would be initiated. Further, a consent form was sent to the Parents on September 28, 2021.

26. The Parents argue that the District unnecessarily delayed the reevaluation by requiring the Parents to sign the consent form twice. The Parents signed the original consent form on September 28, 2021, the same day it was provided by the District. The Parents made changes to the consent form prior to returning the signed copy. The District refused to accept

this modified consent form and asked the Parents to sign another consent form with essentially identical changes to those made by the Parents. The Parents signed and returned the second consent form on October 5, 2021, the day after the District sent it to them. While the Parents were understandably frustrated that they were asked to sign the consent form twice, it only delayed the reevaluation by one week. Further, the District required the additional consent form to ensure the parties agreed on the scope of the reevaluation and that there were no duplicate documents in their online system. As such, the Parents have not proven that the District unnecessarily delayed the reevaluation.

27. The Parents have not proven a violation in regard to these issues.

**Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student with FAPE by attempting to improperly dictate the scope of the Parents' consent for a special education eligibility evaluation**

28. The Parents allege the District improperly tried to dictate the scope of the Student's reevaluation. However, the record does not support this allegation.

29. The District required the Parents to sign two consent forms in an effort to ensure the District was receiving informed consent and to avoid confusion in their online database. The substance of the two consent forms was essentially the same and aligned with the scope of the reevaluation requested by the Parents. The Parents provide no significant argument in their closing brief to explain how the District attempted to dictate the scope of the Parents' consent. As such, the Parents have not met their burden in regard to this issue.

### ORDER

1. The Parents have failed to prove by a preponderance of the evidence that the Sumner Bonney Lake School District denied the Student FAPE.
2. All remedies requested by the Parents have been considered and are **DENIED**.

SERVED on the date of mailing.



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Dana Diederich  
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.

Parents

██████████  
████████████████████

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Dated February 3, 2022, at Seattle, Washington.

  
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Representative  
Office of Administrative Hearings  
600 University Street, Suite 1500  
Seattle, WA 98101 3126

cc: Administrative Resource Services, OSPI