

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

IN THE MATTER OF:

OSPI CAUSE NO. 2021-SE-0012

OAH DOCKET NO. 02-2021-OSPI-01249

RENTON SCHOOL DISTRICT

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Dana Diederich by video conference on June 14, 2021. The Parent of the Student whose education is at issue¹ appeared and represented herself. The Renton School District (District) was represented by Carlos Chavez, attorney at law. Special Education Director Gwendolyn Estes-Zuehlke also appeared for the District. The following is hereby entered:

STATEMENT OF THE CASE

Procedural History

The Parent filed a Due Process Hearing Request (Complaint) with the Office of Superintendent of Public Instruction (OSPI) on February 3, 2021.² The Complaint was assigned Cause No. 2021-SE-0012 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered February 5, 2021, which assigned the matter to ALJ Dana Diederich. The District filed its Response to the Complaint on April 9, 2021.

A prehearing order was issued on April 5, 2021, which set the hearing dates for June 14 through 16, 2021, and stated the issues for hearing.

¹In the interests of preserving the family's privacy, this decision does not name the parents or student. Instead, they are each identified as "Parent," "Step-Father," or "Student."

² The Parent originally filed the Complaint with the District on January 19, 2021, which then forwarded it to OSPI on February 3, 2021.

Due Date for Written Decision

As set forth in the Prehearing Order dated April 5, 2021, the due date for a written decision in this matter is thirty days after the record of the hearing closes. The hearing ended on June 14, 2021, and the record closed on June 30, 2021, when the parties timely submitted post-hearing briefs. Accordingly, the due date for a written decision in this case is July 30, 2021.

EVIDENCE RELIED UPON

Exhibits Admitted:

District's Exhibits: D1 – D13; and

Parent's Exhibits: P1 – P30.

Witnesses Heard (in order of appearance):

The Parent,
Sandra Riano, District school psychologist, and
Angela Sasao, school counselor at Dimmitt Middle School.

Post-Hearing Briefs

The parties timely filed their post-hearing briefs on June 30, 2021.

ISSUES

As set forth in the Prehearing Order dated April 5, 2021, the issues 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 evaluate the Student for special education services within specified state deadlines for referral on December 17, 2019;
 - ii. Failing to provide the Student with an appropriate special education placement;

- b. And, whether the Parent is entitled to her requested remedies:
- i. Approval of eligibility for special education services and immediate implementation of needed accommodations;
 - ii. Informing of all staff and personnel of the Student's limitations and providing information to assist in monitoring interactions with the Student without sharing confidential and sensitive details of her diagnosis;
 - iii. 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 Information

1. The Student moved from [REDACTED] to Washington State prior to the start of the 2019-2020 school year. T34.³ The Student did not have an individualized education program (IEP) in [REDACTED] T34.
2. The Student began the 2019-2020 school year as an 8th grader in the [REDACTED] [REDACTED]. T33-34, 74; D1p9.⁴
3. The Student joined the cross-country team at [REDACTED] which had practices in the morning before school. T34. The Student had difficulty getting from practice to school in the morning and was often tardy for class. *Id.* Because of this, the Parent asked [REDACTED] to evaluate the Student for special education services sometime prior to October 24, 2019. T34-36.

³ Citation to the transcript is by the letter "T" followed by the transcript page number.

⁴ Citation to the exhibits of record is by exhibit number and page number, e.g. D1p9 is a citation to District exhibit 1 at pages 9.

4. A Prior Written Notice (PWN) was issued by [REDACTED] on October 24, 2019, proposing to conduct an initial special education eligibility evaluation of the Student based on the Parent's referral. D1p11.

5. The Student was evaluated for special education eligibility by [REDACTED] on November 25, 2019. D1p1. The Student was evaluated in the areas of medical-physical, social/emotional, adaptive, behavior, cognitive, and academic. *Id.* at 5-10. [REDACTED] found the Student was not eligible for special education noting that the Student had diagnoses of [REDACTED], but that testing did not demonstrate the need for specially designed instruction (SDI). *Id.* at 2.

6. A PWN was issued by [REDACTED] on November 25, 2019, refusing to initiate special education eligibility for the Student. D1p15. It noted that standardized assessments demonstrated the Student scored within 1.5 standard deviations of the mean in all assessed areas and there was no demonstrated need for SDI. *Id.*

7. The Parent sent a letter to [REDACTED] requesting a due process hearing in December 2019 because she felt [REDACTED] did not listen to her input when it conducted the Student's evaluation and came to the evaluation meeting with a decision already made. T23, 37. The request was not sent to OSPI. T38-39. After receiving the letter from the Parent, [REDACTED] met with the Parent to discuss her disagreement with the determination that the Student was not eligible for special education. T38-39. The Parent did not further pursue this due process hearing request. T39.

Dimmitt Middle School

8. On December 17, 2019, the Parent emailed Lorinda Schoeneman, the registrar at Dimmitt Middle School (Dimmitt) in the Renton School District (District). The Parent stated that her family would be "relocating to Renton over Christmas break" and inquired about what additional paperwork would need to be submitted to complete the Student's transfer to the District. D2p5. Ms. Schoeneman emailed the Parent back on the same date with instructions on the additional paperwork needed to register the Student in the District. *Id.* at 4-5. Ms. Schoeneman also noted that if the Student received special education, those records would need to be received before a start date could be set for the Student. *Id.*

9. The Parent responded by email to Ms. Schoeneman on December 17, 2019, providing additional registration paperwork and stating,

I did refer [the Student] for special education services in Washington on October 23, 2019. The school representatives made a decision to refuse to initiate Educational Placement, IEP and Eligibility Category prior to an evaluation meeting. I disagree with the refusal and will need to continue to process in the Renton district. I would like to provide information to a counselor that will be able to work closely with [the Student] while she adjusts to a new school.

D2p4. Ms. Schoeneman replied to this email the same day asking the Parent to complete an attached document so she could request any special education documents for the Student from [REDACTED] *Id.* Ms. Schoeneman also sent another email to the Parent the same day with contact information for the 8th grade counselor, Angela Harumi Sasao.⁵ D3p2.

10. On December 18, 2019, the Parent emailed Ms. Schoeneman providing the completed document requested by Ms. Schoeneman as well as a copy of the Student's special education records from [REDACTED] D2p2. Ms. Schoeneman replied to the email on December 19, 2019, stating she would forward the documents to "the counselor, Ms. Sasao, and our sped department head, Ms. Swannack...." *Id.* at 1. Ms. Schoeneman also asked the Parent if she intended for the Student to start on January 6, 2020, "in all general ed classes." *Id.*

11. On December 19, 2019, the Parent responded to Ms. Schoeneman stating, "...general education is correct, [the Student] only requires understanding of her limitations and guidance. She is a smart cookie and can learn in the general education environment most of the time. It's the other times that concerns us." *Id.*

12. On December 19, 2019, Ms. Sasao emailed the Parent stating that she would work with the school psychologist to review the Student's paperwork and that she was "happy to help build some supports for your student." D3p1. Ms. Sasao went on to explain that the Student would have homeroom for the first fifteen minutes of the school day and that for the first three weeks of school she would be in a homeroom with other new students to learn about school expectations and discuss the academic and personal resources available at the school. *Id.* Ms. Sasao also stated that the school has "a number of resources within and outside of our school that help support our students" and offered to address any specific concerns of the Parent's after winter break. *Id.* at 2.

⁵ Ms. Sasao has been a school counselor for seven years. She has a bachelor's degree in women's studies and ethnic studies and a master's degree in education. T131.

13. The Parent responded to Ms. Sasao's email the same date stating that the "new student preparation sounds amazing and exactly what [the Student] needs to succeed." D3p1. The Parent also noted that she did not feel the Student's transcripts reflected her academic capabilities. She stated, "I realize a 504⁶ can provide accommodations but it doesn't include the support an IEP carries. Based on your description of the school's dedication to ensure students are aware of expectations it is possible a 504 would be sufficient to meet [the Student's] needs while attending Dimmitt." *Id.* The Parent then asked to set up a time to meet with Ms. Sasao on January 6, 2020, when the school resumed after winter break. *Id.*

14. The Student and her family moved into the District on December 29, 2019. T37. The Student started 8th grade at Dimmitt on January 6, 2020, after the District returned from winter break. D13p1; T29, 74.

15. The Student did not have an IEP or 504 plan in place at any time at Dimmitt, but the school provided accommodations for the Student. T46-47. For example, the Student had a designated spot she could go to if she felt overwhelmed and the District changed her class schedule several times to accommodate the Student's interests. T74-75.

16. The Parent met with Ms. Sasao to discuss the Student at some point after the Student started in the District. T134. The Parent did not tell Ms. Sasao that she wanted the District to evaluate the Student for special education eligibility during this meeting. T45-46. The Parent shared with Ms. Sasao that the Student had issues with suicidal ideation and self-harming and that she struggled in her last school district. T134.

17. Ms. Sasao serves on the school's "care team." T132. The care team includes multiple staff members from the middle school and meets monthly. *Id.* Teachers can refer students to the care team if they have concerns that the student may need additional support. T13. The team discusses these students and suggests interventions, including referrals for special education evaluations. *Id.* The Student was not referred by any of her teachers to the care team. T135.

18. Ms. Sasao led an anxiety support group at the middle school. T134. The Student participated in this group and attended three or four meetings during her time attending in-person at Dimmitt. T135.

⁶ Testimony was not provided about the meaning of the term "504" or "504 plan". However, it is the ALJ's understanding that these terms reference accommodations and services provided to a student under Section 504 of the Rehabilitation Act of 1973.

19. The second trimester of the 2019-2020 school year at Dimmitt ran from November 28, 2019, through March 13, 2020. D12p6. The Student received the following grades for that trimester: 1, 2, 2, 2, 2.5, and 3.5. A score of 1 means “attempting standard,” 2 means “approaching standard,” 3 means “meeting standard,” and 4 means “exceeding standard.” D12p7.

20. The District switched from in-person classes to remote and distance learning around March 15, 2020, due to the COVID-19 pandemic. T157.

21. The third trimester of the 2019-2020 school year at Dimmitt ran from March 17, 2020, through June 17, 2020. D13p1. During the third trimester, the Student earned the following grades: 2, 3, 3, 4, 4, and 4. D12p6-7. Her grade improved in all subject areas other than Math, which stayed the same. *Id.*; T137-38.

22. The Parent felt the Student did well at Dimmitt from her start in January 2020 until the District switched to remote services in March 2020 due to COVID-19. T29, 30. The Parent felt the Student did not do well during remote learning from March 2020 through June 2020. The Parent based this opinion on the Student’s grades, despite evidence that the Student’s grades improved during her time at Dimmitt. T30, 47-48.

Renton High School

23. On September 1, 2020, the Parent submitted a registration application for the Student to attend Renton High School (RHS) in the District. P6p3. Linda Pappas-Stallman, the high school’s counseling secretary emailed the Parent the same day noting that the Parent had “marked both IEP & 504” for the Student and asking which one the Student had and asking if a copy of it could be uploaded by the Parent. P6p4.

24. On September 3, 2020, the Parent emailed Ms. Pappas-Stallman stating she would forward the educational documents and noting that the Student’s “services were left up in the air after her brief enrollment in [REDACTED]. She began Renton in January and Covid-19 closures happened soon after. She will need an IEP. Please let me know what my next steps are.” P6p5. The Parent sent a second email to Ms. Pappas-Stallman the same day with several documents attached. *Id.* at 6. No one from the District contacted the Parent after this to discuss an IEP or special education. T52.

25. On October 12, 2020, Keith Eager, one of the Student’s teacher, emailed the Parent with the Student’s grades, which were listed as an A-, D, D, D+, and F. P7p3.

26. After receiving the email from Mr. Eager, the Parent took away the Student's electronic privileges at home due to her low grades. T85. The Student

. T86.

27. On November 16, 2020, Rashaad Powell, the Dean of Students at RHS, and Lisa Roberson, the Attendance Specialist at RHS, emailed the Parent stating the Student had not logged on to remote learning in one or two of her classes during the first half of November. D6p2. They asked if there was anything they could do to help support the Student in logging on to the classes. *Id.*

28. On November 17, 2020, the Parent responded to the email asking for clarification on which classes were of concern and stating the Student had missed several classes due to healthcare needs. D6p2. She asked for instructions on how to submit doctor excuses for the absences. *Id.* Ms. Roberson replied with instructions on how to excuse the Student's absences. *Id.*

29. In November 2020, the Student and Parent began working with Erin Alberts, a Care Coordinator in the WISE program. P28p4; T89-90. This non-District program helps families access mental health resources and coordinate care between the healthcare and educational settings. T84.

30. The first trimester for the 2020-2021 school year ended on December 3, 2020. D13p2. During this trimester, the Student earned a C-, two Cs, a C+, and an A. D5p1.

31. On December 17, 2020, Ms. Alberts emailed Blaise Pike, a counselor at RHS, stating that she was currently working with the Student and Parent and wanted to work collaboratively with the District to support the family. D7p3. The Parent was copied on the email. *Id.*

32. On December 18, 2020, Ms. Pike responded to Ms. Alberts's email stating that she "was just made aware of this student" and asked for further information on the Student's needs. D7p2. Ms. Blaise asked to set up a meeting for the week of January 4, 2021. The Parent was copied on the email. *Id.*

33. Ms. Pike emailed Ms. Alberts again on January 4, 2021, to follow up on the request to schedule a meeting to discuss the best way to support the Student. D7p2.

34. The Parent responded to Ms. Pike's email stating that her family was expecting to move out of the District by January 15, 2021, and asked if that changed the need for the meeting. D7p1. The Parent also stated that she had provided all of the Student's records last year upon entering the District, but that she also had new records for the Student with an updated diagnosis. *Id.* D7p1.

35. Ms. Pike responded by email stating that the family's plan to move would change the need for a meeting. D7p1. She asked the Parent to let her know if their moving plans changed. *Id.*

36. On January 4, 2021, Susannah Woehr, the Assistant Principal at RHS emailed the Parent stating that the District would wait to confirm the Student was moving out of the District before meeting to discuss "the 504." D8p3. She stated that Ms. Pike would reach out to the counseling staff at the new school to inform them the District was about to start working on a 504 plan for the Student. The Parent replied to this email the same day asking if the Student's records were forwarded from Dimmitt and stating that "[t]hings have been up in the air since filing an appeal in [REDACTED] [The Student] wasn't in the Renton School District long before COVID-19 shut it down and I honestly lost track because it's remote learning." D8p3.

37. On January 4, 2021, Mr. Powell and Ms. Roberson again emailed the Parent letting her know the Student had not signed on remotely for one or two of her classes during December, and asking if there was anything they could do to help support the Student. P13p13.

38. Ms. Woehr emailed the Parent on January 5, 2021, stating that RHS received the Student's records from Dimmitt and stating "If the 504 was started at Dimmit, we should have gotten a record of it, but, as you said, since this occurred right when COVID struck, it's likely that it got lost during the shift to distance learning." D8p2. She also asked the Parent to clarify what she meant by "appeal in [REDACTED] *Id.*

39. The Parent emailed Ms. Woehr on January 5, 2021, and included a copy of her past emails with Dimmitt in December 2019 related to the Student entering the District. D8p1.

40. On January 8, 2021, the Parent emailed Ms. Woehr, Ms. Pike, Ms. Alberts, and other District staff stating that she would like to schedule a time to meet as the Parent and the Student would not be moving out of the District. P11p12. Ms. Pike responded that she would set up a meeting for the following week to discuss next steps for the Student. *Id.* at 14.

41. On January 11, 2021, Ms. Woehr notified Sandra Riano,⁷ RHS school psychologist, that the Parent had concerns that the Student needed special education services. T100-01.

42. On January 12, 2021, the Parent emailed Ms. Pike and copied Ms. Alberts, Ms. Woehr, and another District staff member. P15p6. In the email she noted that the Student [REDACTED] [sic]" in October 2020. *Id.*

43. On January 19, 2021, the Parent emailed Damien Pattenaude, District Superintendent, requesting a due process hearing on behalf of the Student. P16p3.

44. On January 19, 2021, Ms. Pike emailed the Parent and Student to set up support and tutoring for the Student in Algebra and Physics. P16p8.

45. On January 21, 2021, Ms. Riano emailed the Parent notifying her that she had received a referral for a special education evaluation for the Student. D9p1. She also attached a PWN and a Notice of Special Education Procedural Safeguards. D9p1. The PWN proposed initiating a referral for a special education eligibility evaluation for the Student. D9p2. It noted that on January 11, 2021, a school administrator notified the school psychologist about parental concerns regarding the Student's need for special education. *Id.* It noted the school team, with input from the Parent, would gather information to determine whether to recommend an evaluation of the Student. *Id.*

46. In January 2021, the District offered a 504 plan for the Student. T63. The 504 plan was implemented starting February 3, 2021. T103, 121.

47. On or before February 24, 2021, a team that included District staff and the Parent met and determined the District would move forward with an evaluation of the Student. D10p1; T102. The team decided to conduct an evaluation primarily due to the Parent's concerns about the Student. T103.

48. On February 24, 2021, Ms. Riano emailed the Parent with a consent form for the Parent to sign to allow the District to conduct an initial special education evaluation. D10p1. The consent form indicated that the areas of evaluation would be general education, academic, observation, social/emotional, and behavior. *Id.* at 2.

⁷ Ms. Riano has been a school psychologist for fifteen years with the last three years employed by the District. T99. She has bachelor's and master's degrees in psychology and a specialist degree in psychology. *Id.*

49. On February 28, 2021, the Parent filed a Declaration of Intent for Home-Based Instruction for the Student. D11p1. The District confirmed receipt by email on March 1, 2021. P13p14. The Parent emailed Ms. Roberson on March 3, 2021, letting her know the Student was withdrawing from RHS. *Id.* at 15.

50. The Student engaged in home-based instruction through a program called Time4Learning for the remainder of the 2020-2021 school year. T69-70, 87. This program allowed the Parent to select the Student's curriculum and monitor the Student's performance. T68-70. The Parent felt the switch to this program was beneficial to the Student's mental health. T28.

51. On March 4, 2021, Ms. Riano emailed the Parent following up on the consent form previously emailed to the Parent and asking the Parent to sign and return the form. P25p2.

52. The Parent signed the evaluation consent form on March 8, 2021. D12p34. The Parent requested on the form that any in-person assessments not be conducted at RHS and that RHS staff not be involved in the evaluation other than providing records. *Id.* The District agreed to conduct any in-person assessments at a District building other than RHS. T108-09.

53. On May 6, 2021, the Student's evaluation team met by video conference and completed her special education evaluation. T112. The team included the Parent; the Student's Step-Father; the Student; Aleta Koncol, assistant principal; Shannon Milner, special education teacher; Celeste Dillard, school nurse, Esther Rich, general education teacher, Gwendolyn Estes-Zuehlke, special education director; and Ms. Riano. D12p28.

54. The evaluation covered the following areas: General Education, Observation, Medical-Physical, Academic, Social/Emotional, and Behavior. D12. The evaluation included the Student's educational records from [REDACTED] as well as [REDACTED] Dimmitt, RHS, and the home-based learning program. D12p5-7. The evaluation also included the results of assessments conducted including the Kaufman Test of Educational Achievement – Third Edition, which measured academic achievement in reading, math, and writing, as well as the Behavior Rating Inventory of Executive Function, 2nd Edition, and the Behavior Assessment System for Children – 3rd Edition, which measured the Student's social and emotional functioning. D12p10-26.

55. The District members of the team determined that the Student was not eligible for special education. D12p2. It was noted that the Student had [REDACTED] and that ratings from the Student, Parent, and teachers [REDACTED], and inconsistencies with [REDACTED]

homework completion.” D12p2. However, no externalizing behavior problems were observed in the school setting and the Student’s teachers reported the Student was able to self-monitor and task-monitor as well as her same-age peers. *Id.* Further, it was noted the Student has been able to maintain average grades and continued to demonstrate academic growth. *Id.* As such, the District members of the team found that the Student’s [REDACTED] did not have an adverse impact on her education and SDI was not needed. *Id.*

56. The Parent participated in the evaluation team meeting and disagreed with the team’s conclusion. D12p27; T73.

57. In a PWN issued on May 6, 2021, the District refused to initiate an IEP or special education services for the Student. D12p28. It stated the Student’s [REDACTED] [REDACTED] did not result in an adverse impact on her education. *Id.* It also noted the evaluation team suggested maintaining the Student’s 504 plan, which it believed would meet her current needs. *Id.*

58. The Parent felt some information in the evaluation report was inaccurate and submitted a document with comments and corrections. P19p2-7. This document was attached and made part of the District’s evaluation report. D12p37-68. The evaluation report also included a letter from the Student. D12p35.

59. Prior to the hearing, the Parent requested as a remedy that the Student be placed in the residential facility Discovery Ranch for Girls. At the time of hearing, however, the Parent felt such a placement was no longer needed for the Student. T72.

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 Parent is the party seeking relief in this case, the Parent has 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 Parent's 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 a free appropriate public education (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 recently clarified the substantive portion of the *Rowley* test quoted above:

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

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

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.*” *Endrew 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. on behalf of A.S. v. Issaquah Sch. Dist.*, 2019 WL 2023567 at *21, 119 LRP 18751 (W.D. Wash. 2019) (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:

- (I) 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)(E)(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 (9th Cir. 2003)(quoting *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 887, 892 (9th Cir. 2001)).

Failing to evaluate the Student for special education services within specified state deadlines for referral on December 17, 2019

8. The Parent alleges that the District violated the IDEA and denied the Student FAPE when it failed to timely evaluate the Student after the Parent requested an evaluation in December 2019.

9. A parent may request an initial evaluation of a student to determine if the student is eligible for special education. WAC 392-172A-03005(1). Such a request must be in writing unless the parent is unable to write. *Id.* Further, if a parent requests a student be evaluated to determine if the student is eligible for special education, the District has twenty-five school days to determine whether or not to evaluate the student. WAC 392-172A-03005. If a district

decides to do an evaluation, it must comply with the requirements laid out in WAC 392-172A-03005 to 03040.

10. Further, the IDEA mandates that school districts shall conduct “Child Find” activities “calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability.” WAC 392-172A-02040(1). A disability is “suspected” when the district “has notice that the child has displayed symptoms of that disability.” *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9th Cir. 2016).

11. The Ninth Circuit has held that “the ‘informed suspicions of parents, who may have consulted outside experts,’ trigger the requirement to assess, even if the school district disagrees with the parent’s suspicions because ‘[t]he identification [and assessment] of children who have disabilities should be a cooperative and consultative process.’” *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1120 (9th Cir. 2016). Further,

Whether a school district had reason to suspect that a child might have a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time, not “exclusively in hindsight.” *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999) (quoting *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993)). However, some consideration of subsequent events may be permissible if the additional data “provide[s] significant insight into the child’s condition, and the reasonableness of the school district’s action, at the earlier date.” *E.M. v. Pajaro Valley Unified Sch. Dist.*, 652 F.3d 999, 1006 (9th Cir. 2011) (quoting *Adams*, 195 F.3d at 1149).

E.S. v. Conejo Valley Unified Sch. Dist., 2018 U.S. Dist. LEXIS 126251 (C.D. Cal. 2018).

12. The District first proposed to evaluate the Student for special education eligibility on February 24, 2021, more than twenty-five days after the referral date identified in the issue statement. However, the question at issue is whether the Parent actually requested the Student be evaluated for special education at any point prior to the District’s initiation of the evaluation.

13. In December 2019, the Parent exchanged emails with Ms. Schoeneman, the registrar at Dimmitt, stating that she disagreed with the decision made by [REDACTED] in its evaluation of the Student and that she would “need to continue to process in the Renton district.” Further, in response to another email from Ms. Schoeneman, the Parent stated that the Student

should be placed in all general education classes and that the Student “only requires understanding of her limitations and guidance. She is a smart cookie and can learn in the general education environment most of the time. It’s the other times that concerns us.” The Parent also exchanged emails with Ms. Sasao around this time. The Parent stated that based on the information from Ms. Sasao, “it is possible a 504 would be sufficient to meet [the Student’s] needs while attending Dimmitt.”

14. The Parent has not established that she requested the Student be evaluated for special education services in December 2019. None of the Parent’s emails directly request that the District evaluate the Student. Further, it is not reasonable to expect the District to infer from the Parent’s emails that she was requesting an evaluation, especially since the Student had been evaluated by another school district a month prior. Further, there is no evidence the Parent followed up with anyone at the District about an evaluation for the Student after the December 2019 emails.

15. The Parent also alleges that emails sent in September 2020 constituted a request for a special education evaluation of the Student. In September 2020, when the Parent exchanged emails with Ms. Pappas-Stallman, RHS’s counseling secretary, Ms. Pappas-Stallman asked the Parent to clarify some paperwork in which the Parent indicated that the Student had an IEP and 504 plan. The Parent responded that the Student “will need an IEP. Please let me know what my next steps are.” There is no evidence in the record indicating there was a response to this email or that the Parent followed up with anyone in the District about conducting an evaluation of the Student.

16. Again, the Parent’s email does not directly request that the Student be evaluated. However, the Parent requested an IEP for the Student, which could only be created if the Student was evaluated and found eligible for special education. As such, it is reasonable to infer from the Parent’s email that she was requesting the Student be evaluated. The District violated WAC 392-172A-03005 by not making a determination of whether to evaluate the Student within twenty-five school days of the Parent’s September 3, 2020 email request.

17. Further, even if the Parent’s email was not a request for an evaluation, the Parent’s statements should have put the District on notice that the Student may have a disability that could require special education services. Evidence in the record does not show any follow up by the District in response to the Parent’s email.

18. The District’s failure to appropriately respond to the Parent’s request for an evaluation in September 2020 is a procedural violation of the IDEA. However, the Parent has not proven that the procedural violation denied the Student FAPE because the Student was not eligible

for special education. See *Burnett v. San Mateo Foster City Sch. Dist.*, 739 F. App'x 870, 872 (9th Cir. 2018) ("When a student is ineligible for special education there can be no loss of educational opportunities"). Although the evaluation was delayed, the Student was evaluated by the District in May 2021 and found not eligible for special education. No evidence was presented to indicate that the eligibility determination would have been different had the evaluation been conducted earlier in the school year. This is further supported by the fact that the Student was evaluated in November 2019 and also found ineligible for special education. As the Parent has not proven that the District denied the Student FAPE, no remedy is warranted in regards to this issue.

Failing to provide the Student with an appropriate special education placement

19. The Parent argues the District violated the IDEA and denied the Student FAPE by failing to provide her with an appropriate special education placement during her time attending school in the District. A school district has no obligation to provide special education services or a special education placement if the student has not been determined to be eligible for special education services as a result of an evaluation. Accordingly, inherent in this issue is the question of whether the Student was eligible for special education.

20. A student is eligible for special education if the student has a disability in one of thirteen eligibility categories and, because of the disability and an adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services. WAC 392-172A-01035(1)(a); 34 CFR § 300.8(a).

21. The Parent provided no evidence to show that the Student was eligible for special education while enrolled in the District. The Student was not receiving special education services prior to moving to Washington State. ██████ evaluated the Student in November 2019 and found her not eligible for special education because she did not need SDI. The District evaluated the Student in May 2021 and also found the Student not eligible for special education because she did not need SDI. No evidence was provided to indicate any of the Student's teachers had concerns that she needed special education services.

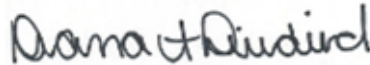
22. The Parent has not proven that the Student was eligible for special education. As such, the District had no obligation to provide the Student with a special education placement and the failure to do so did not violate the IDEA or deny the Student FAPE.

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

ORDER

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

SERVED on the date of mailing.



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.

Parent



Jennifer Traufler
Renton School District
300 SW 7th Street
Renton, WA 98057

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

Dated July 28, 2021, at Seattle, Washington.

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

cc: Administrative Resource Services, OSPI