

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

IN THE MATTER OF:

OSPI CAUSE NO. 2018-SE-0090

OAH DOCKET NO. 08-2018-OSPI-00584

ISSAQUAH SCHOOL DISTRICT

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

Administrative Law Judge (ALJ) Matthew D. Wacker held a due process hearing in the above matter via remote video conference over eight days on August 25-28, August 31-September 2, and September 23, 2020. The Parents of the Student whose education is at issue<sup>1</sup> appeared and were represented by Diane Wiscarson and Taylar Vajda, attorneys at law. The Issaquah School District (the District) was represented by Susan Winkelman, attorney at law. Also present for the District was Joan Lawson, director of secondary special services. A certified court reporter was present at the due process hearing.

**STATEMENT OF THE CASE**

*Procedural History*<sup>2</sup>

The Parents filed a Due Process Hearing Request (“the Complaint”) on August 31, 2018. A Scheduling Notice was entered September 4, 2018, assigning the Complaint to ALJ Anne Senter. The Scheduling Notice set a prehearing conference for October 1, 2018. That prehearing conference was continued to October 8, 2018, by order on September 25, 2018. ALJ Senter held the prehearing conference on October 8, 2018, at which the parties agreed to participate in an ALJ settlement conference. The October 9, 2018 Prehearing Order also: 1) Set a prehearing conference for January 10, 2019, with the expectation that the settlement conference would occur before then; 2) Set a due process hearing for February 25 to March 1 and March 4, 2019; 3) Extended the due date for a written decision to the close of record plus 30 calendar days. The District filed its Response to the Complaint on September 10, 2018.

By prehearing order entered February 4, 2019, ALJ Senter struck the due process hearing set to begin February 25, 2019, because the parties’ settlement conference was reset for March 4, 2019. On April 2, 2019, the Complaint was reassigned to ALJ Matthew D. Wacker to ensure the availability of an ALJ for the due process hearing. ALJ Wacker held a prehearing conference on April 24, 2019. By prehearing order entered August 2, 2019, the due process hearing was set

<sup>1</sup> In the interest of preserving the family's privacy, this decision does not use the actual names of the parents or the student. Instead, they are identified as the “Mother,” “Father,” or “Parents,” and the “Student.”

<sup>2</sup> This procedural history is not intended to detail every event. Rather, it is intended to provide a brief history of the most relevant matters for the reader.

for September 9-13 and 16-17, 2019. ALJ Wacker held a prehearing conference on August 23, 2019, to hear a request by the District to continue the due process hearing in order to obtain discovery from the Parents. After hearing from the parties' counsel, the District moved to continue the due process hearing set to begin September 9, 2019, until April 2020 in order to obtain its requested discovery from the Parents and, in part, due to the unavailability of Parents' counsel. The Parents did not object. By prehearing order entered August 30, 2019, the due process hearing was set for April 20-24 and 27-28, 2020. The due process hearing was later reset to August 25-28 and August 31 to September 2, 2020 by order entered March 23, 2020.

Multiple prehearing conferences were held with counsel between June 30 and August 14, 2020 to address logistical matters related to conducting the due process hearing via remote video conference, rather than in-person, due to restrictions imposed by the Covid-19 pandemic. On July 31, 2020, the parties filed their Stipulated Facts for the due process hearing. At the due process hearing on September 2, 2020, it was agreed to add an additional partial-day of hearing on September 23, 2020, in order to complete the hearing. The parties timely filed their post-hearing briefs on November 13, 2020. A post-hearing conference was held with counsel and the parties on November 19, 2020, to inform the parties that the written decision on the Parents' Complaint would not be timely filed on December 13, 2020, due to the ALJ's medical leave of absence.

#### Due Date for Written Decision

The due date for a written decision in the above matter is the close of record plus thirty (30) calendar days. See October 9, 2018 Prehearing Order. The record of the hearing closed with the filing of post-hearing briefs on November 13, 2020. Thirty calendar days from November 13, 2020, is December 13, 2020. Therefore, the due date for a written decision in the above matter is **December 13, 2020**.

#### **EVIDENCE RELIED UPON**

The following exhibits were admitted into evidence:

Court Exhibits: C1.

Parents Exhibits: P94, P123, P125, P127-P128, P130-P142, P144-P145, P147-P150, P152-P153, P155-P168, P170-P200, P201 p.1 only, P202-P205, P207-P208, P210-P222, P224-P229, P231-P233, P235, P237-P239, P243-P250, P253-P257, P259-P270, P272-P273, P275, P277-P279, P281-P284, P286-P291, P293-P295, P297-P303, P305-P306, P308-P314, P316-P317, P319-P327, P330-P335, P336 pp. 1-6, P337-P360, P366.

District Exhibits: D2–D16.

The following witnesses testified under oath. They are listed in order of their first appearance:

The Father of the Student;  
Dr. Gayle Fay, Ph.D., clinical neuropsychologist;  
John Marshall, Yellow Wood Academy (YWA) teacher;

Nikolaus Hoffman, former District school psychologist;  
Susan Small, YWA vice-president/director;  
Joel Raff, District special education teacher, Issaquah Middle School (IMS);  
Kyle Tatro, District health teacher, IMS;  
Amy Ainsworth, District math teacher, IMS;  
The Mother of the Student;  
Vera Winslow, District language arts/social studies teacher, IMS;  
Joan Lawson, District director of secondary special services;  
Carolyn Santos, District art/humanities teacher, IMS;  
Seth Adams, former District principal, IMS;  
Julia Weed, District language arts teacher, IMS;  
Vasanthasenai Singanallur Karuppusamy, District paraprofessional, IMS;  
The Student.

### **ISSUES AND REMEDIES**

The statement of the issues and requested remedies for the due process hearing is:

- a. Whether the District committed procedural violations of the IDEA and denied the Student a free appropriate public education (FAPE) during the 2016-2017 and 2017-2018 school years by:
  - i. Failing to keep accurate records;
  - ii. Failing to issue IEP progress reports;
  - iii. Failing to provide the Parents with proper documentation;
  - iv. Failing to obtain informed consent for Student evaluations;
  - v. Failing to convene IEP meetings when appropriate;
  - vi. Making changes to the Student's IEPs outside of an IEP meeting and without written agreement from the Parents (2016-2017 school year only);
  - vii. Failing to consider information shared by the Parents, thereby denying them meaningful participation in the development of the Student's IEPs;
  
- b. Whether the District committed substantive violations of the IDEA and denied the Student FAPE during the 2016-2017 and 2017-2018 school years by:
  - i. Failing to evaluate the Student in all areas of suspected disability, including:
    - a. Anxiety;
    - b. Executive functioning;
    - c. Attention;
    - d. Social skills and behavioral needs;
    - e. Occupational therapy (OT) and sensory needs;
    - f. Assistive technology (AT) needs;
    - g. Work/School refusal;
    - h. Failing to conduct a functional behavioral assessment (FBA);
    - i. Failing to consider the results of a neuropsychological evaluation of the Student (2017-2018 school year only);

- ii. Failing to consider whether the Student was eligible under the Other Health Impairment (OHI) and/or Specific Learning Disability (SLD) eligibility categories;
- iii. Not being prepared to meet the Student's educational needs upon commencement of the school years;
- iv. Failing to provide appropriate District staff, support (adult and/or 1:1), and training to meet the Student's educational needs;
- v. Failing to provide appropriate OT and AT services;
- vi. Failing to develop an appropriate behavior plan;
- vii. Failing to convene IEP meetings when requested by the Parents and/or when appropriate;
- viii. Failing to provide trimester progress reports on the Student's IEP goals, and/or providing progress reports that did not use IEP goal-reporting criteria;
- ix. Materially failing to implement the Student's IEPs;
- x. Failing to ensure the Student made meaningful progress towards his IEP goals;
- xi. Failing to provide appropriate services to address the Student's executive functioning deficits (organization, task initiation/completion, attention)(2016-2017 school year only);
- xii. Failing to appropriately modify curriculum for the Student (2016-2017 school year only);
- xiii. Failing to appropriately determine the Student's grades in light of reduced assignments (2016-2017 school year only);
- xiv. Creating a plan which required the Student to request help from teachers (2016-2017 school year only);
- xv. Failing to provide preferential seating per the Student's IEP(s) (2016-2017 school year only);
- xvi. Failing to provide the Student with access to classroom materials (2016-2017 school year only);
- xvii. Failing to contact and/or consider recommendations from outside providers (2016-2017 school year only);
- xviii. Failing to administer the Student's ADHD prescription medication twice a day (2016-2017 school year only);

- xix. Failing to address reports of the Student harassing another student (2016-2017 school year only);
  - xx. Failing to amend the Student's IEP after the Parents reported the Student would be dual-enrolled in the District and at Yellow Wood Academy (2017-2018 school year only);
  - xxi. Failing to provide the Student's paraeducator with appropriate instruction to assist the Student, and failing to provide appropriate paraeducator support (2017-2018 school year only);
  - xxii. Failing to contact or consider recommendations from the Student's outside providers and Yellow Wood Academy Student (2017-2018 school year only);
- c. Whether the District committed a substantive violation of the IDEA and denied the Student FAPE during the 2016-2017 when it failed to provide an appropriate educational placement by:
- i. Failing to appropriately integrate the Student into general education classes;
  - ii. Failing to consider other placement options;
- d. Whether the District committed a substantive violation of the IDEA and denied the Student FAPE during the 2017-2018 school year when it predetermined his educational placement by:
- i. Failing to appropriately integrate the Student into general education classes;
  - ii. Issuing a prior written notice (PWN) that included decisions related to the Student's placement and services before holding an IEP meeting;
  - iii. Failing to consider other less restrictive placement options for the Student, including private placement;
  - iv. Not holding any further IEP meetings to consider the Student's placement after March 2018;
- e. And, whether the Parents are entitled to their requested remedies:
- i. A comprehensive District evaluation of the Student to include:
    - a. An FBA;
    - b. An academic assessment;
    - c. A cognitive assessment;
    - d. A fine motor assessment;
    - e. A sensory assessment;
    - f. A communication assessment;
    - g. An emotional assessment;
    - h. A social-skills assessment;
    - i. An adaptive assessment;

- j. An AT assessment;
- ii. An IEP team meeting to develop an appropriate IEP and BIP;
- iii. Prospective District placement of the Student at Yellow Wood Academy, including transportation to and from Yellow Wood Academy;
- iv. Compensatory education services, including transportation to and from such services for denial of FAPE during the 2016-2017 and 2017-2018 school years;
- v. Training of all District staff involved with the Student in the proper development and implementation of IEPs, BIPs, and evaluations, as well as the use of restraints and seclusion;
- vi. Or other equitable remedies, as appropriate.

See August 2, 2019 Second Prehearing Order.

### FINDINGS OF FACT

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

#### *General Background*

1. The Student was first determined eligible for special education under the Developmental Delay eligibility category following an initial evaluation by the District in March 2008, when he was approximately 3 years old. P94p1,<sup>3</sup> Mother T1081.<sup>4</sup>
2. The District reevaluated the Student in May 2009, determined he was no longer eligible for special education, and exited the Student from special education. P94p1.
3. Following another District evaluation in May 2011, the Student was again determined eligible for special education, this time under the autism eligibility category. *Id.*

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<sup>3</sup> Citation to the exhibits are by party (**P**arents, **D**istrict, and **C**ourt) and by page number. For example, citation to "P94p1" is a citation to Parents Exhibit 94 at page 1.

<sup>4</sup> Citation to the testimony of a witness is by last name and page number of the **T**ranscript. The exceptions to this are citations to the testimony of the Mother, Father, and Student, who are identified as such in order to help preserve the privacy of the family. For example, citation to "Mother T1081" is a citation to the testimony of the Mother at page 1081 of the transcript.

4. A March 2014 Assessment Revision added services to address the Student's difficulty with writing. T94p1. The Student "had been struggling in writing for awhile (sic) and had been acting out with extreme behaviors at home; the team felt that it would be appropriate to add services in writing...and the team hoped this would reduce his stress and severe behaviors at home." P94p1.

5. The District conducted a triennial reevaluation of the Student in May 2014, and determined he was eligible to receive specially designed instruction (SDI) and related services for behavior, social skills, writing, and communication. *Id.* p2. The triennial reevaluation noted that the Student's Functional Behavioral Analysis (FBA) would be discontinued because he no longer demonstrated a need for it at school.<sup>5</sup> *Id.*

#### *2014-2015 School Year: Fourth Grade*

6. The Student attended fourth grade at the District's Cougar Ridge Elementary School during the 2014-2015 school Year (SY). Father T42. Prior to fourth grade, it was a "regular occurrence" for the Student to get in trouble at school because of his impulsivity. *Id.* Fourth grade was a "pivotal year" for the Student because of changes in the Student's medication to address his Attention Deficit Hyperactivity Disorder (ADHD). *Id.*

7. These medication changes were "effective for the first time" in treating the symptoms of his ADHD. *Id.* These were the symptoms of the Student's ADHD that regularly got him in trouble for breaking rules at school. Father T75. However, the changes in medication did not solve all of the Student's problems with distractibility and focus. *Id.*

8. With the changes to the Student's ADHD medications, "(A)ll of a sudden it was finally possible to focus on [the Student's] academic progress, and that's when we got really concerned just based on where he was at." Father T42-43.

9. The Parents began providing and paying for "outside tutoring" for the Student three times a week in October or November 2014. *Id.* T48, T49. The Parents hired the tutor because the Student was having trouble completing his school assignments and homework, was disorganized, and would "space out" and lose focus. *Id.* T45-T46, T68.

#### *The May 2015 Reevaluation of the Student*

10. On May 6, 2015, an evaluation team convened to consider the results of a District reevaluation of the Student. P94p1. The purpose of the reevaluation was "to determine if his current services are appropriate for his educational needs." *Id.* p2. The reevaluation consisted of a records review, Parents' input, teacher input, observation, social rating scale, behavior rating

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<sup>5</sup> The reference to the Student's FBA is likely an error, as an FBA is not implemented but rather serves as the source of information from which to develop or create a Behavioral Intervention Plan or Behavioral Improvement Plan (BIP). A student's BIP is then implemented to address undesirable or inappropriate behaviors that interfere with the student education, or the education of other students.

scale, review of cognitive records, and assessments of academics and communication.” *Id.* The Parents attended the meeting as members of the evaluation team. *Id.* p4.

11. The reevaluation determined the Student remained eligible under the autism eligibility category. *Id.* p2. The Mother agreed with this determination. Mother T892. It recommended the Student receive SDI for behavior, reading comprehension, and writing. *Id.* p3.

12. The Student’s fourth-grade general education teacher completed a social/emotional/behavioral assessment of the Student, the BASC-2 Teacher Form, as part of the reevaluation. *Id.* pp14-15. The teacher’s responses placed the Student in the “Clinically Significant” range for problems relating to anxiety, depression, attention, learning, functional communication, and withdrawal. *Id.* The teacher’s responses on the BASC-2 were determined to be valid. *Id.* p15.

13. The Student’s fourth-grade general education teacher also completed an assessment of the Student designed to measure social skills and problem behaviors at home and at school, the SSIS Teacher Form. *Id.* p9. The teacher rated the Student’s social skills at the third percentile. *Id.* The fourth-grade teacher also completed an assessment of the Student’s adaptive functioning, the ABAS-2, which is a measure of an individual’s “daily functioning.” *Id.* p11. The teacher’s ratings of the Student placed him in the “Extremely Low” range for communication, self-direction, and social skills. *Id.* The Student’s teacher also rated the Student as having difficulties with overall executive functioning. *Id.* pp16-17. The teacher had concerns regarding the Student’s ability to initiate tasks, stick with tasks, plan for events/goal setting, keeping an orderly area, and monitoring/checking his homework. *Id.* p16.

14. Based upon a standardized test of the Student’s “communicative pragmatic or social use of language,” the SLDT-E, and observation by a District Speech-Language pathologist (SLP), the reevaluation concluded that:

[The Student’s] expressive, receptive, and pragmatic language skills fall within the average range for his age. Although he demonstrates some difficulty in the classroom,...it is believed this is due to a lack of focus.

Pragmatic language skills should continue to be monitored, as this is an area of difficulty often demonstrated with children diagnosed with Autism. If [the Student] begins to demonstrate a need for communication services, the team should consider if services would be appropriate to support [the Student].

*Id.* pp23-24.

15. The District reevaluation included two independent observations of the Student in his fourth-grade classroom by a District school psychologist and a school psychologist intern. *Id.* p27-28. One of those observations concluded that:

At times during this observation, [the Student] was able to demonstrate shorts periods of attention and focus when given a task. Overall, [the Student] required frequent redirection to task, one-on-one checking for understanding, repetition/break down of instructions,



access to a paper copy of teacher's notes, and chunking of expectations into more manageable parts.

*Id.* p26.

16. The Student was receiving "modified grading" at school at the time of the reevaluation. Father T51; P94pp6-7. The Father understood this to mean "[the Student] was graded according to a different standard than would be a typical student who was not on an IEP," or that the grading standards were "lowered" to accommodate the Student's disability. Father T149, T51. Additionally, the Student's handwriting was so illegible that he could not read his own handwriting just a few minutes later. *Id.* T53.

17. Concurrent with the reevaluation, the Student was having difficulty getting his work done at school, and doing his homework at home. Father T45-T46. He was having trouble with organization, and the Parents were "experimenting with a smaller dosage of...medication" for the Student. *Id.* T45. The Student was having difficulty reading due to distractibility and the multiple impacts of his autism. *Id.* T52. The Student could sustain concentration on a task for only 2 to 5 minutes. *Id.* T55. The Student had problems making and keeping friends, and was very "inflexible." *Id.* T57-T58. The Father opined that the Student's social skills continued to lag behind his same age/gender peers. *Id.* T59, T136.

18. The Mother opined that the Student was not reading at grade level at the time of the reevaluation. Mother T901-T902. While the Student could read the words, he struggled with comprehension. *Id.* T901. The Student also struggled with handwriting. *Id.* T902. The Mother does not agree that the Student's communication skills were in the average range when compared to his peers. *Id.* T911.

#### *2015-2016 School Year; Fifth Grade*

19. The Student attended fifth grade at the District's Cougar Ridge Elementary School during the 2015-2016 SY. P123p2.

20. By May 2016, the Parents believed the Student's education was not going well, and they could "see a downward spiral." Mother T913.

#### *The Student's May 2016 Individualized Education Program*

21. The Student's Individualized Education Program (IEP) team met on or about May 9, 2016 to develop a new annual IEP for the Student.<sup>6</sup> The Mother attended as an IEP team member. T912-T913, T1080.

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<sup>6</sup> There is conflicting evidence regarding whether the IEP team met on May 5 or May 9, 2016. *Compare* P123p1 (printed meeting date 5/5/16 crossed out and 5/9/16 written in) with P123p2 (IEP Meeting Date 5/5/16). However, for the purpose of resolving the issues presented in this case, the difference is immaterial.

22. The Father initially testified that he attended the IEP meeting. Father T68. However, on cross-examination the Father said he does not remember if he attended this meeting. *Id.* T737. Given this and the fact that the Father's signature does not appear along with the other team members' signatures (See D2p1), it is found as fact that the Father did not attend the IEP meeting.

23. There are two exhibits that appear to be different versions of the May 2016 IEP. P123, D2. Of the two, the IEP at D2 appears to be a more complete or final version of P123. D2 includes the signatures of the team members who attended the meeting, P123 does not. D2p1; P123p2. D2 includes additional information which is not included in P123.<sup>7</sup> After review of the entire record, it is found as fact that the final version of the Student's May 2016 IEP is D2.

24. As part of the May 2016 IEP, the Student's fifth-grade general education teacher reported she was concerned that the Student would not ask questions when he felt overwhelmed, and that he would sit quietly and try to "hide" or not be noticed. D2p4.

25. The IEP noted that the Student's "independent and instructional reading level" was assessed using the Fountas and Pinnell in September 2015 and February 2016 and was determined to be "on-standard" for fifth grade. D2p2.

26. The IEP provided the Student with SDI in reading, writing, and behavior. *Id.* p14. The IEP did not provide SDI in the area of communication because the Student's skills were "commensurate, or nearly so, with those of his same-aged peers." *Id.* p2. The IEP provided the Student with accommodations and modifications that included:

- Daily access to computer keyboarding for writing;
- Assignments and homework modified to reduce length or provide alternative assignment;
- Preferential seating near teacher to provide prompts to refocus attention;
- Grading modifications in areas of qualification and consequent impacted subjects;
- A check-in by the end of the day for planner completion and assignments/papers in backpack;
- Allow for use of computer keyboarding during extended writing on tests;
- Extended time for tests;
- Allow for testing individually, in a small group, or alternative setting.

D2pp11-12.

*2016-2017 School Year: Sixth Grade at Issaquah Middle School*

27. The Student moved to the District's Issaquah Middle School (IMS) to attend sixth grade during the 2016-2017 school year (SY). Father T86. The first day of school was September 1,

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<sup>7</sup> Compare D2p2 (includes Mother's report from May 2016 regarding the Student's tutor) with P123p3 (no such report), and D2p16 (LRE table reflects 80% to 100% in Regular Class selected) with P123p16 (LRE table is blank).

2016. Parties' Stipulated Facts #1; D15p1. The school year at IMS runs on a schedule of three grading periods, or trimesters. Lawson T1252.

28. Joel Raff was the Student's special education teacher and case manager during sixth grade. Raff T1348. The Student's SDI for reading and writing was provided by Mr. Raff and a general education teacher, Carolyn Santos, in their co-taught language arts (LAs) classroom. *Id.* T566, T1348; Santos T1274. Mr. Raff provided the Student's SDI for behavior in a special education learning strategies class. Raff T1348-T1349. The Student's behavior SDI "would also carry over to outside the special education class...working with him in the language arts class." *Id.* T1349. All of the Student's SDI in his May 2016 IEP was provided to him during sixth grade. *Id.* T1348-T1349, T1359. Mr. Raff is not aware of any of the accommodations and/or modifications in the Student's May 2016 IEP not being implemented during sixth grade. *Id.* T1350.

29. The Student had problems turning in his homework on time right from the start of sixth grade. *Id.* T567. These problems continued throughout sixth and seventh grades. *Id.* Mr. Raff tried modifying the length and complexity of the Student's assignments, but that did not improve the Student's problem with late homework. *Id.* T577. Initially Mr. Raff believed the Student's problem was caused by his tendency to become "distracted." *Id.* T562-T563. However, by April or May 2017, Mr. Raff came to believe the problem was caused more by a combination of avoidance and distractibility. *Id.*

30. The Student continued to receive modified grading based on modified content in LAs, social studies, and "Tech Smart" classes intermittently over the course of sixth grade. P218; Santos T1291, T1297. The Student was not doing sixth-grade-level work or doing work equivalent to other sixth-grade students in classes where he received modified content. Raff T578, T617-T618.

31. Mr. Raff tracked the Student's progress towards meeting his IEP goals throughout sixth grade. *Id.* T1349. It was Mr. Raff's practice to report students' progress towards meeting their IEP goals to parents via email at the midterm of each of the three trimesters during the school year, and then via a hard-copy report mailed to parents at the end of the school year. *Id.* T1349-T1350. Mr. Raff has no independent recollection of how he reported the Student's IEP goal progress to the Parents. *Id.* T1349.

32. The only report regarding the Student's progress towards his IEP goals during either sixth or seventh grade is one report dated June 21, 2017. P207, P220, C1pp2-3.

33. Joan Lawson is the District's director of secondary special services. Lawson T1161-T1162. Students with IEPs at IMS receive IEP goal progress reports at the same time general education students receive grades; once each trimester. *Id.* T1226, T1253. Ms. Lawson is unaware of any IEP progress reports for the Student during seventh grade. *Id.* T1226, T1253. If the Parents requested the Student's educational records from the District and did not receive any IEP progress reports, it's possible that no such reports exist. *Id.* T1254. After review of the record, it is found that the District did not create any other IEP progress reports for the Student during the 2016-2017 and 2017-2018 SYs.

34. Ms. Santos, who co-taught the Student's LAs class with Mr. Raff during sixth grade, was also the Student's social studies teacher during sixth grade. Santos T1269, T1272; P218. The Student struggled academically in her classes. Santos T1270. "[The Student] had a difficult time getting started with any task he was being asked to complete." *Id.* Ms. Santos would frequently work 1:1 with the Student. *Id.* She "would often walk by his desk and check in with him while he was working." *Id.* These strategies were effective with the Student. *Id.* Ms. Santos cannot recall if the Student was working below grade level in her LAs and social studies classes. *Id.* T1277. However, the Student had modified content and modified grading in both LAs and social studies classes for the entire sixth-grade school year. *Id.* T1291, T1297.

35. Amy Ainsworth was the Student's sixth-grade general education math teacher. Ainsworth T806. While the Student had "really solid math skills," he definitely struggled with organization and staying focused in math class. *Id.* T807-T808. It "took longer for [the Student] to catch on to the procedures or how to organize a binder or where to find things." T808-T809. It took "lots of prompting" to get the S to fill out his planner accurately, and he "didn't always get it down." T809. Ms. Ainsworth also worked with the Student separately at school outside of math class to provide him with extra help in math. *Id.* T814. While she checked all her students' planners daily to make sure the students were writing in their planners, she did not check the accuracy of what they wrote in their planners every day. *Id.* T812. Ms. Ainsworth never saw the Student "having issues with his social skills that impacted his education" in her classroom. *Id.* T836.

36. Vera Winslow was the Student's sixth-grade homeroom teacher. Winslow T976. The Student was "generally very quiet" in homeroom, and she usually had to "prompt" him to get to him to work during homeroom. *Id.* T982-T983. Part of the sixth-grade curriculum in homeroom was teaching students how to use their planners.<sup>8</sup> *Id.* T976. Ms. Winslow would "model" how to use the planner for the students and then do "planner checks." *Id.* The students could earn up to six points if their planners were completed. *Id.* T980. Ms. Winslow conducted weekly planner checks during the first trimester, every other week during second trimester, and then sporadically during the third trimester. *Id.* T977.

37. The Parents continued to provide and pay for a tutor for the Student during the 2016-2017 SY. Father T158. The tutor worked 1:1 with the Student at the tutor's house two or three times each week. *Id.* The Parents believe the tutor helped the Student, and that his grades would have been even worse during sixth grade but for the tutoring they provided. *Id.* T159. The Father cannot recall if he ever observed the Student at IMS during sixth grade, and cannot recall if he ever asked Mr. Raff what the Student's "binder organization routine" was during sixth grade. *Id.* T745, T746. However, by the end of sixth grade, the Father no longer believed the District was providing the Student with an appropriate education. *Id.* T150.

38. The Mother believes that the "major crux of the problem of sixth grade is we have a high IQ child getting Ds and Fs." Mother T1105. However, the Parents never asked the District to reevaluate the Student during sixth grade, and never questioned the Student's IEP team about

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<sup>8</sup> Throughout the record, the terms "planner" and "binder" were used interchangeably to describe a tool or organizer all sixth-grade students were provided to help organize their work, and keep track of assignments and homework.

developing a behavior plan for the Student or changing the Student's eligibility category. *Id.* T1070-T1071. The Parents did not request any IEP team meetings during sixth grade. *Id.* T1071. However, the Parents "asked for meetings continuously throughout the year. We wouldn't say we would like (to) have an IEP team meeting. We would say can we meet with his teachers (to) talk about strategies." *Id.* The Mother never observed the Student at IMS during sixth grade. *Id.* T1080.

39. In an email to Mr. Raff on September 9, 2016, the Mother stated that, "[the Student's] biggest struggle the past couple years has been organization." P137p1.

40. In an email to Mr. Raff on September 14, 2016, the Father reported that the Student was not getting the support he needed to get his daily homework assignments listed in his planner. P134.

41. In an email to the Father on September 15, 2016, Mr. Raff stated that the school would be implementing a weekly planner check. P134p1. Mr. Raff went on to state that while he was still getting to know the Student, it seemed "that distractibility (rather than avoidance) is the cause for the planner not being completed." *Id.*

42. The Student's science and LAs teachers started daily planner check-ins with the Student, which continued through the end of the school year. Raff T560-T561. However, Mr. Raff does not know if any of the teachers checked to see if what the Student had written in his binder was accurate. *Id.* T561-T562. Mr. Raff does not know what may have happened in the Student's other classes. *Id.* T561. Ultimately, Mr. Raff opined that getting the Student to reliably use his planner was never "a successful venture" across both the 2016-2017 and the 2017-2018 SYs. *Id.* T566.

43. In an email to Mr. Raff on September 15, 2016, the Father stated, "Distractibility is THE issue with [the Student]." P134p1 (Emphasis in original).

44. In an email to IMS staff on September 19, 2016, Mr. Raff relayed the Father's "expressed concern regarding [the Student's] inconsistent use of his planner. [The Student] would benefit from a check-in when students are recording their assignments in the planner...Any extra support with the planner would be awesome." P135.

45. In an email to Mr. Raff the same day, the Mother stated, "Honestly [the Student's] biggest struggle the past couple of years has been organization. He struggles greatly with it so any support we can get is wonderful." P137p1.

46. In an email to Ms. Ainsworth on September 28, 2016, the Father stated, "[The Student] has test anxiety...[The Student] also says that he got distracted in class during the test." P140pp1-2.

47. Ms. Ainsworth replied to the Father via email the next day stating, "I will be sure to pop by during quizzes or tests...and encourage him to take his time...I can also check in on how he is doing to give him some feedback mid-test." P140p1.

48. Ms. Ainsworth opined that the Student's test anxiety was addressed by her classroom practices of no-time-limit tests, allowing for "test revisions," walking around and providing prompts during tests, and just generally checking in with students during tests. Ainsworth T815-T816.

49. In an email to Mr. Raff and Ms. Santos on September 29, 2016, the Father set out the Parents' concerns regarding use of the Student's planner and support at school. P141p2, P142pp2-3. The Father told Mr. Raff that the Parents discovered the Student had a homework assignment due, but it had not been written down in his planner. The Student did not know the user name and password to access an online version of the text book he needed for the homework assignment. The Student needed support at school to ensure he was writing down assignments and due dates in his planner. Finally, an adult needed to review the Student's planner to confirm a task was completed. *Id.*

50. Mr. Raff replied via email the same day to the Father, stating "I can always test [the Student] verbally if he seems to be struggling on the written exam." P141p1.

51. The Father replied to Mr. Raff via email later the same day stating, "What about my request to help him get organized? I know I am being persistent about his, but that is one of the root causes of his academic struggle and the specific focus of his IEP." P142p1.

52. Mr. Raff replied to the Father within minutes stating, "I'm working on setting up a system for [the Student] as I continue to get to know him...In an effort to build independence, I am kicking around the idea of implementing some type of reward system to see if that results in greater focus." *Id.*

53. Mr. Raff implemented a reward system for the Student utilizing a "checklist." If the Student completed the checklist during the school day, he would earn free time. Mr. Raff tried to get the Student to use the checklist through the end of the school year. But after just a couple of weeks, he could no longer get the Student to use his planner. Raff T571-T573.

54. In an email to Mr. Raff and the Student's life science teacher, Melissa Miller, on October 4, 2016, the Father stated that the Student reported to the Parents that he was moved to the back of the classroom that day. P148p2. The Father questioned why the Student was moved to the back of the classroom when his IEP included an accommodation for the Student to have preferential seating. *Id.* The Parents understood that preferential seating meant the Student would be seated at the front of the classroom. Father T78. However, the IEP accommodation called for preferential seating near a teacher to provide prompts to refocus the Student's attention. D2p11.

55. Ms. Miller replied to the Father via email the same day, stating that she would "honor" the Father's request and return the Student to sit at the front of her classroom. P142p2. The record is unclear regarding where Ms. Miller's desk was placed in her classroom, or where she stood to instruct students.

56. On October 13, 2016, the Father reviewed the Student's grades on the District's on-line "Skyward" system. P150. Skyward is the District's platform for reporting grades and assignments. Raff T584. When parents sign up for Skyward, they have the option to receive an automatic

report of their student's grades when any grade fell below a parent-selected threshold. *Id.* The Father had selected a threshold of 72.99%. Father T96.

57. The Student had Fs in LAs and life science, and Ds in math and learning strategies. P150. The Student's grades "really concerned" the Father. Father T84. It didn't appear like things were going very well for the Student. *Id.*

58. In an email to Ms. Miller and Mr. Raff on October 19, 2016, the Mother stated that she and the Student had "spent all week working on his test study guide...to say he is overwhelmed is an understatement." P156pp2-3. The Mother went on to say that the Parents "have a lot of questions and points that we were waiting to discuss at the Guidance team meeting, but since that's not on the calendar yet, I think it's important to bring things up now." *Id.* The email went on to set out ten "questions and points" they wanted to discuss at a Guidance team meeting, including:

- The Student "is extremely distracted and has an insurmountable obstacle in trying to concentrate on anything. His level of distraction (even on meds) is so high it virtually incapacitates him."
- "We have always had to re-teach him everything from the school day again in the evening. Now that the workload is so huge with 7 classes that feat has become virtually impossible."
- "(Science) is moving so fast for him and he is so overwhelmed, he is already completely lost 6 weeks in."
- "I don't know how we can do this the whole year. He feels like a failure."
- "His time spent in tears...it's out of frustration that in reading the same paragraph 6 times he still doesn't understand it and loses hope."

*Id.*

59. At the time, the Parents were spending "hours" every day working on homework with the Student along with providing the Student with his private tutor, and the Mother did not believe the Student was receiving enough support at school. Mother T923.

60. Ms. Miller replied to the Parents and Mr. Raff via email the next day. P156pp1-2. She noted the Student's IEP provided for modification of the length of his assignments, but the IEP could not tell her what length was appropriate because, "That requires a process of trial and error though regular communication between the teacher and student/student's family." *Id.* p1 Ms. Miller went on to state:

Let's agree on a time limit (for science homework) and then stick to it. On future assignments I will highlight the most important questions to answer...This will likely lead to him not learning as much content as his peers, but perhaps what he does learn will stick. I will modify his assessments accordingly...As for [the Student's] testing accommodations, the quizzes he's done so far have all been read aloud to him.

*Id.* pp1-2. Ms. Miller concluded her email saying, "I'm happy to continue communicating by email, but I'd feel best if we met." *Id.* p2.

61. On October 20, 2016, Mr. Raff sent an email to the Student's teachers at IMS stating, "I would like to set up a meeting with [the Student's] parents and his teachers. The family is quite overwhelmed with the transition to middle school, including homework, and could use some clarification around expectations." P155. In addition to the teachers, Mr. Raff included the IMS principal, Seth Adams, in his email. *Id.*

62. Mr. Raff followed his email to the Student's teachers and Principal Adams with an email to the Parents the same day. Mr. Raff offered a meeting with the Parents on either October 28 or October 31. P156p3.

63. On or about October 26, 2016, the Student received his IMS Mid-Trimester 1 Report Card. P157. On the report card, Ms. Ainsworth remarked that while the Student worked very hard in math, "The one area he could improve is with getting homework logs turned in on time and complete. He is still missing the first log from September." *Id.* p2.

64. On October 26, 2016, Ms. Ainsworth sent an email to the Father. She remarked that:

In class [the Student] has had a tough time staying focused this week (I have had to prompt him to take notes multiple times most days)...he told me he didn't like his seat this time because his back is to the board this week, so I let him tell me where he would like to sit next week. Hopefully that will resolve that issue.

P158.

#### *October 2016 Guidance Team Meeting*

65. On October 28, 2016, a Guidance Team meeting was held for the Student at IMS. P159.<sup>9</sup> This was not an IEP team meeting. Parties' Stipulated Facts #2. Present were the Parents, Mr. Raff, Ms. Miller, Ms. Ainsworth, and Ms. Santos. Raff T576, Father T85-T88, Mother T925-T926. The purpose of the meeting was to "Identify strategies for [the Student] that enable him to efficiently identify tasks to be completed at home, that are within his ability level, and that allow him to demonstrate his learning on assignments." P159p1; Father T85, Mother T925.

66. The Parents reported at the meeting that the Student's medication was being increased, which they anticipated would increase his ability to focus attention on given tasks. P159p2.

67. The team concluded that the Student's math assessments would be reduced, focusing on the same content while decreasing the number of problems, and the Student would use graph paper to help organize his written work. *Id.* The Student would also have access to a "word problem key" to provide clues for identifying operations to solve math problems. *Id.*

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<sup>9</sup> Mr. Raff identified P159 as an "Itinerary" for the meeting. Raff T575. Although P159 is stamped or marked "DRAFT (working document)," Mr. Raff clarified that while part of the Itinerary was drafted by him prior to the meeting, some part(s) of the Itinerary were based on the team's discussion at the meeting. *Id.*



68. For science, the team concluded that the Student's assignments and assessments would be adjusted to identify the level at which he is challenged, but not overwhelmed by the demands. *Id.*

69. The team concluded that the Student would be provided a "homework help" checklist. *Id.* p3. The purpose of the checklist was to provide the Student with a series of strategies for identifying work to be completed at the after-school "homework help" program. *Id.* A copy of the homework help checklist was attached to the meeting itinerary. *Id.* p4.

70. Prior to the Guidance team meeting, Mr. Raff had already been trying to modify the length and complexity of the Student's assignments, but that had not worked for the Student. Raff T577.

71. After the meeting, the Student's LAs and science teachers identified the "most important content" for him, but Mr. Raff could not confirm this happened "100 percent" of the time. *Id.* T576-T577. Mr. Raff did not know what happened in the Student's math class. *Id.*

72. The Father opined that the strategies proposed by the Guidance Team for the Student had not worked in the past, and were not working at the time of the meeting. Father T88. The Father could not clearly recall if the strategies proposed at the meeting made much of a difference for the Student moving forward. *Id.* The Mother opined that the use of checklists to help the Student improve his performance had been tried in the past, but was unsuccessful. Mother T925-T926. Using checklists was not effective because it required the Student to "self-initiate" a task. *Id.*

73. In an email to the Father on November 2, 2016, Ms. Ainsworth reported that there had been "No improvement on focus so far. Today I reminded [the Student] 3 times to fill in his homework log and then again to get started on the worksheet." P162.

74. The Father replied to Ms. Ainsworth's email the same day. P163. In part, the Father stated that:

I could be mistaken, but it seems as if you have an expectation that students are able to mark the correct page in their textbooks at home. I am sure that is a reasonable expectation for other students, but it's unreasonable for [the Student] until we get his medication figured out.

*Id.*

75. Via email on November 2, 2016, the Father told Principal Adams that the Student was struggling academically and he did not think "the status quo is meeting [the Student's] educational needs." P164p1. He asked Principal Adams for a meeting to review the Parents' concerns, and went on to remark that "We had a guidance team meeting last Friday...I think it's important you know that we know that (the guidance team members) care and are trying to support out son as best as they can." *Id.*

76. Principal Adams confirmed that as of the fall of 2016, he was aware from the Parents' reports that the Student was "struggling," but he was unable to recall the specifics. Adams T1408.<sup>10</sup>

77. In an email to Mr. Raff on November 3, 2016, Principal Adams confirmed he had a meeting set the next day with the Father, and asked Mr. Raff if they could meet to discuss "what I'm facing." P167. However, neither Principal Adams nor Mr. Raff could recall if they met before Principal Adams met with the Father. Adams T1409-T1410, Raff T579.

78. Principal Adams met with the Father on November 4, 2016. Parties' Stipulated Facts #4. The Father took notes during the meeting. P168. Principal Adams does not recall the "specifics" of this meeting, even after reviewing the Father's notes from the meeting. Adams T1411. At this point, the Father still believed that the Parents and the District "were working together as a team." Father T95.

79. Principal Adams and the Father discussed the District providing the Student with a 1:1 aide at IMS. P168p1. Based upon the Father's meeting notes, his testimony, and Principal Adams' inability to recall specifics about their discussion, it is found that Principal Adams more likely than not told the Father that the District was probably not going to provide a 1:1 aide for the Student. P168p1; Father T95.

80. Principal Adams and the Father agreed that the Parents and the Student would no longer spend "hours" working on homework, even if that meant the Student would earn an "F." P168p1, p2.

81. In an email on November 21, 2016, to IMS Nurse Juli Holst, the Mother stated the Parents were giving the Student his ADHD medication right before the Student left for IMS in the morning. P173p2. The Mother went on to state that:

This year we are seeing a significant drop-off in (medication) coverage by the end of the day, probably due to the early hour he leaves the house and the extended length of the bus ride...We want to try an experiment with having his meds given to him when he arrives at school off the bus in the morning to give him that extra 45 minutes or so of coverage later in the day.

*Id.* Nurse Holst replied to the Mother later the same day, identifying the information IMS would need in order to give the Student his ADHD medication upon arrival at school in the morning. *Id.*

82. The Parents "were so desperate at this point that we were adjusting [the Student's] meds. We were adjusting his dosages, and we were looking at dosage timings." Mother T926.

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<sup>10</sup> Principal Adams actually testified his understanding was that the Student was struggling during the fall of 2017, when the Student was in sixth grade. Adams T1408. This is clearly incorrect. The Student was in seventh grade during the fall of 2017. After considering all the evidence of record, it is found that Principal Adams was aware of the Student struggling during the fall of 2016.

83. By November 26, 2016, the Student was earning a D+ in life science and a C- in social studies. P174. At this point, the Father believed that the Student was “not doing well at school...he’s barely getting by.” Father T98-T99.

84. By December 2016, “[The Student’s] self-awareness of his situation was growing...he became aware that he was different from other kids. Not just different, but that, you know, he was off track (sic) academically.” Father T99-T100.

85. In an email on December 2, 2016, Ms. Santos told Mr. Raff that the Student had missing assignments, and asked, “So...For [the Student], do I grade only what he does in class? Should I exempt him from work and not expect him to complete things outside of class?” P176. Ms. Santos was “asking (Mr. Raff) for guidance on how to best modify the grading for [the Student] and his work.” Santos T1278. Ms. Santos cannot recall when she started using modified grading for the Student. *Id.*

86. As of December 3, 2016, the Student had no *courses* with “a current Progress Report Grade less than 72.99%.” P177. However, the Student had multiple *assignments* in the week prior with scores below 72.99%. *Id.*

87. During December, Ms. Miller made the Father aware of a “Science Help on Thursdays” opportunity available for any students who were absent, struggling with work, or had missing assignments. P178. The Student went to Science Help, but it is unclear if it helped him in science. Father T1010.

88. As of December 10, 2016, the Student was earning a D in life science and an F in math. P179. However, “Term” or Trimester 2 did not end until March 10, 2017. *Id.*

89. Via email on December 15, 2016, Nurse Holst wrote to the Parents that, “I just wanted to check in to see how the ADHD med trial is working for [the Student] with his classes and if you received any feedback from his teachers or your doctor. He has been very responsible coming in off the bus to take his daily med.”<sup>11</sup> P181.

90. On or about December 16, 2016, a Mid-Trimester 1 Additional Report Card for the Student included comments from Ms. Ainsworth about math class. P180p2. Ms. Ainsworth commented that:

[The Student] has been a bit inconsistent in his work habits since mid-trimester. He comes into class and gets started quicker now, but taking notes or staying focused on the lesson is still a struggle for him. [The Student] continues to take advantage of test revisions but not turning in homework logs is still an area for improvement.

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<sup>11</sup> The record is unclear exactly when the Student began receiving his ADHD upon arrival at IMS in the morning. The reference to the student being “very responsible coming in off the bus to take his daily med” seems to confirm he was receiving medication upon arrival by December 15, 2016. But there is no evidence of, for example, the Parents signing any authorization for administration of the Student’s medication at IMS, as the Mother would later do on January 11, 17. P188p2.

*Id.*

91. Via email on December 17, 2016, the Mother replied to Nurse Holst's inquiry about the Student's ADHD medication. The Mother wrote, "It's actually going really well. Teachers in later periods have said they saw an immediate difference. I think we will continue this routine." P181. Moving the Student's medication to later in the morning when he arrived at IMS made him better able to focus over the last couple periods of the school day. Mother T929-T930.

92. By December 19, 2016, the Student was earning a B in math and LAs, a B- in backyard forests, a C in learning strategies, a C- in social studies, and a D in life science. P182. The Student's grades in LAs and social studies were based on "modified content." *Id.* In math, the Student's progress reflected "accommodations made in the classroom." *Id.*

93. Based on this report, the Mother understood that the Student was not doing grade-level work as of December 2016. Mother T930.

94. By December 31, 2016, the Student was earning Fs in life science and social studies, and a D in math. P183p2.

95. By January 7, 2017, the Student was earning a D in math, and Fs in health, life science, and social studies. P185.

96. On or about January 10, 2017, the Student learned of an opportunity called "Catch-Up Café." P187p2. This appears to be an opportunity for additional help or support for students during the lunch period. *Id.* p3. The Student went to Catch-Up Café at least once because he had a missing assignment. Student T1596-T1597. The Student did not find it helpful because it seemed like more of an opportunity for independent study, rather than additional help or support. *Id.* T1597.

97. In January 2017, the Student switched to an extended-release ADHD medication that he took once a day in the morning. Mother T932. The Mother does not believe this change in medication caused any marked improvement in the Student's grades. *Id.* T933.

98. On January 11, 2017, the Mother signed an Authorization for Administration of Medication at Elementary and Middle School form with the District. This permitted Nurse Holst to administer the Student's ADHD medication upon arrival at school. P188p2.

99. By January 21, 2017, the Student was earning Fs in health, life science, and social studies. P191. Despite the Student's grades, no one from the District contacted the Parents to suggest any different strategies to help the Student, and no one suggested convening an IEP team meeting. Father T104.

100. Via email on January 24, 2017, Ms. Santos informed the Father and Mr. Raff that "The Student has been struggling to be productive in class." P192p1.

101. Via email on January 25, 2017, Mr. Raff informed the Parents and Ms. Santos that:

[The Student's] attitude has changed in learning strategies class as well...when presented with a reading or writing task, he chooses not to participate. Today in class, I gave him time to work on the social studies assignments, but he told me that he wasn't going to work on them...He reiterated that he wasn't going to work on them.

In learning strategies class, as of late, [the Student] has been telling me that he isn't going to complete any work because there shouldn't be any work requirements in the class. He has then followed through with his word by not completing the work.

P193p1. Mr. Raff had an education assistant (EA) in his learning strategies class, and the Student "would often get one-on-one assistance from the EA." Raff T586.

102. Mr. Raff does not know if anyone at the District ever suggested or asked to convene an IEP team meeting to address the Student's changing attitude or his refusal to do work at school. *Id.* T587.

103. Via email on January 25, 2017, Ms. Santos told the Father and Mr. Raff that "I have tried to work with [the Student] in class to complete (his missing assignments) but he is very resistant to working in class." P194p3. Ms. Santos cannot recall why the Student was missing assignments or why the Student was resistant to working in class. Santos T1285.

104. Via email the same day, the Father replied to Mr. Raff, telling Mr. Raff that he wasn't aware the Student was refusing to do assigned work. P194p1. The Father went on to say, "I will also talk to [the Student] about his behavior and choosing not to participate during class. There will be consequences at home if this behavior continues." *Id.*

105. At least once a week, all IMS students received a printout of their missing assignments. Raff T588, See e.g. P195/P201pp4-5. Then, using parent volunteers in the classroom and education assistants, students would work on their missing assignments. T588-T589.

106. By February 2017, the Student was so distracted in learning strategies class that it was just a place for him to socialize. Raff T590. "And so we did attempt to have him work one-on-one outside the classroom or go to a different location with just him and the educational assistant...And they would go with just a printout of missing assignments...to work on those." *Id.* T590. Sometimes the Student and the EA would get assignments done, but Mr. Raff opined that "I don't know that what was being produced out of it resulted in a noticeable grade change." *Id.* T590-T591.

107. By February 4, 2017, the Student was earning Fs in health and life science, and a D in social studies. P196. Despite the Student's grades, no one from the District contacted the Parents to suggest any different strategies to help the Student, and no one suggested convening an IEP team meeting. Father T104.

108. On or about February 7, 2017, a Mid-Trimester 2 Additional Report Card for the Student included comments from Ms. Ainsworth about math class. P197p2. Ms. Ainsworth commented that, "[The Student] has improved his homework completion and quality. The content is getting tougher and he seems to be keeping up well...[The Student]...continues to need multiple reminders or prompts daily to stay on task and focused on tasks." *Id.*

109. By February 11, 2017, the Student was earning Fs in health and life science, and a D in social studies. P198. Despite the Student's grades, no one from the District contacted the Parents to suggest any different strategies to help the Student, and no one suggested convening an IEP team meeting. Father T112.

110. In a letter to the District dated February 20, 2017, the Father requested "a copy of all educational records relating to [the Student]." P200. The Father made this request on the advice of his then-attorney. Father T112.

111. By March 2017, the Father believed the Student was "failing" at school. *Id.* T124. The Father contacted Dr. Gayle Fay at Northwest Neuropsychology Learning and Behavioral Services regarding an evaluation of the Student. *Id.* T747. The Father cannot recall if he contacted the District regarding a reevaluation of the Student before he contacted Dr. Fay. *Id.* The Father cannot recall if he informed the District that the Parents were getting an outside evaluation of the Student before the Parents gave the District a copy of Dr. Fay's evaluation later in the school year. *Id.*

112. Dr. Fay conducted a neuropsychological evaluation of the Student during April and May 2017. P213p3. Dr. Fay reported the results of her evaluation in a report dated June 8, 2017. *Id.* p1.

113. In an email to Principal Adams on April 28, 2017, the Father stated that the Student was still reporting that, "he is continuing to be seated in the back of one or more of his classes. In fact, other than Ms. Ainsworth, he says that all of his other teachers have – at one time or another – been seating him at the back." P203.

114. Principal Adams replied to the Father the same day, stating:

Depending on the class, preferential seating may in fact mean what is perceived as the back of the class. For example, a student who need (sic) regular check-ins might benefit from being closer to the teacher desk or station. With that, I will make sure that I follow up with staff regarding the placement of [the Student] in the classrooms.

*Id.* Principal Adams cannot recall if he followed up with staff regarding the Student's seating in class. Adams T1413. The Father does not recall any follow up with the Parents after this email exchange with Principal Adams. Father T125.

#### *The Student's May 2017 IEP Team Meeting and Individualized Education Program*

115. On or about May 8, 2017, an IEP Meeting Invitation was sent to the Parents, inviting them to an IEP team meeting on May 10, 2017 at IMS. C1pp4-5. The purpose of the meeting was to review the Student's current IEP, review his instructional needs, and discuss annual goal progress. *Id.* p4.

116. By this time, the Student was doing terribly at school. Father T125, Mother T934. Emotionally, the Student was "very upset about school," specifically about homework assignments. Father T125. The Student was experiencing "a lot of self-esteem and depression

issues” at this time. Mother T936. The Mother was also concerned about the Student’s social, and emotional skills, and she shared all this with the District at the meeting. *Id.* T936, T937.

117. There are two exhibits identified as the Student’s May 2017 IEP. P204, D4. After careful comparison of the two exhibits, it is clear that P204 is an earlier, less complete draft of D4. The testimony of multiple witnesses confirms this. Raff T1355-T1356, T1653, T1660, Father T750-T753. It is found as fact that the Student’s final May 2017 IEP is D4.

118. Both of the Parents attended the IEP meeting.<sup>12</sup> D4p1; Father T125, T749, Mother T934, T1072. Mr. Raff, Principal Adams, and Ms. Miller also attended the meeting. D4p1; Raff T591, Adams T1414.

119. Although both Mr. Raff and Principal Adams attended the IEP meeting, apart from review of the IEP (D4) neither of them have any independent recollection of what took place during the meeting. Raff T1354, Adams T1415.

120. Principal Adams attended the IEP meeting as the District representative. Adams T1415. Principal Adams does not know why the Parents’ input for this IEP (D4p4: Parent input form completed by the Mother on April 27, 2015) was not updated for this 2017 IEP. *Id.* T1417.

121. The IEP team members did not have copies of the draft IEP (P204) at the meeting. Father T763, T764, T1453, Mother T937, T938. The Parents were not asked to sign anything at the meeting. Father T764. The signatures on the final IEP (D4) were obtained after the meeting, but the Father cannot recall the circumstances of how the signatures were obtained. *Id.* T749, T844. He signed the IEP to acknowledge, but not agree with it. *Id.* T769.

122. The meeting began at 3:30 pm, and continued until 5:45 or 6:00 pm. *Id.* T761. The Parents expressed their concerns and provided their input “throughout” the meeting. *Id.* T126, T761-T762. No one at the meeting suggested or offered to conduct an FBA. *Id.* T128, Mother T937.

123. The Student’s IEP noted that, “When [the Student] is focused on a given task, he is able to complete it efficiently. However, obtaining focus is a challenge for [the Student].” D4p3. The Parents’ concerns included: “organization, assignment completion and performance on assessments,” and they wanted the Student to “attain academic skills equal to his same-aged peers.” *Id.*

124. The IEP team determined that the Student’s present level of educational performance with respect to his social and emotional skills was “not an area of concern.” *Id.* p5. The IEP team

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<sup>12</sup> Both the Parents testified they were unsure or unclear if this was an IEP team meeting. Father T764, T765; Mother T939, T1072, T1074. This is despite the fact that by this time the Parents had participated in many IEP Team meetings. Father T765. The Parents’ Post-Hearing Brief identifies this meeting as an IEP team meeting. Post-Hearing Brief at p35; Relevant Facts Presented at Hearing #34. It is found as fact that this was an IEP team meeting, and the Parents were more likely than not aware of this.

determined the Student's "fine motor skills are equal to his peers' skills. *Id.* p10. The IEP team determined the Student's "communication skills are equal to his peers' skills." *Id.*

125. The IEP provided for SDI in reading comprehension, written expression, and behavior skills. *Id.* p14. The IEP included annual goals for reading comprehension, writing, and behavior. *Id.* p9.

126. The Student's annual IEP goal for written expression from his May 2016 IEP stated the following:

When given an editing checklist, [the Student] will write in complete sentences and correct sentence fragments and run-on sentences improving his written expression from writing in complete sentences with 38% accuracy to writing in complete sentences with 80% accuracy as measured by curriculum-based measurements over four writes during 12 weeks.

D2p10. By May 2017, the Student had not met the metrics of his goal. D4pp7-8.

127. Despite failing to meet his annual goal, the IEP team determined that the Student demonstrated grade-level skills in the area of written expression and recommended that the focus of the Student's goal be changed. *Id.* p8. The justification for this determination was that the Student demonstrated "the ability to apply periods to simple sentences. He is experimenting with complex sentences and compound sentences, which brought down his overall accuracy." *Id.* p8. The Student was in sixth grade in May 2017.

128. The Student's annual IEP goal for reading comprehension from his May 2016 IEP stated the following:

When given reading materials at his instructional level, [the Student] will accurately determine the theme of a text, including how characters in a story or drama respond to challenges or how the speaker in a poem reflects upon a topic, improving his reading comprehension from accurately determining the theme of a text in 1 out of 3 opportunities to accurately determining the theme of a text, including how characters in a story or drama respond to challenges or how the speaker in a poem reflects upon a topic, in 4 out of 5 opportunities as measured by curriculum-based measurements and teacher-created questions over 3 consecutive data days over 12 weeks

D2p10. By May 2017, the Student had not met the metrics of his goal. D4p7. The IEP team determined the Student's baseline for his new reading comprehension goal was 23% accuracy on reading comprehension assessments based on a passage written at the sixth-grade level material. *Id.* p9.

129. The Student's new annual reading goal stated:

By 05/11/18, when given a reading comprehension assessment based on a passage written at the sixth grade level, [the Student] will independently read the passage and answer the questions, improving reading comprehension from averaging 23% accuracy over two consecutive assessments to averaging 70% accuracy over two consecutive assessments as measured by curriculum-based measures.



*Id.*

130. The Student's new annual behavior goal stated:

By 05/11/18, when given a non-preferred subject matter, [the Student] will independently initiate in-class assignments improving work initiation from initiating an average of 25% of assignments to initiating an average of 75% of assignments over three assessments as measured by student self-monitoring checklist (see attached).

D4p9.

131. The Student's May 2017 IEP discontinued the following accommodations/modifications from his May 2016 IEP:

- Allow for short work breaks;
- Model expectations;
- Provide consistent routines and schedules;
- Give short, concise directions;
- Repeat directions as needed;
- Check-in by end of day for planner completed and assignments/papers in backpack;
- Strategies to decrease environmental stimulation;
- Isolating portions of a test to focus student's attention.

*Compare D2pp11-12 with D4pp10-11.*

132. The *draft* of the Student's May 2017 IEP (P204) included the following modification: "Grading Modification: Pass/Fall grading in lieu of letter grades – consult with special education teacher prior to applying P/F grading." P204p13. This pass/fail option was "vehemently opposed" by the Mother at the meeting. Mother T944. The Student's final May 2017 IEP (D4) did not include this modification. See D4pp10-11.

133. The Student's May 2017 IEP included the following modification: "modified classroom assignments (e.g., off-grade-level, decrease in complexity, decrease in length/amount)." *Id.* p11. The Father understood this modification as the District, "lowering the expectations of [the Student], as opposed to proposing strategies to help him meet typical expectations." Father T134.

134. There was no discussion of Extended School Year (ESY) services for the Student at the IEP team meeting. Mother T946.

135. By the time of the IEP team meeting, Mr. Raff had already tried modifying the Student's curriculum by looking for alternate ways for him to demonstrate his learning. Raff T597. Mr. Raff tried to incorporate technology and giving the Student more choice in deciding how to demonstrate his learning. *Id.* T598. Initially, the Student "got behind the idea...then it kind of trailed off, like the reward system." *Id.* Mr. Raff doesn't know if the Student ever made any progress towards his new annual IEP goal for work initiation. *Id.* T603. Mr. Raff doesn't know if

“we ever got [the Student] to a point where he could actually write down the assignments in his planner and follow the process through to turning in his assignment.” *Id.* T605.

136. Mr. Raff confirmed that when he would modify curriculum, like shortening assignments, the Student was not being graded on the same criteria that his general education classmates were being graded on, and the Student was not producing grade-level work equal to his peers. *Id.* T599.

137. There are 3 Prior Written Notices (PWNs) apparently associated with the May 2017 IEP and IEP team meeting. P204pp20-21, C1pp22-23, D5. P204pp20-21 is an example of a draft PWN Mr. Raff would send parents before IEP meetings. Raff T1357-T1358, T1660. C1pp22-23 contains additional text not present in D5. *Compare* D5p1 “Any other factors that are relevant to the action” with same section in C1p22. It is found that C1pp22-23 is the final PWN associated with the May 2017 IEP and IEP team meeting.

138. The final PWN states in part that, “The contents of [the Student’s] Individualized Education Program (IEP), along with any changes decided upon prior to 5/12/17, will be implemented beginning 5/12/17.” D5p1.

139. Via emails over May 10-11, 2017, Principal Adams told Ms. Winslow that Mr. Raff would provide her with a “checklist” to help the Student organize his binder in her homeroom. Ms. Winslow assured Principal Adams that she would “be sure to provide whatever guidance [the Student] may need to be successful.” Mr. Raff sent the checklist to Ms. Winslow, and Principal Adams suggested that they share with the Parents that Ms. Winslow would be using the checklist in her homeroom. P208pp1-2.

140. There is conflicting evidence regarding the effectiveness of providing the Student with the checklist. Ms. Winslow recalls working with the Student 1:1 and going through the checklist. Winslow T989. She recalls the Student used the checklist as part of his “binder organization routine” through the end of the school year, with at least some degree of success initially. *Id.* T989-T991. The binder organization routine was the Student using the checklist along with his Binder/planner. *Id.* T991. Mr. Raff opined the Student demonstrated only “minimal participation” with using the checklist to help him organize his binder. Raff T609. Given Mr. Raff was the Student’s special education case manager and special education teacher, it is found that he more likely than not had a broader knowledge and experience with the Student upon which to base his opinion. It is found as fact that providing the Student with the checklist had only a minimal impact on his progress on helping him use his binder/planner.

141. Via email on May 17, 2017, Mr. Raff informed the Parents that Ms. Winslow had initiated the checklist with the Student. P210. Mr. Raff went on to tell the Parents that he forgot to give them a procedural safeguards notice and the District’s isolation and restraint policy, as well as forgetting to have them sign the Student’s May 2017 IEP. *Id.* Mr. Raff asked the Parents to “return the two signature pages.” *Id.*

142. The Parents received a procedural safeguards notice many times during prior IEP meetings in elementary school. Mother T1106, T1116. The last time the Parents likely received the notice was at the Student’s fifth-grade IEP meeting. *Id.* T1106. The District would always ask

for the notice back at the end of the IEP meetings so it could be recycled if the Parents did not want to keep the notice. *Id.* T1115-T1116. They were not “forced” to give it back. *Id.* T1116. The Parents “probably” kept a copy of the procedural safeguards notice from elementary school. *Id.* The Parents read a copy of the procedural safeguards notice when the Student was first determined eligible for special education. *Id.*

143. By June 2017, the Student was feeling “pretty bad” about school. Mother T951. “It was hard to even just physically get him there...he was pretty down on himself. *Id.* T951-T952. In June, no one at the District suggested convening an IEP team meeting. *Id.* T952.

#### *The Student’s Neuropsychological Evaluation – Dr. Gayle Fay*

144. On June 8, 2017, Gayle Fay, Ph.D., issued the report of her neuropsychological evaluation of the Student. P213.<sup>13</sup> Dr. Fay’s Curriculum Vitae (P360) and her testimony at hearing establish her education, training, and experience to provide expert testimony regarding pediatric neuropsychology, her evaluation of the Student, the results of the evaluation, and her opinion regarding any implications of those results on the Student’s learning. See T225.

145. The Parents hired Dr. Fay to do the evaluation because, “we were so concerned that the accommodations he had were not adequate for what we were seeing.” Mother T1105. Dr. Fay first met the Parents during the evaluation intake in March 2017. Fay T226.

146. The purpose of the evaluation was to determine the Student’s neurocognitive status and develop a “comprehensive intervention plan.” *Id.* T227; P213p2. Dr. Fay conducted the evaluation with the assistance of her staff. Fay T226. The evaluation totaled ten hours set across five days. *Id.* T230-T231; P213p3. The results of the evaluation are valid. Fay T231.

147. The Student’s Full Scale IQ (FSIQ) was assessed at 113, which falls at the 81<sup>st</sup> percentile. *Id.* T234; P213p5. However, the Student’s “need for time on many of the more complex items reflects a reduced speed of processing, and that needs to be considered in terms of organizing the amount of time that he spends on in-class assignments or tests.” Fay T235-T236.

148. The Student was assessed with average verbal abilities on the Wechsler Intelligence Scale for Children-V (WISC-V). *Id.* T232. The Student is “absolutely age appropriate in terms of his verbal skills at this time.” *Id.* T236. The Parents did not raise any concerns regarding the Student’s expressive language or social communication skills at the time of the evaluation. *Id.* T286-T287. However, given the Student carried a diagnosis of PDD-NOS (Pervasive Developmental Disorder – Not Otherwise Specified) and autism (P213p19), Dr. Fay “would assume” that any concerns for expressive language and social communication are “incorporated into that diagnosis.” *Id.* T287.

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<sup>13</sup> Dr. Fay would later issue an amended neuropsychological evaluation report on June 21, 2017. The amended report included the results of the Social Skills Improvement System that were not included in her June 8 report. Fay T285-T286. The amended report is not an exhibit of record. Neither party asserted the amended report materially changed Dr. Fay’s evaluation of the Student, or her opinion of the impact of the Student’s disabilities on his education.

149. The most appropriate assessment of the Student's reading comprehension was the Gray Oral Reading Test-5 (GORT-5). P213p7. Measuring the Student's reading comprehension as free recall, where he cannot go back and review a passage, the Student's reading comprehension is "severely impaired." Fay T238 P213p18. "This is the most appropriate measure of comprehension since it mirrors the type of free recall that will be expected in examination and discussion situations." *Id.* p7. Measured as free recall, the Student was reading at a "beginning third-grade level, which is far below his grade placement level." Fay T238, T249. "[The Student's] impairment...would suggest that he has learned reading as 'word calling' in lieu of actually processing the information." *Id.* T239; P213p7. This means the Student, "can accurately read the words on the page, but he's not referencing the meaning of that information." *Id.* T239. The Student's "comprehension does not support demonstration of competence in subject area classes." P213p8. "We know from the (Wechsler Individual Achievement Test-III) WIAT-III that he's able to take in this information, but we also know from the GORT that he can't freely recall it, so he's a kid who can work very hard to get ready for a test, but (is) not able to execute it very well at all." Fay T242-T243, T262. Based on results from the WIAT-III, if the Student is "able to look back he can perform at grade level." *Id.* T241. Unless tests at school are open book tests, the Student "can be expected...to have great difficulty...answering the questions...In class discussions...he cannot freely recall material." *Id.* T238-T239. The Student should have open-book tests or a word bank for tests. *Id.* T241.

150. Dr. Fay assessed the Student's affective domain using the BASC-II Self-Report form. P213p13. Dr. Fay concluded that the Student was "showing significant levels of stress and distress." *Id.* p14. He had a negative attitude towards teachers. *Id.* He presented himself as anxious and having significant attentional problems. *Id.* Based upon the Parents' BASC-II reports of the Student, Dr. Fay concluded that the Student has "significant problems" with adaptability and social skills, which would be expected with a diagnosis of PDD-NOS. *Id.* p15.

151. Nikolaus Hoffman is a former District school psychologist. Hoffman T373. He holds a bachelor's degree in psychology, a specialist degree in school psychology, and an educational administrative certification. *Id.* He was certified to work as a school psychologist in Washington State in 2005. *Id.* He was employed as a school psychologist at IMS during the 2017-2018 SY. *Id.* T373. He reviewed Dr. Fay's evaluation in October 2017 as part of a District reevaluation of the Student. P245. After reviewing the results of the GORT-5 administered to the Student, Mr. Hoffman concluded that all of the Student's scores on the GORT-5 were in the "Average" range, except one which was in the "Low Average" range. P245p17. This materially conflicts with Dr. Fay's analysis of the Student's GORT-5 scores. Mr. Hoffman and Dr. Fay also disagreed about how to interpret the results of the Behavior Assessment System for Children-II (BASC-II) from Dr. Fay's evaluation of the Student. Mr. Hoffman relied on the T-scores from the BASC-II. P245p11. Dr. Fay relied upon the percentile scores from the BASC-II. P213pp14-15.

152. Dr. Fay conceded that a T-score between 40 and 60 on the BASC-II is considered within the average range. Fay T288. But Dr. Fay persuasively explained that with "the standardization of the BASC, they reorganize the percentiles for the T-scores," and that is why she relied upon the BASC-II percentile scores. Fay T289. After careful review of the evidence including the education, training and experience of Mr. Hoffman and Dr. Fay, it is found that Dr. Fay's opinions regarding the analysis of the Student's GORT-V and BASC-II scores warrant greater weight than

Mr. Hoffman's opinions. It is found that the Student's reading comprehension at the time of Dr. Fay's evaluation was severely impaired.

153. When the Student's math skills were assessed in 2012 he scored in the "superior" range at the 98<sup>th</sup> percentile. P213p9. Dr. Fay concluded that, "[the Student] is now, in computational skill, at an average level...This is an area of considerable concern. [The Student] is a poor fit for math problems which require considerable reading and writing. He does not have sufficient reading comprehension to manage story problems." *Id.*

154. Dr. Fay assessed the Student's spelling and written language. P213p8. She concluded that:

While [the Student] is somewhat proficient in writing sentences, he has severe problems when attempting to write even a short essay. His work is considerably less than legible. It is also the case that it took him nearly six minutes to write five lines, and those lines are virtually eligible (sic) with letter formation not being automatic for him. He also struggles with mechanics, usage, spelling, and sentence structure.

*Id.* Dr. Fay concluded that the Student has "severe dysgraphia," and that "Elaborated writing is extremely difficult." *Id.* p18.

155. The Student's everyday attention, e.g. listening to a teacher present material orally in class, was assessed at the 1<sup>st</sup> percentile. Fay T254. "So when [the Student] has a stream of information, in fact he misses huge chunks of that information." *Id.* T254. In order to keep up with "normal pacing," the Student "just omits (information) because he's trying to keep up but is unable to do so." *Id.* T258. This reflects "some fairly serious problems in this ability to synchronize his uptake and output of information with the normal pacing." *Id.* T258. The Student has "severe auditory attention problems." *Id.* T263; P213p11. And the Student has "significant issues with retrieval of verbal information." P213p12.

156. Dr. Fay concluded that the Student "is a strong and capable visual learner, and this needs to be incorporated into his educational program." *Id.* p10.

157. Dr. Fay assessed the Student's executive functioning using multiple tools. *Id.* pp16-17. Summarizing the results of these assessments, Dr. Fay concluded that the Student has "significant problems in the areas of organization and executive and study skills." *Id.* p17. The Student can be expected to have severe problems filling out a planner. *Id.*; Fay T275.

158. In summarizing the results of her evaluation of the Student, Dr. Fay concluded that the Student has severe dysgraphia, which is "highly disruptive to his demonstration of competence in written language." P213p18. His dysgraphia could be expected to be disruptive of laying out math problems. *Id.* The Student has little knowledge of sentence structure, mechanics, usage, and punctuation, and he is severely impaired in reading comprehension when he cannot look back at a passage. *Id.* He has significant Attention Deficit Disorder and is unable to sustain vigilance. *Id.* He is unable to synchronize uptake and output of information processing at a normal pacing. *Id.* The Student has "very serious attentional problems. Fay T291. He has auditory processing issues, and his executive, organization, and study skills are problematic. P213p18.

He has significant issues with anxiety, depression, and dysregulation. *Id.* “Affectively, [the Student] is at significant risk, and he is being requested to return to clinic for clinical interview.” *Id.* p19.

159. Dr. Fay’s diagnoses for the Student were:

- Autism Spectrum Disorder (based on prior PDD-NOS diagnosis)
- Specific Learning Disability – Reading, Written Language, Math
- Developmental Coordination disorder (severe dyspraxia/dysgraphia)
- Pragmatic Social Communication Disorder
- Attention Deficit Disorder (includes executive skills) – Severe
- Provisionally: Generalized Anxiety Disorder

*Id.*

160. Based on the results of the Student’s evaluation, Dr. Fay made the following recommendations for the Student’s education:

- Utilization of the Anita Archer Rewards program to teach reading comprehension, particularly in subject areas;
- Coaching in utilizing the SQ3R technique;
- Accommodations which allow him to have open book tests or to have a work bank;
- Access to books read to him: this would include Kindle with Whispersync for literary reading, enrollment in the Library for the Blind and Dyslexic as well as access to text-to-speech programs, such as the WYNN program;
- Assistive technology evaluation with [the Student] using a tablet or a laptop for all written language tasks;
- Note-taking cannot be considered to be a possibility;
- Utilization of the Anita Archer Sentence Refinement program;
- Allowing [the Student] to have a reader...on all tests and being allowed to dictate his tests;
- Reevaluation of his written language skills in six months;
- Utilization of the Reflex computer program to develop strong capabilities in accurate retrieval of math facts;
- ST math, a computer program, to amplify math problem-solving skills
- Utilization of the consumable Singapore Math program to consolidate performance in math and also the computer-based Apex program;
- Reevaluation in math in six months;
- Use of a study skills or AVID class with that teacher not only teaching skills, but monitoring their application within the framework of the classroom setting;
- Use of a late-afternoon check-in to make sure that all information is in [the Student’s] planner and that it can be read and understood.

*Id.* pp7-10, p17.

161. Based on Dr. Fay’s advice, the Parents believed the Student’s IEP needed to be amended, and the Student needed to be reevaluated. Father T147. Via email on June 9, 2017, the Father

informed Principal Adams and Mr. Raff that the Parents recently had the Student evaluated by a neuropsychologist, and the results indicated the Student's IEP needed to be amended. P215. The Father requested a reevaluation consisting of a review of Dr. Fay's report, and an "IEP meeting" to consider the results of Dr. Fay's report. *Id.* Given the end of the school year was approaching, the Father requested an "expedited review" of Dr. Fay's report. *Id.* The Father offered to provide them with a copy of Dr. Fay's report, but was concerned about sending it electronically without using encryption due to the sensitive nature of the content. *Id.* He offered to send the report as a password-protected ZIP file, or by providing them access to a restricted Google Drive, and asked them which method would work best for them. *Id.*

162. This was the Parents' first request for an "IEP" meeting during the 2016-2017 SY. Raff T1363, T1616-T1617.

163. A short time later still on June 9, 2017, the District requested the Father provide it with an e-copy of Dr. Fay's report. P217p2. Minutes later, the Father replied that he was sending the report as a password-protected attachment to his email. *Id.* The Father sent his email with Dr. Fay's report as an attachment almost immediately, and Mr. Raff replied, stating, "We'll look it over and get back to you soon." P216. It is found that the Parents provided the District with an e-copy of Dr. Fay's evaluation report on June 9, 2017.

164. Via email on June 14, 2017 to Principal Adams and the District's director of secondary special services, Lashae Lee, Mr. Raff stated:

The Parents of [the Student] have requested a meeting on Monday, 6/19. The purpose of the meeting is to discuss the results of a recent neuropsychological evaluation and the implications on his current IEP. I feel that it would be more valuable to meet prior to school starting next school year...what are our legal obligations for holding the meeting on the 19<sup>th</sup>?...Whenever we meet, it would be helpful for a representative from Admin. to be present to assist with problem solving.

P219p2. June 20, 2017 was the last day of the 2016-2017 SY. D15p1. By the end of the school year, the Father did not believe the District was offering the Student an appropriate education. Father T150. This impacted not just the Student's grades, but also his "emotional well-being." *Id.* The Student was feeling "pretty down," and his emotions were "negative." *Id.* T144.

165. On June 21, 2017, Mr. Raff completed a progress report on the Student's IEP goals that were implemented after the May 2017 IEP meeting. Raff T1360; P220. Mr. Raff determined that the Student was already making progress on his writing and reading goals. *Id.* Mr. Raff determined the Student had not yet demonstrated progress on his behavior goal. *Id.*

*June 21, 2017 Meeting with the Father, Principal Adams, and Mr. Raff*

166. On June 21, 2017, the day after the school year ended, the Father met with Principal Adams and Mr. Raff. Raff T622, Father T152; P221/C1p1.

167. The Father believed the Mother also attended the meeting. Father T152. However, the Mother said she did not attend this meeting. Mother T954, T1073; See P217p1 (The Mother was in London for a new job she just started.). It is found that the Mother did not attend this meeting.

168. There was no general education teacher present at the meeting, and the Father did not sign consent to excuse a general education teacher. Father T152, T154, Raff T621, T1655. The purpose of this meeting was to talk about Dr. Fay's report. Father T766, Raff T630, T1364. Both Principal Adams and Mr. Raff had copies of Dr. Fay's evaluation report at the meeting. Father T153, Raff T1619-T1620.

169. Mr. Raff did not consider this meeting to be an IEP team meeting, but changes were made to the Student's IEP. Raff T619-T620, T621, T623. While Mr. Raff did not consider this an IEP team meeting, "as a result of the meeting, looking at the different results and the concerns that were brought up at that time, it made sense to add some information to the IEP." *Id.* T621. Mr. Raff characterized this as "the three of us got together and did some problem-solving." *Id.* T622. During the meeting, "we went over the recent outside evaluation and we just looked at what recommendations were made and based on that we added a few accommodations to the IEP." *Id.* T1619-T1620.

170. Mr. Raff understood that reviewing an outside evaluation and adding accommodations to an IEP are IEP Team functions. *Id.* T1655.

171. Via an email to District staff on June 21<sup>st</sup> after meeting with Principal Adams and the Father, Mr. Raff stated he had to add accommodations to the Student's IEP, and asked that the Student's IEP be "unlocked." P224pp1-2. One of the District staff was Samantha McGarry, a District secondary special education support specialist. *Id.* The Student's IEP was unlocked, and Mr. Raff made changes to the Student's IEP by adding "a few accommodations." Raff T623-624, T1622.

172. Later on June 21, 2017, Mr. Raff sent an email to the Parents and Mr. Adams, stating in part:

After our meeting today, I added the accommodations to [the Student's] IEP. You can find the updated accommodations on page 12 and page 13. Also, I added a note to the Prior Written Notice section on page 19: "It is recommended that [the Student] have a checklist to be completed in his learning strategies class. The checklist should address recording, or taking a picture of, after school homework help locations and checking staff websites when subject areas are left blank in his planner."

P221/P223/C1p1.

173. Mr. Raff attached two documents to his email. The first attachment was a copy of the Student's May 2017 IEP with the accommodations added by Mr. Raff, and a PWN dated May 10, 2017, which included the recommendation for a checklist for the Student. *Id.*, C1pp4-23.

174. The second attachment was a copy of the June 21, 2017 IEP progress report. Father T1452.

175. On June 23, 2017, Ms. McGarry replied to Mr. Raff's email asking to unlock the Student's IEP. P224p1. In her email Ms. McGarry stated, "Accommodations are added through an IEP Amendment unless this is a housekeeping correction that needed to be made to an IEP written in June." *Id.*



176. Mr. Raff replied to Ms. McGarry on June 26, 2017 stating, “Thanks – it was a June IEP that needed some touching up.” *Id.* Given all the evidence, it is found that Mr. Raff’s reference to a “June IEP” was in fact a reference to the Student’s May 2017 IEP to which he added accommodations after meeting with the Father and Mr. Adams on June 21, 2017.

177. On August 1, 2017, the District received a letter from the Parents dated July 31, 2017. P226/D4. With their letter, the Parents informed the District that they intended to unilaterally place the Student at Yellow Wood Academy (YWA) for four core academic classes (math, science, social studies, and language arts) and seek reimbursement of tuition and all related expenses from the District. *Id.* It was the Parents’ intent to “dually enroll” the Student in the District and YWA. *Id.* The Parents also noted that the Student’s “academic and emotional functioning had deteriorated to the point where he began to refuse work this past year.” *Id.* The Parents’ letter closed by stating, “We remain open to considering all programs the District proposes.” *Id.* The Parents sent the District this letter on advice of their then-attorney. Father T156.

178. The Parents’ expectation was that the District and YWA would somehow “partnership” to provide all of the SDI in his IEP at IMS, while at the same time delivering all his “academics” at YWA. Mother T1092-T1094.

#### *Yellow Wood Academy*

179. YWA is a nationally accredited, non-profit private school serving grades K-12 located on Mercer Island, Washington. P358p3. It is authorized to award high school diplomas. Small T476. It is approved by the Washington State Office of Superintendent of Public Instruction as a Non-Public Agency (NPA).<sup>14</sup> *Id.* T458.

180. YWA typically serves between 80 and 120 students at any given time. *Id.* T475. Of those students, approximately 40% do not have a disability, and approximately 60% have a disability. *Id.* Some Students are placed at YWA by their resident school districts and served under IEPs, while other students are placed by their parents. *Id.* T470-T471. YWA provides opportunities for social interaction between the students, including small-group instruction, clubs, and overnight events throughout the school year. *Id.* T473-475. YWA has experience serving students with ADHD, executive functioning challenges, anxiety, autism spectrum disorder, and social functioning challenges. *Id.* T476-477; P358p7.

181. Instruction at YWA is typically 1:1, with one teacher instructing a single student. Small T472, Marshall T321. There is also some “small group” instruction, where a single teacher instructs 2-3 students. Small T473. Instruction at YWA is developed for specific students. *Id.* T478, T483. YWA does not provide “communication services” or “motor services.” *Id.* T502.

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<sup>14</sup> The transcript of the hearing erroneously uses the acronym “MPA.” See e.g. Small T458. However, in the context of this hearing it is clear Ms. Small was referring to a Non-Public Agency (NPA).

182. Susan Small has been employed at YWA since 1988.<sup>15</sup> *Id.* T458. She holds a bachelor's degree in history and educational teaching. *Id.* Ms. Small has not been certificated as a teacher in Washington State since 2001 or 2002. *Id.* T503-T504. She has never taught or instructed the Student at YWA. *Id.* T478, T483. She served as the Student's "case manager" and "program developer" at YWA. *Id.* In that capacity, Ms. Small functions as the point of contact with the Parents, disseminating information from them to the Student's teachers, and then working with the teachers to develop expectations for his classes. *Id.* She also works with the Parents to pick and design the Student's classes. *Id.* To her knowledge, none of the Student's teachers during 7<sup>th</sup> grade at YWA are certificated special education teachers. *Id.* T487; P278.

183. Ms. Small opined that YWA was providing the Student an appropriate education. *Id.* T462. However, after review and consideration of Ms. Small's education, training, and experience, it is found that she does not have the qualifications to accord her opinion any weight with respect to whether or not YWA was providing an appropriate education under the IDEA.

#### *Grading at Yellow Wood Academy*

184. Grades at YWA are not based on standardized assessments of grade-level content. Small T506. YWA does not have one uniform grading standard across all classes. *Id.* T494. "It's often determined by the teachers." *Id.* T494-T495. Grades are based on teachers' assessments. *Id.* T506.

185. John Marshall is one of the Student's at YWA. Marshall T322. Mr. Marshall gave extensive testimony regarding grading at YWA. *Id.* T367-369. Grading standards are "individualized" to the student, and determined by the teacher. *Id.* T363, T365. You cannot infer that a student at YWA in a seventh-grade LAs class is being graded on seventh-grade level material. *Id.* T363, T368-T369. Mr. Marshall was "not comparing (The Student) to 7<sup>th</sup>-grade standards because he wouldn't be successful at that." *Id.* T364.

186. It is found that the Student earned grades based upon modified content and individualized standards while at YWA. There is no reliable method by which to compare the grades the Student earned at YWA to recognized grade-level standards for middle school students in Washington State public schools. This finding is made because it is material to the Parents' concerns regarding the District's use of modified grading and/or modified content for the Student at IMS.

#### *August 29, 2017 Meeting with the Mother, the Student, Principal Adams, and Mr. Raff*

187. The Mother and the Student met with Principal Adams and Mr. Raff at IMS on August 29, 2017. P228/D7, Mother T956. The Mother took extensive notes of the meeting. P229; Mother T962. There was no general education teacher at the meeting. *Id.* T957; P229p1.

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<sup>15</sup> The Parents' witness list identifies Ms. Small as the "Vice-President & Director of Student Services" at YWA. However, neither party questioned her at hearing to identify her current position at YWA.

188. The Father initially testified he also attended this meeting. Father T161. However, after reviewing the Mother's notes from the meeting (P229), he was unsure he attended. *Id.* T167. Finally, the Father confirmed that he did not attend the meeting. *Id.* T781-T782.

189. The meeting began with Principal Adams saying he was prepared to talk about a full-day schedule at IMS for the Student, and that he was unable to give the Parents a final decision on what the District was going to do about private school. P229p1. Mr. Adams conceded that as the district representative at an IEP team meeting, he would not have the authority to commit the District to paying for a private school. Adams T1426.

190. This was not an IEP team meeting. Mother T956, T957. This was a meeting to talk about "scheduling" because the Parents had already decided to "take [the Student] to school for a half-day." *Id.* T956; P229p1. The meeting participants discussed "class options" for a half-day schedule at IMS for the Student. Mother T957.

191. Dr. Fay's report was not reviewed or considered at this meeting because the District would first have to complete a reevaluation of the Student. Raff T636. The Parents' request that the District pay for the Student to attend YWA was not discussed at this meeting. Mother T957.

192. Mr. Raff authored a PWN dated August 29, 2017, and sent it to the Parents. Raff T625, T626; P228/D7. Throughout the PWN, Mr. Raff kept identifying and referencing a meeting of "[the Student's] IEP team. P228/D7. However, Mr. Raff could not with confidence identify any IEP meeting associated with this PWN. See generally Raff T627-T629. The Mother believes this PWN is associated with an IEP meeting that would occur later on September 5, 2017. Mother T961.

193. Ms. Lawson opined that the misleading date on this PWN (8/29/17) which predates the actual IEP team meeting date (9/5/17) is likely due to the IEP Online software program the District used at that time. IEP Online would "prepopulate" dates on multiple forms or documents, including PWNs and meeting invitations, using the date when an IEP is first "opened" in the software program. Lawson T1185-T1186. Most likely Mr. Raff "opened" the Student's IEP on August 29, 2017, and IEP Online used that date to prepopulate the date on the PWN. *Id.* Unless Mr. Raff went into IEP Online and manually changed the date on the PWN, IEP Online would continue to use the opening date of the IEP for the PWN. *Id.* After review of the evidence, it found that this PWN is associated with the IEP team meeting held on September 5, 2017, even though it is dated August 29, 2017.

#### *The Student's September 2017 IEP Team Meeting*

194. An IEP team meeting was held on September 5, 2017. P231<sup>16</sup>. In attendance were the Parents, Principal Adams, Mr. Raff, Ms. Miller, Mr. Hoffman, and Melissa Madsen, the then-District executive director of special services. P231; Father T168, Mother T967, Hoffman T376, Adams T1428, Raff T641-T642.

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<sup>16</sup> P213 are the Mother's notes from the September 5, 2017 meeting. Mother T967.

195. Other than recalling he was present at the meeting, Mr. Raff has no independent recollection of what was discussed at the meeting. Raff T642. Mr. Adams recalls attending the meeting, and based on his review of P237 can recall the topics that were discussed at the meeting. Adams T1428. However, he cannot recall any specifics or details of those topics. *Id.*

196. The Parents asserted at hearing they did not believe this meeting was an IEP team meeting. Father T177-T178, Mother T967-T968. By this time, the Parents had many years' experience attending IEP team meetings for the Student. The composition of the attendees supports finding this was an IEP team meeting. The PWN the Parents received after the meeting (P228/D7, misdated 8/29/17) consistently identified this meeting as an IEP team meeting. The matters discussed at the meeting (See P231), are manifestly matters that require consideration by an IEP team. After considering all the evidence, it is found that the Parents' asserted belief is not credible.

197. Ms. Madsen opened the meeting by telling the Parents the District was aware of their request for private school reimbursement, but that payment was not necessarily on the table at that time. P231p1, Mother T999. Ms. Madsen told the Parents that the District would not provide any SDI for the Student in conjunction with YWA, and the District would not meet with YWA to discuss special education services. P231p1. Ms. Madsen told the Parents that the next step would be to get their consent to initiate a reevaluation of the Student, after which the District would have 35 days to evaluate the Student. *Id.* p2; Mother T999. After that, the District and the Parents would meet to discuss the Student's new proposed IEP based on Dr. Fay's feedback. P231p1.

198. When the Mother pointed out that the Parents had provided the District with a copy of Dr. Fay's evaluation report at the end of the last school year, and asked Ms. Madsen why the report had not been taken into account back then, Ms. Madsen replied that it was because the Parents had not requested tuition reimbursement the prior spring. *Id.* p2.

199. Given the new school year started the next day, the Parents finally agreed to place the Student at IMS for 2 hours per day. *Id.* p3. The Student would take health class and learning strategies class at IMS. *Id.*; Father T171-T172. The Student would receive his SDI for his behavior goal at IMS. Hoffman T380.

200. Although the date is not certain from the record, after the IEP meeting Mr. Raff authored and sent the Parents a PWN. P228/D7. As found above, although dated August 29, 2017, this PWN is associated with the September 5, 2017 IEP team meeting. The PWN proposed to change the Student's IEP "due to enrollment at private school four periods a day." P228/D7p1. The PWN proposed the following action:

"[The Student's] IEP team will be updating his re-evaluation and...(IEP) to reflect new information from an outside evaluation completed by Gayle Fay...on June 8, 2017. The team will reconvene to discuss the implications of the new information on [the Student's] program."

*Id.* The reason for the proposed action was described in part as:

[The Student's] IEP team convened to receive information from parents regarding his enrollment in a private school four periods per day and to initiate the update of [the

Student's] re-evaluation and IEP. [The Student's] parents have elected for [the Student] to receive specially designed instruction in the area of behavior and are opting for [the Student] to forgo receiving services in writing and reading comprehension...Based on the findings of the new evaluation, the IEP team will consider the parents' input and determine a recommendation for [the Student's] placement."

*Id.* Finally, the PWN stated that, "The school team rejected the request for funding at this time. The team will consider [the Student's] placement at the private school based on the findings of the new evaluation." *Id.*

201. Although not present at the August 29, 2017 meeting, Ms. Lawson interprets the language in the PWN stating "[The Student's] IEP team will be updating his re-evaluation and...(IEP)," as the District "initiating" a reevaluation of the Student. Lawson T1237.

*2017-2018 School Year: Seventh Grade at Issaquah Middle School and Yellow Wood Academy*

202. The first day of the District's 2017-2018 SY was September 6, 2017. D15p2. In an email to IMS staff on the first day of school, Principal Adams confirmed that the Student would be taking his "core classes" at YWA, and would attend IMS for 3<sup>rd</sup> and 4<sup>th</sup> periods, and lunch. P232p1.

203. The Student began the school year taking two classes at IMS in the morning, and four classes (math, science, social studies, and LAs) at YWA in the afternoon. This continued until the Parents finally withdrew the Student entirely from the District. See P226/D6; Father T172, T173, T179, T180; Lawson T1231. The Parents transported the Student to and from both schools, a total of 31 miles per day. Father T172-T173.

204. The Father was spending no time working with the Student on homework because the Student "wasn't doing homework at that time from Yellow Wood Academy." *Id.* T188. "[The Student] was receiving one-on-one instruction at Yellow Wood Academy...so there wasn't a need for the homework." *Id.*

205. The Student's IEP was not amended when he started attending both IMS and YWA. Father T174, T179. Ms. Lawson understands that the Parents were declining the Student's SDI for reading comprehension and writing at IMS. PWN P228/D7; Father T789-T790. Given her understanding, Ms. Lawson initially testified she does not know why the Student's IEP was not amended. Lawson T1258-T1259. However, a short time later Ms. Lawson testified that when students are dual-enrolled and parents choose to access only some services at a District school, "we don't typically" amend the student's IEP because the District needs "to make sure that the full offer is on the table." *Id.* T1262. That way, if parents were to return a student full-time to the District, the un-amended IEP could be implemented. *Id.* It is found that Ms. Lawson's testimony on the question of why the Student's IEP was not amended at the start of 2017-2018 SY is not credible.

206. John Marshall was the Student's seventh-grade LAs teacher at YWA. Marshall T322. He worked primarily 1:1 with the Student. *Id.* T321. Mr. Marshall described 2017 as a "train wreck" for the Student. *Id.* T328. He appeared "physically worn out" from attending both IMS and YWA. *Id.* T328, T348. The Student was "struggling to summarize a paragraph." *Id.* T333. The Student was able to work with him for five to ten minutes at a time, and then they would have to break for

the same amount of time before returning to a task. *Id.* T334. The Student could read a page of high-interest material aloud to him, and then the Student could not summarize what he just read. *Id.* T325. The Student has “challenges” with focus, attention, task completion, working memory, and organization. *Id.* T325. However, by January 2018, the Student was able to work with him for up to 30 minutes. *Id.*

207. The Student did on occasion refuse to participate with Mr. Marshall during instruction. *Id.* T338. When that happened, Mr. Marshall had the flexibility to take a five or ten minute break, “circle back” with the Student and see where they were. *Id.* T338. This was effective so long as they were working on a task that highly interested the Student. *Id.* By March 2018, the Student was “doing pretty darn well” in his LAs class. *Id.* T351.

208. Kyle Tatro was the Student’s seventh-grade health teacher at IMS. Tatro T683. In his class, the Student was quiet; he stuck to himself and typically did not engage in any coursework. *Id.* T683-T684. The Student was “never really...able to turn any assignments in.” *Id.* T684. Mr. Tatro provided accommodations for the Student in his class, including positioning himself near the Student in class, providing reminders, checking in with the Student, shortening work assignments, and providing extra time for testing. *Id.* T685-T687. The Student received an F in health class for the first trimester, but Mr. Tatro cannot recall why he received the F. *Id.* T691, T692.

209. Julia Weed is a general education teacher at IMS. Weed T1482. Ms. Weed was one of the Student’s seventh-grade teachers at IMS, first for LAs and then after a schedule change, for social studies.<sup>17</sup> Weed T1483. Ms. Weed does not know why the Student’s schedule was changed. *Id.* T1494.

210. The Student “only rarely” attended her LAs class. *Id.* T1485. Ms. Weed recounted that:

I was given to understand that [the Student] was showing some pretty extreme reluctance to be a part of classes due to some adverse feelings about school and some anxiety on his part and that he was having trouble making the transition back into school after having taken sometime to, I think, attend a different school.”

*Id.* T1485-T1486. After the Student switched to her social studies class, “if he did appear in my class, it would be maybe one or two days.” *Id.* T1483-T1484. She did not mark the Student present in her social studies class because, “when I began instruction and throughout the entirety of the instructional period, [the Student] did not appear. He was either present at school but not present in the class or he was simply not present.” *Id.* Ms. Weed did not always know where the Student was when he was not in her classes. *Id.* T1486.

211. Ms. Weed would try to check in with the Student’s 1:1 paraprofessional to ask if the Student had arrived at school, “and oftentimes on days where he had arrived at school, he would be in the library.” *Id.* Ms. Weed made “suggestions for things to work on in the library...I would

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<sup>17</sup> The Student’s schedule change that placed him in Ms. Weeds’ social studies class occurred with the start of the next trimester after March 16, 2018. See P317p2.

make suggestions to his paraprofessional, but I was not aware of exactly what he would be working on at any given moment.” *Id.* Ms. Weed provided the Student with a list of books in a seventh-grade “book club unit” to read, but the Student never choose one as far as she can recall. *Id.* T1486-T1487. The Student struggled to finish homework assignments in her classes. *Id.* T1943-T1944.

212. On September 9, 2017, the Parents signed a District Reevaluation/Consent form. Mother T1003, T1086; P233p2/D8p2. The reevaluation was requested by the Student’s IEP team because the team “wanted to include data contained within a recently completed private psychological evaluation which may be pertinent to Special Education (SE) eligibility, services, and/or placement. P233p1/D8p1.

213. The Parents did not identify any areas for the reevaluation over what the form already identified because they believed Dr. Fay’s evaluation was “very comprehensive” and they did not see a need for additional data. Father T783, Mother T1088. The Mother agreed to the reevaluation because the Parents were trying to be “cooperative” and do whatever the District asked them to do. Mother T1003-T1004, T1088.

214. Via email to Mr. Raff and staff on September 10, 2017, Christie Santodomingo, the Student’s seventh-grade earth and space science teacher at IMS, said she had not yet received a copy of the Student’s IEP and asked to have a copy emailed to her. P235. Mr. Raff received the email. Raff T637.

215. On September 11, 2017, the District received the Parents’ consent for the Student’s reevaluation, apparently after which a handwritten notation was added. D8p2. The handwritten notation was “RECEIVED: 9-11-2017 35 DAY TIMELINE: 10-30-2017.” *Id.*

216. Via email to Mr. Tatro on September 15, 2017, Kathryn Harbel, the Student’s learning strategies class teacher (See P244), wrote:

I just wanted to check in and see how [the Student] is doing. I am getting ready to start implementing some goal setting tracking and potential behavior tracking sheets but really wanted to get a heads up on how things are going. I know it is early, but would you mind letting me know how he is truly doing? Be very honest. Is he on task? Disruptive in any way? Refusing to work or avoiding? What behaviors (good or bad) are you seeing?

P239 (emphasis in original). Mr. Tatro replied via email on September 20, 2017, stating that “[the Student] is slow to start individual work and needs to be promoted to begin often. Work is often redacted to accommodate and encourage him to start. He often is given classroom notes. No behavior issues.” *Id.*

217. In a letter to Ms. Madsen dated September 17, 2017, the Parents thanked her for her time for the September 5 meeting. P237. The letter included a 5-page summary of what the Parents believed were the “key points” from that meeting, and the actions the Parents were taking based on those key points. The Parents asked Ms. Madsen to review their summary and advise them if they had misunderstood any of the key points. *Id.* p1. The Parents never received a response from Ms. Madsen. Father T176.

218. Via email to Ms. Lawson on October 11, 2017, Ms. Madsen asked her to check with Mr. Hoffman regarding where he was with the Student's reevaluation, and when was the "results meeting" scheduled. P243. Ms. Madsen stated, "I believe you can attend that meeting and that I don't necessarily need to be there unless you want/need me to go." *Id.*

219. Mr. Hoffman was the school psychologist in charge of the Student's reevaluation. Hoffman T381-T382; P245p1.

220. Ms. Lawson replied via email the next day. P243. She told Ms. Madsen that she "checked IEP online and found there is no evidence of an evaluation being opened. The last one that was completed is from 2015. I will email him (Hoffman) to let him know that this is a priority." *Id.*

221. If the Parents provided the District with a copy of Dr. Fay's report within a day or two of the end of the 2016-2017 SY, a decision on whether to reevaluate the Student should have been made in September 2017. Lawson T1170-T1171.

222. Via email on October 16, 2017, the Father informed Principal Adams that the Student reported there was a substitute teacher in his "LRC" class who "threatens a lot of the students in his class, including [the Student]." P244p2. The Father stated that the Student is afraid of the substitute, and is "sad" about going to class. *Id.* Based on the Student's reports and his observations of the Student, the Father kept the Student home at least once because he was "in tears" about going to his class with the substitute. *Id.*

223. Principal Adams replied via email the same day, telling the Father that unfortunately Ms. Harbel was ill, and the District was looking for a long-term substitute. Principal Adams said he would look into the LRC class and see if he help create a more positive, motivating climate. P244p1.

#### *The Student's October 2017 Evaluation Team Meeting*

224. An evaluation team meeting was convened on October 25, 2017. P245p1/D9p1. Careful review of these two exhibits confirm that while D9 bears the signatures of the meeting attendees, P245, though unsigned, is a more complete document and includes additional text not found in D9. It is found more likely than not that P245 is the final evaluation report. The final evaluation report was written by Mr. Hoffman and Mr. Raff. Hoffman T382, Raff T1300.

225. The Parents, Mr. Hoffman, Principal Adams, Ms. Lawson, Mr. Raff, and a general education teacher attended the meeting. D9p5; Father T185, Mother T1089; Lawson T1173. The Ms. Lawson attended the meeting as the District representative. Lawson T1178. The Father signed the reevaluation report as "present only" on the advice of the Parents then-attorney. Father T185.

226. This reevaluation consisted of a review of records, a review of Dr. Fay's evaluation report, teacher input, and a 35 minute observation of the Student in class by Mr. Hoffman. P245p3, p19.



227. The records that were reviewed and relied upon for the Student's reevaluation included (all citations to P245):

- A parent input form completed by the Mother in April 2015 (p6);
- The Student's May 2014 and May 2015 reevaluations (p11);
- Dr. Fay's evaluation (p11);
- An April 2014 fine motor assessment of the Student (p20-22);
- Observations of the Student in his third-grade classroom in April 2014 (p23);
- An April 2014 sensory evaluation of the of the Student (p24);

228. Without any reference to Dr. Fay's evaluation that diagnosed the Student with severe dysgraphia and relying solely on the April 2014 fine motor assessment, now 3½ years old, Mr. Hoffman concluded that the Student "performs at or above age level in all areas of Fine Motor and Visual-Motor Integration" and therefore does not qualify for occupational therapy (OT) services. (P245p22).

229. Mr. Raff has no idea why the Mother's input from 2015 was not updated as part of the reevaluation. Raff T1300-T1301. Mr. Raff expected to see most of the supplementary aids and services recommended in Dr. Fay's report included in the Student's reevaluation. *Id.* T1303-T1304. He does not know why those aids and services were not all included in the Student's IEP. *Id.* T1305-T1306; P250pp113-14.

230. The District did not conduct any assessment of the Student's communication or social skills as part of the reevaluation. Hoffman T401. The District did not conduct any investigation or assessment of the Student's developmental coordination disorder diagnosed by Dr. Fay. *Id.* T402. Mr. Hoffman does not know why observations from 2014 were included in his evaluation report. *Id.* T412. At hearing, Mr. Hoffman could not explain the term "pragmatic social communication disorder." *Id.*

231. The District's reevaluation determined the Student remained eligible to receive special education and related services under the autism eligibility category. P245p2. The Father believes that the Student was not considered for any eligibility category other than autism. Father T186. The Mother does not recall any discussion of any category other than the autism. Mother T1005. Ms. Lawson does not recall any team member raising a concern about qualifying the Student under the autism category. Lawson T1250. The Parents did not ask the team to consider changing the Student's eligibility category. Mother T1089-T1090. The Father cannot recall if he disagreed with any part of the District's reevaluation. Father T784-T785.

232. Based upon her review of the reevaluation report, Ms. Lawson cannot identify any "verbal or nonverbal communication deficits" or "social interaction deficits" that qualify the Student for the autism eligibility category. See P245p2; Lawson T1175-T1176. Ms. Lawson explained that in Washington State, school districts do not make "educational diagnoses" for autism; there must be an "outside diagnosis" of autism. *Id.* T1177.

233. The reevaluation recommended the Student receive SDI in behavior, reading, and writing. P245p4. The reevaluation also recommended multiple supplementary aids and services for the Student. *Id.* p10.

234. On October 26, 2017, Mr. Hoffman sent a PWN to the Parents, proposing to continue the Student's eligibility category. P2246/D10.

235. Via email on November 6, 2017, Mr. Raff asked Ms. Larson, "I imagine that since we are considering a one-on-one for [the Student] I should complete a BIP for him. Right?" P248. Ms. Larson replied via email the same day, stating, "If there is a FBA." *Id.* Mr. Raff replied, telling Ms. Larson, "Not since 2011." *Id.* Ms. Larson's final reply to Mr. Raff stated, "No BIP then. Must have a current FAN (sic). We can discuss this need at the IEP mtg." *Id.* Ms. Lawson confirmed that her reference to "FAN" was an error, and her email should have said "FBA." Lawson T1182-T1183.

236. Ms. Lawson explained that the purpose of an FBA, or Functional Behavioral Assessment, is to narrow down and hone in on the "root cause of the behavior of concern, and from that information a behavior intervention plan...is developed to address those behaviors of concern." *Id.* T1182. FBAs are done when a student's behaviors interfere with the student's learning, or other students' learning. *Id.* T1238.

237. Finally via email on November 6, 2017, Mr. Raff stated to Ms. Lawson, "I would love for you to check out a few sections of [the Student's] IEP before I send it home." P249.

238. There is a PWN dated November 8, 2017 in the record. P250pp19-20/D12pp1-2. This date is more likely than not another artifact of the IEP Online software program. Mr. Raff confirmed that this PWN is actually the PWN associated with the Student's IEP and IEP meeting held November 15, 2017. Raff T1627-T1628.

239. There is an undated IEP meeting invitation in the record that identifies the Parents as the recipients, and reflects a meeting has been scheduled for November 15, 2017 at IMS. P250p1.

#### *The Student's November 2017 IEP and IEP Team Meeting*

240. The Student's IEP team convened a meeting on November 15, 2017. P250pp3-18/D11. Apart from the signatures on D11p1 (P250 is unsigned), the two exhibits appear to be identical copies of the same IEP for the Student.

241. Present for the IEP meeting were the Parents, Mr. Raff, Mr. Tatro, Principal Adams, and Ms. Lawson. Father T512-T513, T788, Mother T1006, T1091, Raff T1625, Tatro T690, Adams T1433, Lawson T1189. The Father signed as "present only" on advice of the Parents' then-attorney to make clear he did not agree with the IEP. Father T513.

242. Mr. Adams has no independent recollection of what occurred at the meeting. Adams T1433. Other than recalling that Dr. Fay's evaluation report was discussed at the meeting, Mr. Tatro cannot recall any details of what was discussed. Tatro T690.

243. The Student's IEP was based on the assumption that the Student would attend IMS full-time. P250p16 ("Total minutes per week student spends in school: 1700 minutes per week"); Lawson T1241. However, the Student had not attended IMS full-time since the end of the 2016-

2017 SY. Father T172, T173, T179, T180, T514-T515, Mother T1017, Lawson T1231. As of this IEP meeting, the Student was taking 4 classes at YWA (math, LAs, social studies, and science), as he had since the beginning of the 2017-2018 SY, and he was taking 2 classes at IMS (a special education learning strategies class and one other class). Father T514-T515, Raff T1312.

244. Ms. Lawson explained that an IEP “is supposed to be offering the full program...to the family...[the Student] was only attending two periods a day, but we needed to show (the Parents) the full offer of what we were proposing.” Lawson T1242.

245. The IEP included goals and SDI for reading, writing, and behavior. P250pp12, 16. The IEP continued the same work-initiation behavior goal from the Student’s prior IEP, which he had not met. *Id.* p9. The rationale for continuing the same behavior goal for another year was that the Student had, “demonstrated strong work initiation skills in subjects of interest, but he has continued to struggle in his other classes.” *Id.*

246. Effective with the start of the second trimester on December 2, 2017, the IEP provided the Student with a 1:1 Educational Assistant (EA) to assist him with development of his “work initiation skills and self-monitoring skills.” *Id.* p17; Lawson T1195, Raff T1318. The Student would receive his SDI in behavior with his 1:1 EA in a general education setting. P250p17. The Student’s special education teacher, Mr. Raff, would provide the EA with the curriculum and instructional guidance for working with the Student. *Id.* However, there was no team discussion about providing the Student with a 1:1 EA. Mother T1021. The Parents were just told that the District would provide a 1:1 EA. *Id.* Ms. Larson is not aware of any discussion with the Parents about assigning a 1:1 EA for the Student. Lawson T1188.

247. Starting the second trimester, the Student would be enrolled in two general education classes at IMS: LAs and digital photography. P250p17. The IEP did not provide Extended School Year (ESY) services for the Student. *Id.* p18.

248. The Student’s IEP does not address many of Dr. Fay’s concerns regarding the Student’s education. Father T526-T529, T785. These included Dr. Fay’s concerns about the Student’s dysgraphia, inability to sustain/persevere at tasks, auditory processing, executive functioning, organization, study skills, anxiety, depression, and the Student’s safety. *Id.*

249. Although the Parents wanted all of these concerns addressed in the Student’s IEP, the Father cannot recall if he asked anyone on the IEP team or anyone from the District to add those areas of concern from Dr. Fay’s report to the IEP. *Id.* T785-T786. The services in the Student’s IEP (P250p16) were discussed at the meeting. *Id.* T787. The Father can’t recall if he expressed any disagreement with the IEP services at this IEP meeting. *Id.* T788.

250. Ms. Lawson attended as the District representative. Lawson T1189. As such, she had the authority to commit the District to paying for YWA. *Id.* T1227. She does not recall if ESY services or an FBA for the Student were discussed at the meeting. *Id.* T1200, T1260. Ms. Lawson does not recall any team member raising any concern about the Student being determined eligible under the autism category. *Id.* T1250. Given the Student’s IEP now called for him to receive all of his SDI in a special education setting (P250p16), Ms. Lawson was initially unable to explain how the Student received all this SDI for reading, writing, and behavior while attending IMS for

only two periods a day. *Id.* T1199, T1232-T1233. Nevertheless, Ms. Lawson later asserted the Student received all his SDI for reading, writing, and behavior from November 2017 until the Parents removed him entirely from IMS. *Id.* T1235. In Ms. Lawson's opinion, once the Student's IEP added a 1:1 paraeducator as an "intervention" to address the regression on his behavior goal, the November 2017 IEP provided the Student with an appropriate education. *Id.* T1225.

251. Mr. Raff drafted the Student's IEP. Raff T1624. Initially, Mr. Raff could not explain why the IEP includes SDI for reading and writing when the Student was receiving all his academics at YWA. *Id.* T1312, T1628. He later stated that he thought "there was an oversight on my behalf." *Id.* T1649. The Student was only receiving SDI in behavior at IMS. *Id.* Nothing was done at the IEP meeting to address the Student's anxiety. *Id.* T1317. No data was being collected on the Student's progress towards his IEP goals as of the IEP meeting. *Id.* T1313.

252. The PWN associated with the Student's IEP team meeting on November 15, 2017 (P250pp19-20/D12pp1-2: misdated November 8, 2017. See above) identified the purpose of the IEP team meeting as aligning "[the Student's] IEP with the findings of the updated re-evaluation." P250p19/D12p1. It denied the Parents' request to pay for YWA because the District could provide an appropriate program for the Student at IMS. *Id.* The PWN confirmed that the Student's new IEP "along with any changes decided upon prior to 11/22/17, will be implemented beginning 11/22/17." *Id.* (Emphasis added). The record is not clear what changes decided upon prior to November 22, 2017 the PWN is referencing. The PWN confirmed that with the start of the second trimester on December 2, 2017, the Student would receive the support of a 1:1 paraeducator.<sup>18</sup> *Id.* The PWN specified that the Student would, "receive his specially designed instruction in behavior with his one-to-one Para-Educator in the general education setting. The special education teacher will provide the Para-Educator with the curriculum and instructional guidance for working with [the Student]." *Id.*

#### *The Student's Educational Assistant – Vasanthaseni Singanallur Karuppusamy*

253. Vasanthaseni Singanallur Karuppusamy was hired by the District in December 2017 as the Student's EA. Karuppusamy T1507-T1508. The Student was her first assignment at IMS. *Id.* She first met the Student in December 2017. *Id.* T1508. She met Mr. Raff on the second day she worked with the Student. *Id.* T1531. Mr. Raff supervised Ms. Karuppusamy. Raff T1329. She would meet with Mr. Raff and/or the Student's school counselor, Amy Lorang, a least twice a week to talk about her work with the Student. *Id.* T1548. At the time she started as the Student's EA, he had 2 classes at IMS; LAs and photography. *Id.* T1510. Ms. Karuppusamy described the Student as an intelligent, smart, shy kid. *Id.* T1508.

254. Ms. Karuppusamy understood her job was to provide "emotional support" and to prompt the Student when he would get distracted or off-task. *Id.* T1509, T1515. This was effective with the Student. *Id.* She "was not trained as such" to work with the Student. *Id.* T1509. "I was given to understand what I was supposed to do...And then if I had any difficulty, I had people around

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<sup>18</sup> The individual assigned to the Student is identified by different witnesses and exhibits as a 1:1 aide, a paraprofessional, a paraeducator, and an educational assistant (EA). Unless in the context of a direct quote, the individual assigned to the Student will be identified as his EA.

who I could contact and discuss” what to do. *Id.* If needed, Ms. Karuppusamy would take the Student to see Mr. Raff or Ms. Lorang, and they would speak with the Student. *Id.* T1518. Ms. Karuppusamy always walked “ten feet behind [the Student] because he was not comfortable (with) me walking with him alongside.” *Id.* T1519. While she “was not given to understand” that the Student was experiencing anxiety at IMS, when the Student refused to go to LAs class, Ms. Karuppusamy “felt like he had some kind of anxiety.” *Id.* T1510.

255. The Student was not interested in LAs. *Id.* The first day she was with the Student at IMS, he went to Ms. Weed’s LAs class. *Id.* T1511. After that, he refused to go to LAs class. *Id.* T1511, T1516-T1517, T1519. When the Student refused to go to LAs class, Ms. Karuppusamy “was instructed to take [the Student] to the library, and...engage him in other activities” by Mr. Raff. *Id.* T1513. In the library, the Student might allow her to quiz him on subjects he enjoyed. *Id.* T1415. Sometimes Ms. Karuppusamy would log the Student onto “BrainPOP,” where he could watch “educational videos.” *Id.* T1517. Otherwise, the Student would get a book of his choice and read quietly. *Id.* T1514. While Ms. Karuppusamy would suggest what to do in the library, it was “ultimately [the Student’s] decision as to what he wants to do.” *Id.* T1534. The Student did complete some digital photography assignments in the library, he never worked on LAs assignments. *Id.* T1535.

256. Via email to Mr. Raff on December 12, 2017, Ms. Lorang reported that the Student did not want to go to LAs class, and he was experiencing some anxiety. P254/P255p1. She went on to say that “[The Student] also doesn’t like the aid (sic) hovering over him.” *Id.* Mr. Raff had heard about the Student having anxiety before receiving Ms. Lorang’s email. Raff T1323.

257. Via email to the Parents on December 13, 2017, Mr. Raff reported that the Student had shared with Ms. Lorang that he was anxious about LAs class. P256p2. Mr. Raff wrote, “[The Student] felt that having language arts instruction at both IMS and Yellow Wood was resulting in overload in reading and writing. Has [the Student] mentioned anything at home?” *Id.*

258. Via email to the Parents on December 18, 2017, Mr. Raff again wrote, “Has [the Student] mentioned anything to you about his language arts class? The school counselor, Amy Lorang, shared that [the Student] visited her about being stressed with having language arts class twice a day.” P257p2.

259. The Mother replied to Mr. Raff the same day via email stating, “We have been having lots of talks with [the Student] about this. Bottom line is he is majorly stressed to go to IMS.” P257p1/P258p1. The Mother reported to Mr. Raff that she had to “physically” dress the Student that morning, and then had to carry the Student onto the school bus. *Id.* She reported that the Student did not like being back in a “mainstream” class with expectations, and “the connection with the aide(s) isn’t there either.” *Id.*

260. By this time, the Student was feeling “a lot of pressure because he felt a lot of blame...and expectations that he didn’t feel like he could measure up.” Mother T1029. In the mornings, the Student was “clinging to his mattress...hanging onto his headboard refusing to get dressed.” *Id.* T1030-T1031. It took “monumental efforts” to get the Student to go to IMS. *Id.* T1031. “In fact, it occupied most of my mornings...to just beg and plead to get him to the bus.” *Id.* The Mother shared these issues with the District. *Id.* T1031-T1032. In response, the District “offered to send

people over to the house to observe him.” *Id.* T1032. These people were from the Brooks Powers Group. *Id.* But no one from the District asked to conduct an FBA of the Student. *Id.*

261. The Brooks Powers Group is an outside, i.e. non-District, business that offers parents and school districts evaluations and/or support for students. Lawson T1214; See generally P337pp1-8.

262. At the same time, the Mother was not having any trouble getting the Student to go to YWA. *Id.* A lot of the difference in going to IMS versus YWA was that the Student “didn’t feel like a failure” at YWA. Mother T1033. The Student, “felt like his efforts were recognized, and he felt like he was getting a lot of support” at YWA. *Id.*

263. The Mother confirmed that the Student did not have a “good working relationship between him and his aide. *Id.* T1025. “They hadn’t really established any kind of rapport...he just didn’t like her.” *Id.* T1025-T1026, T1030. However, the Mother never asked Mr. Raff or anyone at IMS if the Parents could communicate with the Student’s EA. *Id.* T1096. The Parents did not ask because, “We didn’t even know her name...We did not know the process...It was kind of like we were just along for the ride at that point.” *Id.*

264. Mr. Raff replied to the Mother’s email the same day, thanking her for “the details,” and telling the Parents that he would “follow up soon.” P257p1. Mr. Raff cannot recall how he followed up with the Parents. Raff T1326.

265. The Parents continued to struggle getting the Student to attend IMS during January 2018. Father T548. The Student did not want to get out of bed or get dressed. *Id.* He refused to get in the car to go to IMS. *Id.*

266. Via email to Principal Adams, Mr. Raff, and other District staff on January 3, 2018, Ms. Weed wrote, “Can we please meet regarding [the Student] in my ELA class?”<sup>19</sup> P260p2.

267. In a later email the same day to Principal Adams, Mr. Raff, and other District staff, Ms. Weed stated, “Met with Seth (Adams); [the Student] hasn’t been in class since he switched. It’s an evolving issue that will hopefully work itself out as the year progresses.” *Id.* p1. The “switch” Ms. Weed referred to was the Student switching from her ELA class to her social studies class. Weed T1488.

268. Via email to Mr. Raff on January 4, 2018, Ms. Lorang stated:

[The Student’s] para came by looking for some support. It sounds like [the Student] has been getting to school on time on the bus but hasn’t been going to Language Arts this week...The para has been getting work for (sic) Julia (Weed) and trying to get him to do work in the library...Maybe we need some type of reward for him when he goes to LA?

P262p2.

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<sup>19</sup> ELA (English Language Arts) is another identifier for Ms. Weed’s LAs class.

269. During this time, Mr. Raff worked with Ms. Karuppusamy, training her to provide the Student's behavior SDI. Raff T1330, T1331. He met with the Student and Ms. Karuppusamy, and then she continued working with the Student by herself. *Id.* T1330. The Student's "curriculum" for his behavior SDI was working with "iterations" of his checklist, along "with the modifications or accommodations provided with the activity to make it accessible...so that he could apply the checklist to what he was working on and not being overwhelmed by what he was working on." *Id.* T1330-T1331, T1333.

270. Mr. Raff replied to Ms. Lorang via email on January 5, 2018, stating:

I wish there was a reward that worked for [the Student]. According to the family, and my experience working with [the Student], a certain reward might be effective for a day, but it loses its luster quite quickly. I think the best approach might be creating a feasible goal for [the Student]."

P262p2.

271. Via email to Mr. Raff on January 9, 2018, the Mother stated:

I just wanted to check in and see how you all think [the Student] is doing from your perspective. We did manage to get [the Student] to school to 'try things' for a few weeks but now he's back to resisting coming. I don't get much feedback from him about the aide so I'm not sure how it's working out. I know he was happier when in the library with her, but was anxious today because she said they might go into class...BTW, he's home today. He had a bit of a meltdown when I tried to get him ready.

P263p2.

272. By this time, the Student was experiencing "massive, massive anxiety to the point where it was just gut wrenching, and so some days I would just say that is it...you are not going" to IMS. Mother T1039. "I would have to literally put his clothes on and then his socks and shoes and literally peel his hands off his headboard and carry him to my car." *Id.* T1039-T1040.

273. In an email to Mr. Raff on January 9, 2018, Ms. Lorang stated:

[The Student] is not here today...he hasn't gone to Weed's class last week or this week. I met with him on Friday and Monday. I thought...we had a good breakthrough yesterday and he would go today, but he his (sic) home. Not sure what to do. Is it okay for him to work with his aid (sic) in the library instead of going to Weed's class?

P262p1.

274. Despite the Student struggling or simply refusing to go to IMS, no one from the District asked to meet with the Parents to consider strategies to get him to attend IMS. Mother T1037. No one asked the Mother about conducting an FBA of the Student or developing a behavior plan. *Id.* T1037, T1042.

275. Via email to Mr. Raff on January 12, 2018, the Mother reported that the Student was “feeling extremely overwhelmed in a mainstream class that moves at such a faster pace. Even with the help, it doesn’t stop his little mind from panicking.” P263p1. The Student “had another bad morning and I basically dragged him onto the bus.” *Id.* “I also think there’s an adjustment period getting used to the aide.” *Id.*

276. On January 16, 2018, Ms. Karuppusamy sent an email to the IMS attendance secretary stating that, “[The Student] did not attending (sic) the 3<sup>rd</sup> period today and he is in the library.” P265. The Student’s 3<sup>rd</sup> period class was Ms. Weed’s LAs class. Karuppusamy T1513. Ms. Karuppusamy sent materially the same email to the attendance secretary when the Student refused to go to Ms. Weed’s class as follows (all dates are for 2018):

1/18 (P267), 1/19 (P268), 1/23 (P269), 1/24 (P270), 2/5 (P281), 2/7 (P282), 2/13 (P286), 2/14 (P287), 2/15 (P288), 2/16 (P290), 2/17 (P293), 3/1 (P295), 3/2 (P297), 3/13 (P308), 3/15 (P313), and 3/16 (P316).

277. Via email to Mr. Raff on January 16, 2018, Ms. Lorang stated, “[The Student] is telling his para that his parents are telling him it is his choice to go to LA or not...The para is struggling with what to do with him in the library...She is looking for guidance.” P277pp3-4. Ms. Karuppusamy confirmed that on more than one occasion towards the end of the time she work with the Student, he told her that the Parents were telling him it was his choice whether or not to go to LAs class. Karuppusamy T1547.

278. The Mother did tell the Student that he did not have to go to LAs class. Mother T1046. “I finally said if you don’t want to go, I’m not going to make you, but you should probably go talk to the counselor so you can work through your anxiety issues.” *Id.*

279. The Student did not go to his LAs class every day in January 2018. Student T1600. He did not want to go to LAs class because he felt like Ms. Karuppusamy was just there to “monitor” him. *Id.* T1599-T1600. He perceived that Ms. Karuppusamy, “was just kind of like there to stand in the back of the classroom, but not help me.” *Id.* T1601, T1609. Instead, the Student did “independent work” in the library. *Id.* T1601. He would read a newspaper or read online, and sometimes got work from his digital photography class to do in the library. *Id.*

280. Via email on January 25, 2018, Mr. Raff informed Ms. Larson that:

I am in the process of setting up a meeting with [the Student’s] parents. The purpose is to reflect on how things are going with his two period schedule at IMS. In short, he has missed quite a few days. Parents have shared that he has missed school due to anxiety, but that he has been able to attend Yellow Wood Academy. Let me know if you’d like to attend the meeting and we can arrange a date that works for you.

P272. Ms. Larson replied the same day stating, “Yes, I should probably be there.” *Id.* She believed she should attend the meeting because she attended the IEP meeting in November. Lawson T1211. However, Ms. Lawson could not recall if she attended a meeting with the Parents. *Id.* T1210-T1211.



281. Via email to staff at YWA on January 25, 2018, the Mother wrote:

As most of you know a couple of weeks ago we increased [the Student's] medication dosage. We initially heard positive feedback, but then heard he's had a couple bad days since...I'm using every day this week to do slightly different things. Give him different dosages, give him his pill at different times of day, let him skip his public school and sleep in.

P273p1. The Mother believes this "study" worked, and she does not "know if we have had medication issues past this...date." Mother T1043.

282. Via email on January 31, 2018, Ms. Karuppusamy told Ms. Lorang that she and the Student were in the library, and when they were in the library they would sometimes read a book, work on a topic in BrainPOP, or do general quizzes in areas the Student was interested in. P277pp2-3. Ms. Karuppusamy went on to state, "Let me know if I can do something structured," referencing her work with the Student. *Id.*

283. Via email to Mr. Raff and Ms. Lorang on February 1, 2018, Ann Swiftney, the IMS dean of students, wrote "I'm kinda feeling like we all need to get together to talk about the situation with [the Student]. From my perspective, refusing to attend LA and doing work in the library can't continue...The current situation isn't working." P277p1.

284. Mr. Raff replied to Ms. Swiftney via email the next day stating, "I am in the process of setting up a meeting with [the Student's] parents, including Joan Lawson from admin...I think we need to decide what our overall goal for [the Student] is at this point." *Id.* By this time, the Student's "anxiety was crippling." Mother T1045.

285. Via email on February 6, 2018, to IMS staff and copied to Ms. Lawson, Mr. Raff wrote, "I'd like to book Joan (Lawson) for a meeting with [the Student's] parents and the team. The purpose will be to discuss his progress and identify next steps." P283pp1-2.

286. Via email to the Mother on February 6, 2018, John Marshall, the Student's seventh grade LAs teacher at YWA, wrote:

[The Student] came to class/could not focus on writing a paragraph about a high interest topic/we decided to just write a simple paragraph about french fries...The rest (of) class unstructured surfing of Wikipedia facts about states. [The Student] could not find success without direct teacher assistance.

P284.

287. Via email to the Parents on February 12, 2018, Michelle Downing, a teacher-librarian at YWA, wrote,

I do want to note that it seems the timing and amount for [the Student's] medication appears to be working fantastically...this has been likely his most overall successful week in terms of focus and being able to maintain and (sic) on-topic conversation about his current academic studies.

P289p2.

288. Via email to the Mother on February 13, 2018, Mr. Marshall wrote, “[The Student] seems very alert...Whatever the dosage and the timing were today they had a great impact on our work together.” P289p3

289. Via email to Ms. Karuppusamy on February 27, 2018, Mr. Raff wrote, “I have attached a writing activity that relates to [the Student’s] IEP goal. Encourage him to select a topic that he genuinely cares about.” P294. While Ms. Karuppusamy “definitely” worked on assignments with the Student that had to do with his IEP, she cannot recall any specifics. Karuppusamy T1532.

290. On March 5, 2018, the District met with the Parents and discussed having Brooks Powers Group complete an evaluation of the Student that addressed school refusal. Parties’ Stipulated Facts #6.

291. Via email to Mr. Hoffman on March 7, 2018, Mr. Raff wrote, “At a meeting with [the Student’s] family, the idea was broached to complete a Release of Information with the private school that he is attending part time: Yellow Wood Academy.” P299. Mr. Raff cannot recall

292. Via email on March 9, 2018 to Beth Hardy, the IMS attendance secretary, the Mother wrote, “yesterday [the Student] was extremely agitated and I could not get him on the bus.” P303.

*The Parents’ Notice of Intent to Remove the Student from the District*

293. On March 13, 2018, the District received a letter dated the same day from the Parents. P306/D13. In their letter, the Parents wrote:

We intend to remove our son [the Student] from his public school placement at ISD and place him solely at Yellow Wood Academy, a private school, and seek reimbursement from ISD at public expense for tuition and all related expenses at Yellow Wood.

We will be removing [the Student] from Issaquah Middle School after ten business days.

[The Student’s] emotional state of being attending Issaquah Middle School is increasingly severe and concerning. We feel like we have expressed this many times and yet things haven’t improved.

*Id.* Ten business days from March 13, 2018, was March 27, 2018. D15p2. The record is unclear regarding the exact date of the Student’s last day attending IMS part-time. It appears that by no later than April 4, 2018, the Student was removed from the District. See P326p3 (“Now that [The Student] doesn’t have the added stress of public school...”).

294. By this time, the Parent’s did not believe the Student was learning enough at IMS, and he was very unhappy at IMS. Father T697. They felt like it was a “lost cause” at IMS. Mother T1053. They were having problems getting the Student out of bed, getting him dressed, and refusing to get on the bus or in a car to go to IMS. Father T697.

295. After providing their notice of intent to withdraw the Student from the District, no one from the District contacted the Parents to convene an IEP Meeting. *Id.* T703. After providing their notice to the District, the Parents did not ask the District to convene an IEP meeting. Mother T1098, Lawson T1250-T1251. Since providing their notice, the Parents have never told the District they are interested in returning the Student to the District. Mother T1098.

296. During the almost two school years the Student attended IMS and Mr. Raff was his special education teacher and case manager, “academically, there seemed to be a bit of a decline” for the Student. Raff T557. The Student also declined behaviorally over the two school years. *Id.* Mr. Raff described this decline over time as the Student seeming “to disengage more and more.” *Id.* In his general education classes the Student, “seemed to remove himself even more from social interactions.” *Id.* T558.

297. On March 14, 2018, Mr. Raff wrote a letter to YWA. P311. Mr. Raff identified himself as a special education teacher at IMS, and identified the Student as a student at IMS. Mr. Raff stated he was “reaching out...to discuss teaching strategies that you have found to be effective with [the Student]...I would love the opportunity to communicate with one of the teachers who works with [the Student].” *Id.* Mr. Raff sent his letter to YWA, but he cannot recall if he received a response from YWA. Raff T1635. He cannot recall if he had a release signed by the Parents or the Student when he sent his letter. *Id.* T1644.

298. On March 19 and March 20, 2018, the Parents signed a consent for the release of the Student’s records from YWA to Mr. Raff. P322. However, the Parents authorized District staff to speak with YWA staff “only if Parents are present, except for non-substantive matters.” *Id.*

299. On or about March 27, 2018, the Student’s final Trimester 2 grades from the IMS were reported. P325. The Student earned a D+ in his digital photography class, and he earned a “0” grade in social studies. *Id.*

300. Via email to YWA staff on April 4, 2018, the Mother stated:

Now that [the Student] doesn’t have the added stress of public school and has gotten more comfortable at YWA, I’d like to start the concept of homework with him. I’d like him to mainly get use to the idea of homework and to having keep track of it, but not to overwhelm him...I will work on getting [the Student] some sort of planner so he can document what he needs to do and due dates.

P326p3. Sometimes the Student would get so anxious attending IMS in the morning that it was “hard for him to calm himself down and back into a learning mode” at YWA in the afternoon. Mother T1062. This was also the point in time when Parents decided that “emotionally and anxiety wise [the Student] could probably start...the process of learning how to do homework.” *Id.*

301. On April 22, 2018, the Father and the Student signed multiple Consent for Release And/OR Exchange of Information forms. P330-P334. Collectively, these authorized the District and the identified entities to release and/or exchange information regarding the Student. *Id.* The releases identified Mr. Hoffman as the individual at the District to receive any information. *Id.* Mr. Hoffman could not recall why these releases were executed. Hoffman T1415-T1416. Ms. Lawson does

not know what prompted Mr. Hoffman to requests these releases. Lawson T1247. The Father recalled someone from the District asked the Parents to sign the releases, but he cannot recall who or why they were requested. Father T791.

302. Via email to the Parents on April 30, 2018, Ms. Lawson stated:

I was able to connect with the Brooks Powers Group (BPG)... to obtain additional information regarding [the Student's] educational needs and concerns related to school refusal, and to determine supports that BPG could possibly provide. They are able to begin on May 7<sup>th</sup>. We will need Release of Information form filled out and signed by you for each provider so that BPG can communicate with those providers that support [the Student]. That form is attached to this email.

P337pp8-9.

303. Although she cannot recall precisely when, Ms. Lawson attended a meeting with the Parents where they shared that the Student was refusing to go to IMS. Lawson, T1212. She spoke with the Parents about the District's "partnership" with BPG, and how BPG had been able to work successfully with students who exhibited school refusal. *Id.* After the meeting, Ms. Lawson reached out to BPG. *Id.* T1214. After BPG responded, Ms. Lawson sent her email (P337pp8-9) to the Parents. She included a release of information form for signature so the District could speak substantively with BPG about the Student. *Id.*

304. Ms. Lawson does not know what was done to address the Student's refusal to attend IMS, or, if present at IMS, his refusal to go to his classes, from Mid-January 2018 to the end of April 2018. *Id.*

305. The Parents did not ask the District to have BPG evaluate the Student; the suggestion came from Ms. Lawson. Father T712. BPG never did evaluate the Student. *Id.* T714.

306. Via email the same day to Ms. Lawson, the Mother stated, "We are confused by your email. Were you aware that [the Student] no longer attends Issaquah Middle School or any other school in the district? Is this request still applicable?" P337p8.

307. Via a letter to Mr. Hoffman dated April 30, 2018, the Father and the Student revoked all of the releases of information they had executed on April 22, 2018. P335. The letter stated in part that, "We will provide information to you, but will not provide unfettered access to all records" held by the providers identified in the earlier releases. *Id.*

308. The Father asserted he does not know why BPG never evaluated the Student. Father T714. This is found not credible given there is no evidence that the release of information form Ms. Lawson included with her April 30, 2018 email was ever signed by the Parent(s) and/or the Student and returned to her.

309. Over the period May 4 to June 12, 2018, Ms. Lawson and the Parents exchanged a series of emails, all concerning the possibility of setting up an evaluation of the Student by BPG regarding his school refusal. P337pp1-8. The final email in the series was from Ms. Lawson to the Parents. *Id.* pp1-2. Ms. Lawson's final email answered a number of questions pending from the Parents. *Id.* Ms. Lawson then closed by stating, "If you have any additional questions

regarding the evaluation, I would be happy to schedule a telephone conference with BPG to answer those questions.” *Id.* p2.

310. While the Father cannot recall if he ever responded to Ms. Lawson’s final email, when questioned by the District at hearing, the Mother stated, “I imagine not or it would have been included” in the exhibits. Mother T1101. As far as Ms. Lawson knows, the Parents never agreed to an evaluation by BPG, and she does not recall receiving any response to her final email from the Parents. Lawson T1249-T1250, T1248. It is found more likely than not that the Parents did not respond to Ms. Lawson’s final email, and did not consent to BPG evaluating the Student.

*The Student’s Final Grades for the 2017-2018 SY at YWA*

311. The Student’s final grades for the first semester of the 2017-2018 SY at YWA were: LAs A; math A; science B; social studies A. P338p2. The Student’s final grades for the second semester were: LAs B; math A-; science A-; social studies A. *Id.*

312. The Parents filed their request for a due process hearing on August 31, 2018.

*2018-2019 School Year: Eighth Grade at Yellow Wood Academy*

313. Until 8<sup>th</sup> grade, the Student “really never much did any homework, like actually got it finished, completed and turned in.” Mother T895. The initial decision to not have homework assigned to the Student at YWA was deliberate. Father T797. The Parents believed “we first had to build up his self-esteem.” *Id.* To date, the Student still does not complete homework independently, “but...we are getting it done.” Mother T1068.

314. Based upon emails from staff at YWA that the Parents receive weekly, which the Father characterized as “progress reports,” the Father believes that the Student’s reading, writing, and work-initiation skills were improving during 8<sup>th</sup> grade. Father T726; See e.g. P339-P347. The Father attributed this improvement to the 1:1 instruction, variable pace of instruction, and customized lesson plans using high-interest instructional materials with the Student at YWA. Father T704-T705, T723-T724.

315. The Student has never refused to go to YWA. Father T706, T708-T709, Mother T1064. He really likes his YWA teachers. Father T706.

316. YWA is a “good fit” for the Student. Fay T280, T303-T304. It is a good fit because YWA offers instruction that is provided 1:1 or in small groups, the instruction is highly individualized, there are high levels of reinforcement, an emphasis on social interaction, and development of social and safety skills. *Id.* T281. YWA also provides “exposure to a very small controlled peer environment,” which the Student needs. *Id.* T305. Given her education, training, experience, and very comprehensive evaluation of the Student, Dr. Fay’s opinion regarding the degree to which YWA offers the services and environment the Student needs to make progress in his education is found to merit greater weight than the opinion of any other witness.

317. The Student has been attending YWA continuously since the Parents removed him from the District. Father T708-T709. The Student attended YWA remotely in April, May, and June 2020. *Id.* T732.

### *The Parents' Requested Remedies*

318. The Parents were compelled to transport the Student back and forth to YWA beginning September 2017, because the District would not provide transportation. Father T172-T173. The Father carefully calculated their expense to provide the Student's transportation from September 29, 2017, through March 31, 2020, based upon the then-current Internal Revenue Service (IRS) mileage rates. See Summary at P366pp4-5, and underlying spreadsheet, pp7-32. It is found that the Parents' total transportation expense for this period is \$7,640.46. *Id.* p5, See also P366p1.

319. The Father calculated the Parents paid \$1,350.00 for the Student's evaluation by Dr. Fay. P359p2 (See entries for "Neuropsych"), P211, P225;<sup>20</sup> Father T142-T143, T155. The Father's summary of payments for Dr. Fay's evaluation includes an entry in the amount of \$50.00. P359p2, (See entry dated September 3, 2019). That entry is described as "Conference Call with Wiscarson Law." *Id.* Given this payment was made more than two years after Dr. Fay's evaluation report and the reference to a conference call with the Parents' current attorneys, it is found the \$50.00 payment cannot be attributed to the cost of Dr. Fay's evaluation, but is more likely some expense attributable to legal preparations for this due process hearing. It is found that the Parents paid a total of \$1,300.00 for Dr. Fay's evaluation of the Student.

320. The Parents paid for the Student's tuition at YWA beginning September 2017, through the present time. The Father calculated that for the period September 5, 2017, through June 5, 2020, the Parents paid \$153,839.56 in tuition to YWA for the Student's attendance. Father T731; P359p2.

## **CONCLUSIONS OF LAW**

### **The IDEA and Jurisdiction**

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).
2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief, in this case the Parents. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).
3. The IDEA and its implementing regulations provide federal money to assist state and local

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<sup>20</sup> There is a third "Statement of Account" from NW Neuropsychology. P227.

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

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

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

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

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

*Andrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. \_\_\_, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Andrew F.* standard as follows:

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

*M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1201 (9<sup>th</sup> Cir.), *cert. denied*, 583 U.S. \_\_\_, 138 S. Ct. 556 (2017).

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

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

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

Procedural violations of the IDEA amount to a denial of FAPE, and therefore 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.

WAC 392-172A-05105(2). See *also* 34 CFR §300.513; 20 USC §1415(f)(3)(E)(ii).

6. As an initial matter, the Parents' Post-Hearing Brief (Parents' Brief) does not address at least three of the issues to be decided for the 2016-2017 SY: whether the District failed to obtain informed consent for evaluations of the Student; whether the District failed to administer the Student's ADHD medication twice a day; and whether the District failed to address reports of the Student harassing another student. See Second Prehearing Order: Statement of the Issues and Remedies pp3-5. Given the Parents have not identified the evidence in their favor on these issues and have not articulated how any applicable law would result in a conclusion the District violated the IDEA, these issues are **DISMISSED**.

7. Second, the Parents' Brief condenses all of the issues into 10 general sections or arguments. Parents' Brief pp31-68. At times, this makes it difficult to parse out the Parents' arguments with respect to each of the issues to be determined. Then with respect to each of the 10 sections or arguments, the Parents' Brief makes reference to "the facts set forth in the Facts Presented at Hearing section above." See, e.g. *Id.* p60. However, the Parents' Brief often does not more specifically identify *which* facts it is referencing, leaving it to the undersigned ALJ to try to determine which facts the Parents' are asserting in support their legal arguments.

*Whether the District committed procedural violations of the IDEA and denied the Student FAPE during the 2016-2017 and 2017-2018 SYs by:*

*Failing to keep accurate records;*

8. As can best be determined, the sections of the Parents' Brief that include this assertion (See Parents' Brief pp31-38, pp38-41) identify two instances of the District's alleged failure to keep accurate records during the 2016-2017 SY. First, the Parents cite Mr. Raff's failure to have the Parents sign the IEP cover page at the May 10, 2017 IEP meeting, and a Medicaid Consent form. Parents' Brief p35, #36. The second instance is when Mr. Raff made changes to the May 2017 IEP and associated PWN, but did not correct or update those documents to reflect his changes were made on June 21, 2017. *Id.* p36, #40. However, the Parents' Brief does not clearly or compelling explain how Mr. Raff's failures to have the Parents sign documents or correct the dates on these documents denied the Student FAPE, or were so consequential the failures denied the Parents their opportunity to participate in the decision-making process for the Student's education. The District's Post-Hearing Brief correctly points out there is no requirement that IEP team members sign the IEP document. See generally WAC 392-172A-03090 and WAC 392-172A-03090(2)(a). It is concluded that the Parents have not carried their burden to establish any violation of the IDEA that warrants any remedy for the 2016-2017 school year.

9. With respect to the 2017-2018 SY, the Parents' Brief appears to identify one instance of a failure to keep accurate records. Parents' Brief, p39. This was Mr. Raff's error with respect to



including SDI for reading and writing in the Student's November 2017 IEP, when the Student has not received SDI in reading and writing at IMS since the end of the 2016-2017 SY and his enrollment at YWA. This argument is not compelling. There is no question that by November 2017, the Parents were well aware the Student was no longer receiving SDI for reading and writing at IMS because they had unilaterally placed him at YWA with the start of the school year. Mr. Raff's error could not have denied them any knowledge necessary to meaningfully participate in the development of the Student's IEP. It is concluded that the Parents have not carried their burden to establish any violation of the IDEA that warrants any remedy for the 2017-2018 school year with respect to any failure to keep accurate records.

*Failing to issue IEP progress reports;*

10. A school district is, at a minimum, required to issue IEP goal progress reports with the issuance of a particular school's report cards. WAC 392-172A-03090(1)(c)(ii). IMS operated on a trimester system. Therefore, the District was required to issue IEP progress reports for the Student a minimum of three times per school year. The only IEP progress report in evidence for the 2016-2017 and 2017-2018 SYs is the IEP progress report dated June 21, 2017, created by Mr. Raff. While Mr. Raff gave testimony regarding his general practices for IEP goal reporting, he had no independent recollection of issuing goal progress reports for the Student.

11. The District argues that just because neither party offered a particular goal progress report as an exhibit does not mean such a progress report does not exist or was not timely provided to the Parents. District's Brief pp27-28. The undersigned ALJ does not find the District's argument compelling. Clearly aware the Student's IEP progress reports were an issue in this case, it would border on malpractice to not offer such reports as an exhibit, if such reports in fact existed. The Parents' requested extensive discovery in this case, but received only the one IEP progress report from the District. Furthermore, Mr. Raff's testimony about his general practices for IEP progress reporting does not deserve greater weight than the absence of what any reasonably diligent attorney would have offered as exhibits in this matter, had those exhibits in fact existed. It is concluded that over the course of the two school years, the District violated the IDEA by issuing only the single progress report. This is a procedural violation of the IDEA. It is further concluded that this procedural violation more likely than not denied the Parents' right to meaningfully participate in the decision-making process. Without timely IEP goal progress reports, the Parents were denied the necessary information to participate in an informed manner. This procedural violation warrants a remedy, as discussed further below.

*Failing to provide the Parents with proper documentation;*

12. Due to the manner in which the Parents' Brief is organized, it is difficult to clearly identify which facts they rely upon with respect to this issue. This issue also appears to be intertwined with the issues of whether the District kept accurate records, and whether the District failed to issue IEP goal progress reports. Both those issues have already been decided.

13. After careful review of those sections of the Parents' Brief that address this issue (See Parents' Brief pp31-38, pp38-41), it appears that, apart from the IEP progress reports, the only mention of the District *failing to provide* the Parents "proper documentation is a reference to a

procedural safeguards notice, the District's policy on use of isolation and restraint, and a Medicaid Consent form. *Id.* p35, #36. The Parents' Brief does not cite to or identify the controlling regulation on procedural safeguards notices, WAC 392-172A-05015, making it that much more difficult to follow the Parents' argument. *Id.* pp31-41. Chapter 392-172A WAC imposes no duty on a school district to provide a copy of a Medicaid consent form to parents.

14. School districts must provide a copy of the procedural safeguards notice at least once a school year, or more often given facts not present in this case. WAC 392-172A-05015(1). The Parents are correct that Mr. Raff failed to provide them with a procedural safeguards notice at the May 2017 IEP meeting. The record is unclear whether the Parents received a procedural safeguards notice at some other time during the 2016-2017 SY. However, for the sake of argument, it will be assumed they did not. This is likely a procedural violation of the IDEA.

15. The facts establish the Parents have a long history of receiving procedural safeguard notices from the District over many prior school years. They probably kept a copy of the notice from elementary school, and they definitely read the notice in the past. Given these facts, the Parents' Brief does not explain how the District's failure to provide a copy of the procedural safeguards notice at the May 2017 IEP meeting significantly impeded their meaningful participation in the development of that IEP, impeded the Student's right to FAPE, or caused a deprivation of educational benefit. Accordingly, it is concluded that this likely procedural violation does not warrant any remedy.

16. There is no regulation in chapter 392-172A WAC that requires a school district to provide parents with a copy of a district's policy regarding the use of isolation and restraint. However, RCW 28A.600.486 requires a school district to provide parents and guardians of all students who have IEPs with a copy of the district's policy on the use of isolation and restraint. To any extent a failure to provide such a copy to the Student was a procedural violation of the IDEA, the Parents have simply not explained in any convincing manner why that procedural violation warrants a remedy under the facts in this case. The Parents' Brief does not cite RCW 28A.600.486 in relation to this issue. Nor is there sufficient evidence to find that the Student was ever subject to the use of isolation or restraint by the District. To any extent the Parents' are arguing the Student going to the library with his EA rather than attending classes at IMS constituted the use of isolation with the Student, that argument is not developed in the Parents' Brief, and will not be assumed. It is concluded that he Parents have not proven any violation of the IDEA with respect to not receiving proper documentation.

*Failing to convene IEP meetings when appropriate;*

17. WAC 392-172A-03110 provides in part that:

(3) Each public agency must ensure that...the IEP team:

(a) Reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and

(b) Revises the IEP, as appropriate, to address:

(i) Any lack of expected progress toward the annual goals described in WAC 392-172A-03090 (1)(b) and in the general education curriculum, if appropriate;

(ii) The results of any reevaluations;

(iii) Information about the student provided to, or by, the parents, as described under WAC 392-172A-03025;

(iv) The student's anticipated needs; or

(v) Other matters.

18. The extent of the Parents' argument on this issue is limited to the statement, "Despite numerous concerns from staff and Parents alike about Student's anxiety, inability to attend classes and worsening mental state, District did not ask to convene an IEP meeting, nor did District ask to conduct an FBA or any additional evaluations after October 2017." Parents' Brief p41, #62. This appears in the Parents' Brief in the section relating to the 2017-2018 SY. *Id.* pp38-41. There is simply no argument clearly articulated in the Parents' Brief regarding any failure to convene IEP meetings during the 2016-2017 SY. Nor does the Parents' Brief cite to or identify what they believe is the controlling authority to decide this issue. At the very least, when a party is represented by counsel it is not the duty of the undersigned ALJ to attempt to ferret out which facts and what law a party relies upon. To do so would run the considerable risk of placing the ALJ in the position of advocate, rather than impartial decision maker. This ALJ declines to do so under the facts in this case. The issue of whether the District failed to convene IEP meetings when appropriate during the 2016-2017 SY is **DISMISSED**.

19. With respect to the same issue for the 2017-2018 SY, where the Parents have articulated at least some factual basis to consider, the issue will be considered. The Father requested an IEP team meeting on June 9, 2017, after the Parents received Dr. Fay's evaluation of the Student. The last day of the school year was June 20, 2017. An IEP meeting was convened on September 5, 2017, one day before the new school year started.<sup>21</sup> That IEP team decided to reevaluate the Student. Following the District's reevaluation of the Student, an IEP team meeting was convened on November 15, 2017. That was the last meeting the Student's IEP team held during the 2017-2018 SY.

20. After the November 2017 IEP team meeting, the record is clear that the Student's grades, attendance, and general emotional state at IMS continued to deteriorate. He never really turned in assignments for Mr. Tatro's health class, and didn't engage in classwork. The Student only rarely attended Ms. Weed's LAs class. After switching to her social studies class, he appeared only once or twice. The Student was unable to develop any type of reasonably productive relationship with his 1:1 EA, and the EA was unable to get the Student to attend Ms. Weed's LAs. Ms. Lorang, a school counselor, confirmed the Student's multiple reports that he was experiencing

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<sup>21</sup> The District asserted it convened an IEP team meeting on August 29, 2017, with the Mother, the Student, Principal Adams and Mr. Raff in attendance. This was not an IEP meeting, as there was no general education teacher present. WAC 392-172A-03095(1)(b).

anxiety while at IMS. The Parents reported to District staff that the Student was very stressed about attending IMS. The Student was refusing to get out of bed and get dressed in the mornings in order to avoid attending IMS, and the Parents reported this to the District. Ms. Weed requested a meeting regarding the Student refusing to attend her LAs and then her social studies classes. The Student's 1:1 EA kept reporting to the attendance secretary that the Student was not going to Ms. Weed's class. The Student's EA began seeking support so she could better serve the Student. The Student's anxiety continued to increase and he was becoming overwhelmed at the thought of going to IMS, which the Parents reported to IMS staff. The IMS dean of students wanted to meet because the Student was continuing to refuse to go to Ms. Weed's class, and she did not believe the current situation was working for the Student. Finally, by March 5, 2018, the District met with the Parents to discuss having the Brooks Powers Group conduct an evaluation of the Student's refusal to attend IMS, but this was not an IEP team meeting. And as the Student's special education teacher and case manager, it was Mr. Raff's opinion that the Student had declined both behaviorally and academically over the 2017-2018 SY.<sup>22</sup> The Parents finally withdrew the Student from IMS entirely on or about March 27, 2018, ten business days after their notice. From November 2017 until the end of March 2018, the District never convened an IEP team meeting despite being very well aware of the Student's increasingly severe problems at IMS.

21. It is concluded that in light of all the above, the District should have convened an IEP team meeting for the Student to consider his lack of progress in the general education curriculum, his severe school refusal, and his deteriorating mental health, all of which was clearly known to the District. In fact, much of this information was provided by the Student's teachers and staff at IMS.

22. It is concluded that the District's failure to convene the Student's IEP team from November 15, 2017, through the time the Parents withdrew the Student from IMS at the end of March 2018, constitutes a procedural violation of the IDEA. It is concluded that this violation impeded the Student's right to FAPE, and caused a deprivation of educational benefit for the Student. It is concluded this procedural violation warrants a remedy, as discussed further below.

*Making changes to the Student's IEPs outside of an IEP meeting and without written agreement from the Parents (2016-2017 SY only);*

23. This claim stems from a meeting between the Father, Principal Adams, and Mr. Raff on June 21, 2017. Parents' Brief p39, #39-40. This was not an IEP team meeting, and Mr. Raff was aware of it. Nevertheless, after the meeting Mr. Raff made material changes to the Student's IEP by adding a few accommodations, despite knowing this was properly an IEP team decision to make. Mr. Raff later had the Student's IEP unlocked so he could make the changes, despite being told again that such changes needed to be made by the Student's IEP team. Mr. Raff later provided a copy of the IEP with the new accommodations to the Parents.

24. The District asserted that the Father agreed at the meeting to add the accommodations to the Student's IEP and by doing so, this constituted an amendment or modification of the IEP without an IEP team meeting pursuant to WAC 392-172A-03110(c). This is not a compelling argument, but rather appears to be a post-hoc rationalization to justify Mr. Raff's addition of

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<sup>22</sup> This was Mr. Raff's opinion for the 2016-2017 SY as well.

accommodations without an IEP team meeting. Mr. Raff knew at the meeting and then later was told again by District staff that adding accommodations was an IEP team decision. That Mr. Raff provided the Parents with a copy of the Student's IEP with the accommodations he added does not change this conclusion. It is concluded that by adding accommodations to the Student's IEP without the participation and decision of an IEP team, the District committed a procedural violation of the IDEA. It is further concluded this procedural violation more likely than not impeded the Student right to FAPE and deprived him of educational benefit. This is supported by the fact that over the 2017-2018 SY, the Student continued to decline both behaviorally, emotionally, and academically at IMS. It is concluded that this procedural violation warrants a remedy, as discussed further below.

*Failing to consider information shared by the Parents, thereby depriving them meaningful participation in the development of the Student's IEPs;*

25. With respect to the 2016-2017 SY, the Parents' Brief identifies the District's alleged failure to take into account or consider Dr. Fay's evaluation, and the District's alleged failure to consider or discuss the Parents' request for private placement at YWA. Parents' Brief p38, #46-47. Both these claims fail.

26. The Parents provided an e-copy of Dr. Fay's evaluation report to the District on June 9, 2017, and requested a District reevaluation of the Student and an IEP team meeting. The Father met first with Mr. Raff and Principal Adams on June 21, 2017, to discuss Dr. Fay's report. Mr. Raff and Principal Adams each had a copy of Dr. Fay's report. The Student's IEP team then met on September 5, 2017, the day before the new school year started. Ms. Madsen stated at the meeting that she was aware of their request for a private placement at YWA, but the District would first have to reevaluate the Student. The District's reevaluation report clearly reflects how the District considered and extensively integrated Dr. Fay's evaluation into the District's reevaluation. The Student's IEP team met on November 15, 2017, after the District's reevaluation was completed. The IEP team did not agree with the Parents' request to place the Student at YWA at the District's expense, but there is no evidence to conclude the team did not consider the request.

27. The District is correct that an evaluation team and an IEP team must consider input from parents, in this case the Parents' input in the form of Dr. Fay's report, and their desire that the District place the Student at YWA. The District is also correct that while Parents have the right to meaningful participation in consideration of their input by the teams, the Parents do not have veto power over team decisions. District's Brief p34. Under the facts in this case, it is clear the teams considered the Parents' input, although ultimately not agreeing to place the Student at YWA. It is concluded that the Parents have not proven the District failed to consider their input, and have not proven any violation of the IDEA.

*Whether the District committed substantive violations of the IDEA and denied the Student FAPE during the 2016-2017 SY by failing to evaluate the Student in all suspected areas of disability, including: Anxiety, Executive functioning, Attention, Social skills and behavioral needs, Occupational therapy and sensory needs, Assistive technology needs, Work/School refusal, and failing to conduct an FBA;*

28. A school district must ensure that a reevaluation of each student eligible for special

education is conducted in accordance with WAC 392-172A-03020 through 392-172A-03080 when a district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or if the child's parent or teacher requests a reevaluation. WAC 392-172A-03015. Such a reevaluation must assess a student in all areas related to the suspected disability. WAC 392-172A-03020(3)(e).

29. Prior to the 2016-2017 SY, the District last reevaluated the Student in May 2015, when he was in fourth grade. The Student entered IMS as a sixth-grader in September 2016, approximately 16 months later, with a May 2016 IEP already in effect from fifth grade. The May 2016 IEP provided the Student with SDI in reading, writing, and behavior, along with multiple accommodations and modifications. However, the Student began experiencing difficulty at IMS almost immediately. He had problems with turning in his homework, even when Mr. Raff, his special education teacher, modified the length and complexity of the homework. Initially, Mr. Raff attributed this to the Student having problems becoming distracted. But by April or May 2017, he came to believe the Student's problem was caused more by avoidance than distractibility. The Student struggled academically in his LAs class, despite receiving modified grading. He had difficulty getting started with tasks and required a lot of prompting in all his classes. The Student struggled with organization. The Father communicated to IMS staff that distractibility was a major issue for the Student, and he had anxiety about tests. Mr. Raff tried implementing a reward system for the Student, but it proved effective for only a week or two. By October, the Student was failing LAs and life science, and had Ds in math and learning strategies, while the Parents were spending hours each night working with the Student on his schoolwork. The Father requested a meeting with IMS staff, in part because they were overwhelmed with the transition to middle school. Despite a Guidance Team meeting held to identify strategies to help the Student, his focus and his grades did not improve. The Father told Principal Adams that the status quo was not working for the Student. They discussed the possibility of assigning a 1:1 aide for the Student.

30. By January 2017, the Student was earning Fs in health, life science, and social studies, and a D in math. He was struggling and resistant or refusing to do work in class. By February the Student was so distracted in his learning strategies class that it had become just a place for him to socialize, and he was earning Fs in health and life science and a D in social studies. By March 2017, the Parents believed the Student was failing at school, and contacted Dr. Fay regarding an evaluation for the Student. By May 2017, the Student was very upset about school, and experiencing a lot of self-esteem and depression at home, which the Parents shared with the District at the Student's May IEP meeting. That IEP team determined that the Student's social and emotional skills were not an area of concern. The May 2017 IEP provided the Student with SDI in reading comprehension, written expression, and behavior skills. The IEP team continued the reading comprehension goal from the Student's May 2016 IEP because the Student had not met that annual goal a year later. By June 2017, it was hard for the Parents just to get the Student to go to IMS.

31. The facts in this case are manifest. Despite the SDI and accommodations and modifications in the Student's May 2016 IEP, the Student was experiencing very significant difficulty across multiple domains in sixth grade; academically, emotionally and behaviorally. And all of this was known to the IMS staff. Based on nearly 13 years' experience conducting due

process hearings under the IDEA, it is frankly inconceivable to the undersigned ALJ how the District failed to recognize there was something so seriously wrong with the Student during the 2016-2017 SY that he needed to be reevaluated to find out what was happening.

32. In its brief, the District argues that because it never determined the Student required a reevaluation during the 2016-2017 SY, and because no teacher or Parent requested a reevaluation during the 2016-2017 SY, the District committed no violation of the IDEA. District's Brief p35. This argument is a straw man, and lacks any legal merit. Accepting the District's argument would allow any school district to simply bury its head in the sand, ignoring the problems of any student it did not wish to evaluate, and escape its responsibility for providing FAPE to eligible students.

33. It is concluded that the District committed both procedural and substantive violations of the IDEA when it failed to recognize the Student required a reevaluation during the 2016-2017 SY. By failing to reevaluate the Student, the District was simply ignoring all the problems the Student was experiencing, and which the District was clearly aware of. It is concluded that the District denied the Student FAPE for the 2016-2017 SY by failing to reevaluate the Student. This clearly warrants a remedy, as discussed further below.

*Whether the District committed substantive violations of the IDEA and denied the Student FAPE during the 2017-2018 SY by failing to evaluate the Student in all suspected areas of disability, including; Anxiety, Executive functioning, Attention, Social skills and behavioral needs, Occupational therapy and sensory needs, Assistive technology needs, Work/School refusal, Failing to conduct an FBA, and failing to consider the results of a neuropsychological evaluation of the Student;*

34. The issue of whether the District considered the results of Dr. Fay's evaluation has already been decided above, and will not be repeated here.

35. By the start of the 2017-2018 SY, the District had Dr. Fay's evaluation report in hand. The District conducted a reevaluation of the Student, and held an evaluation team meeting on October 25, 2017. The District's evaluation consisted of a records review, a review of Dr. Fay's evaluation report, teacher input, and a 35 minute observation of the Student in class by Mr. Hoffman. The records that were reviewed and relied upon for the District's reevaluation included:

- A parent input form completed by the Mother in April 2015;
- The Student's May 2014 and May 2015 reevaluations;
- Review of Dr. Fay's evaluation;
- An April 2014 fine motor assessment of the Student;
- Observations of the Student in his third-grade classroom in April 2014;
- An April 2014 sensory evaluation of the of the Student;

By the time of this reevaluation meeting, most of these records were 3½ years old. In April 2014, the Student was in *third* grade. By the time of this October 2017 reevaluation meeting, the Student was in *seventh* grade. Without any reference to Dr. Fay's evaluation that diagnosed the Student with severe dysgraphia, and relying solely on the April 2014 fine motor assessment now 3½ years old, Mr. Hoffman concluded that the Student performed at or above *age level* in all areas of Fine

Motor and Visual-Motor Integration and therefore does not qualify for OT services. Mr. Raff has no idea why the Mother's input from 2015 was not updated as part of the reevaluation. Mr. Raff expected to see most of the supplementary aids and services recommended in Dr. Fay's report included in the Student's reevaluation. He does not know why those aids and services were not all included in the Student's IEP. Mr. Hoffman does not know why observations from 2014 were included in his evaluation report. At hearing, Mr. Hoffman could not explain the term "pragmatic social communication disorder." The District did not conduct any assessment of the Student's communication or social skills as part of the reevaluation. The District did not conduct any investigation or assessment of the Student's developmental coordination disorder diagnosed by Dr. Fay. The District did not conduct any additional assessments regarding Dr. Fay's provisional diagnosis of Generalized Anxiety Disorder, or the Student's affective status despite Dr. Fay's warning that the Student was affectively at significant risk.

36. It is concluded that the District's reevaluation of the Student was based on outdated and more likely than not unreliable information, apart from Dr. Fay's evaluation report. It is concluded the District's reevaluation did not evaluate the Student in all the now clearly suspected areas of disability based upon the District's knowledge gleaned from its review of Dr. Fay's report. Given by this time the Student had a long and well-documented history of severe anxiety and work/school refusal, it is irrefutable the District should have assessed the potential impact of his anxiety on his education and learning. The District's reevaluation report is deficient and inappropriate on its face. And tellingly, Mr. Hoffman and Mr. Raff, the two District staff most involved with the reevaluation, could not answer basic yet very material questions about the evaluation process, what was assessed or not assessed, and why. It is concluded that the District's reevaluation of the Student is manifestly incomplete and inappropriate. It is concluded this is both a procedural and substantive violation of the IDEA. It is concluded that the District's reevaluation is so obviously and fatally flawed, it is far more likely than not that any IEP developed based on this reevaluation would be inappropriate, and deny the Student FAPE.

*Whether the District failed to provide the Student with FAPE during the 2017-2018 SY*

37. The Parents appear to focus this argument on the appropriateness, or lack thereof, of the Student's November 2017 IEP. Parents' Brief pp64-67. The Parents identify events and circumstances that occurred after the development of the Student IEP in November 2017, but consideration of those events and circumstances to prove or disprove the appropriateness of the November IEP runs afoul of the Adams' snapshot rule. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).

38. Based upon the District's October 2017 reevaluation of the Student, the Student's IEP team convened and developed an IEP for the Student in November 2017. Despite all the new information from Dr. Fay's evaluation report, the IEP did not increase the Student's amount (minutes) of SDI over the Student's May 2017. The Student's reading goal in the November 2017 IEP still assumed the Student could read at a sixth-grade level, when Dr. Fay determined the Student's reading comprehension was at a third-grade level. The November IEP continued the same behavior goal from the May 2017 IEP, even though the Student had made no progress on that goal, and had actually regressed. Despite Dr. Fay's evaluation confirming the Student had significant communication skills and social skills deficits, the November IEP did not address those areas. The only substantial change from the Student's May 2017 IEP to his November IEP was



the provision of a 1:1 EA for the Student to support progress towards the Student's behavior goal.

39. That the District's October 2017 reevaluation of the Student was manifestly inappropriate and incomplete has already be decided. And it has been concluded that an IEP based upon that reevaluation is far more likely than not inappropriate, and would deny the Student FAPE. That conclusion is only buttressed by review of the subsequent November 2017 IEP. It is concluded that the Student's November 2017 IEP was not appropriate and denied the Student FAPE. This substantive violation of the IDEA warrants a remedy.

*Failing to consider whether the Student was eligible under the Other Health Impairment (OHI) and/or Specific Learning Disability (SLD) eligibility categories;*

40. The Parents appear to conflate two different school district duties under the IDEA: the child-find duty and the duty to provide FAPE to all eligible students. Child find is the duty to locate, identify, and then evaluate a child in order to determine if the child is eligible to receive special education and related services. Eligibility determination is a three-part analysis. First, a child must have a disability included in one of the 13 eligibility categories. In the Student's case, the District determined the Student is a child with autism, which is one of the 13 eligibility categories. Second, the child's disability must have an adverse impact on the child's education. The adverse educational impact of the Student's autism manifests across multiple domains. Finally, the adverse educational impact must be such that it cannot be addressed exclusively through education in a general education setting with or without accommodations, and requires the provision of special education. WAC 392-172A-01035. Once a student is determined eligible for special education and related services, a school district is obligated to provide all the special education and related services that the student needs in order to receive FAPE, regardless of the eligibility category identified as the first element of the student's eligibility. In the Student's case, once the District determined him eligible based in part on a determination the Student has autism, the Student was entitled to receive all the special education and related services he required in order to obtain FAPE, including the special education and related services associated with or deriving from any other disability or disabilities the Student may have. As the District's Brief correctly points out, once a child is determined eligible, the disability category does not dictate or control what special education and related services a school district is responsible for providing in order to enable the child to receive FAPE. A "child's entitlement is not to a specific disability classification or label, but to a free appropriate public education. *Letter to Fazio* (OSEP 1994) 21 IDELR 572, 21 LRP 2759. In other words, once determined eligible for special education and related services, the label (or disability category) does not drive or determine the special education services a school district must provide. Rather, a school district must provide any and all special education and related services the child requires in order to receive FAPE.

41. For the Student, once determined eligible in part under the autism category, it is immaterial whether the District failed to consider or identify him under any of the 12 remaining eligibility categories because having been determined eligible at all, the Student is entitled to receive any and all special education and related services he required in order to obtain FAPE. The pitfall for school districts comes when a child is determined eligible, but the district has not comprehensively evaluated the child because it relied upon a particular eligibility category or "label" to somehow limit its evaluation, thus failing to identify not all the child's disabilities, but all the special education and related services the child requires in order to obtain FAPE. It is concluded that the District

did not violate the IDEA by failing to consider whether the Student was eligible under the OHI or SLD eligibility categories in either the 2016-2017 or 2017-2018 SYs.

*Whether the District failed to provide the Student with FAPE during the 2016-2017 SY:*

42. The Parents' Brief appears to consolidate multiple issues from the statement of the issues and requested remedies into this omnibus assertion the District denied the Student FAPE during the 2016-2017 SY. *Compare* Statement of the issues and requested remedies at Issues (b)(ii)-(xix), above, with Parents' Brief pp49-56. This makes it extremely difficult to parse out or clearly identify the individual facts, applicable law, and the legal argument or analysis the Parents rely upon with respect to each of the specific issues consolidated into their omnibus assertion the District denied the Student FAPE. Furthermore, the Parents' Brief again references "the facts set forth in the Facts Presented at Hearing section," without identifying which of those facts supports the resolution of any particular issue in the Parents' favor. Indeed, careful review of this section of the Parents' Brief (pp49-56) finds no mention at all of the facts or legal arguments with respect to multiple issues. For example, this section of the Parents' Brief does not address in any manner whether the District was unprepared to meet the Student's educational needs upon commencement of sixth or seventh grades. It does not address whether the District failed to provide necessary occupational or assistive technology. It does not address whether or how the District failed to appropriately modify curriculum for the Student. It does not address preferential seating or access to classroom materials. As concluded above, this places the undersigned ALJ in the position of effectively becoming the Parents' advocate, reviewing the record to identify particular facts that support the Parents' positions, and then articulating a legal argument or analysis supporting resolution of an issue in the Parents' favor. In the particular circumstances of this case, the undersigned ALJ declines that role.

43. Careful review of the Parents' Brief at pp49-56 identifies the following arguments reasonably articulated in support of the Parents' omnibus assertion the District denied the Student FAPE during the 2016-2017 SY:

- a. The District did not develop an IEP that was reasonably calculated to enable the Student to make progress;
- b. The Student was not getting the support he required in order to complete his homework or effectively use his planner/binder;
- c. The Student was earning Ds and Fs in his academic classes;
- d. The Student was refusing to do assigned work at school and was refusing to participate in class;
- e. The May 2017 IEP discontinued daily checking of the Student's planner/binder;
- f. The May 2017 IEP discontinued the behavioral supports in his May 2016 IEP;
- g. The District materially failed to implement the Student's IEP (which IEP is not identified; the May 2016 IEP or the May 2017 IEP);
- h. The Student was not making progress on all of his May 2016 IEP annual goals.

44. The Student entered the 2016-2017 SY with his May 2016 IEP still in effect. That May 2016 IEP was developed prior to the commencement of the statute-of-limitations period on August

31, 2016.<sup>23</sup> Because the development of the May 2016 IEP falls outside the statute-of-limitations period, the Parents may not challenge the procedural or substantive appropriateness of that IEP. The Parents may, however, raise challenges to whether or not the May 2016 IEP was appropriately implemented during the 2016-2017 SY.

45. The Student's May 2016 IEP provided a "check-in by the end of the day for planner completion and assignments/papers in backpack" as an accommodation to address the Student's organization. A reasonable interpretation or application of this accommodation must include a daily check that not only is the Student's planner complete, but that the information in the binder is also accurate or correct. A binder that is complete but inaccurate could not possibly assist the Student with his organization or completion of his assigned homework. The record is clear that while the Student's teachers in sixth grade would, perhaps not daily but regularly, check the Student's binder/planner, it is also clear that the teachers were not regularly checking to see if what the Student wrote in his planner/binder was accurate or correct. It is concluded that the Student's May 2016 IEP was not appropriately implemented during the 16-17 SY. Moreover, this is clearly a material failure to implement the May 2016 IEP. Without having complete and accurate information in his binder/planner, the Student could not be expected to complete his homework, and it would not assist him in preparing for examinations at school. This, in turn, undoubtedly impacted the Student's grades, impeded his learning, and likely contributed to the Student's refusal to engage in work at school, or attend school altogether during sixth grade. It is concluded the District materially failed to implement the Student's May 2016 IEP during sixth grade, thereby denying him FAPE during the 2016-2017 SY.

46. The Student's May 2017 IEP discontinued the Student's accommodations for organization, including the daily binder/planner check-in. This was despite the fact that the Student showed no significant improvement in his organization or use of his binder/planner at school throughout the school year. It is unclear how the May 2017 IEP provided any other SDI, services, or accommodations to help the Student's disorganization. It is concluded that the Student's May 2017 IEP denied him FAPE. This is a substantive violation of the IDEA, and warrants a remedy.

47. The fact that the Student was not making progress on *all* of his May 2016 IEP goals is not dispositive of the issue of whether the District denied the Student FAPE during the 2016-2017 SY.

*Whether the District failed to provide the Student an appropriate placement during the 2016-2017 SY:*

48. The Parents assert that the District did not appropriately integrate the Student into general education classes, and failed to consider other placement options. See Statement of the issues and requested remedies at Issues (c)(i)-(ii); Parents' Brief pp56-59. The Parents' legal argument on this issue is difficult to follow. First, the Parents offer the legal definition of what constitutes an

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<sup>23</sup> The Parents filed their request for a due process hearing on August 31, 2018. See WAC 392-172A-05080(2).

“appropriate placement,” citing *Ka. D. v. Nest*, 58 IDELR 244 (9<sup>th</sup> Cir. 2012); Parents’ Brief p56. Then the Parents assert that the proper test for determining whether a placement is “substantively appropriate” is the four-factor test under *Sacramento City Unified Sch. Dist. v. Rachel H.*, 20 IDELR 812 (9<sup>th</sup> Cir. 1994); Parents’ Brief p57. The *Rachel H.* test is used to determine the least restrictive environment (LRE) in which a Student’s IEP can be successfully implemented. And then in support of their argument, the Parents cite to facts that all occurred *after* the 2016-2017 SY ended. Parents’ Brief pp57-59. Finally, the Parents go on to assert the District predetermined the Student’s placement for the 2016-2017 SY, although they did not raise any predetermination issue regarding that school year.

49. The undersigned has already determined the District denied the Student FAPE for the 2016-2017 SY. To the extent the Parents argue such a determination is equivalent to failing to provide the Student with an appropriate placement, their argument does not add to what has already been determined. Furthermore, as the District’s Brief notes, the Student spent the vast majority of his school day during the 2016-2017 SY attending general education classes at IMS. District’s Brief p48. It is also concluded that the District did not fail or refuse to consider the Parent’s proposed private placement at YWA during the 2016-2017 SY. The Parents did not even propose YWA until the District received the Parents’ letter on August 1, 2017, wherein the Parents informed the District that they were placing the Student at YWA and would be seeking reimbursement from the District. It is concluded the Parents have not proven any violation of the IDEA with respect to failing to provide the Student with an appropriate placement for the 2016-2017 SY.

*Whether the District predetermined the Student’s placement and failed to provide the Student an appropriate placement during the 2017-2018 SY:*

50. A district violates a parent’s right to meaningfully participate in the IEP process if it predetermines a student’s placement, such as when it “independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification.” *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9<sup>th</sup> Cir. 2003). Predetermination may also occur when a District makes a placement determination prior to an IEP meeting and is unwilling to consider other alternatives. *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9<sup>th</sup> Cir. 2007). Further, predetermination violates the IDEA because the Act requires that the placement be based on the IEP, and not vice versa. *K.D. ex rel. C.L. v. Dep’t of Educ., Hawaii*, 665 G.3d 1110, 1123 (9<sup>th</sup> Cir. 2011).

51. The Parents’ argument on this issue is brief and unpersuasive. Parents’ Brief pp67-68. The Parents cite a PWN written by Mr. Raff that is dated November 8, 2017. The associated IEP meeting was held on November 15, 2017. Mr. Raff explained during his testimony that the date on the PWN is more likely than not an artifact of the IEP Online software program used by the District at that time. This is not compelling evidence of the District predetermining the outcome of the November 2017 IEP meeting. The Parents then cite to the November IEP itself to argue that the District considered only one placement for the Student, thereby predetermining the Student’s placement. This is based upon the Parents’ belief that because only one placement option on the LRE continuum matrix was marked as both “considered” and “selected,” no other options were considered. See P250p17. Again, this is not sufficiently compelling evidence to conclude the District committed predetermination. It is concluded the Parents have not met their

burden to prove predetermination.

*The Parents' Requested remedies*

52. The Parents request the District be ordered to conduct a comprehensive evaluation of the Student. Parents' Brief p69. Having concluded the District failed to conduct an appropriate evaluation of the Student in October 2017, this is an appropriate remedy, particularly given how much time has passed since the Student has been evaluated to determine the impact of his disabilities on his education. **The District shall conduct an evaluation of the Student that complies with all regulations at WAC 392-172A-03005 through 392-172A-03080** that includes whatever assessments an evaluation team, including the Parents, determines is appropriate and at a minimum includes: a functional behavioral assessment; an academic assessment; a cognitive assessment; a fine-motor assessment, a sensory assessment; a communication assessment that includes expressive, receptive, and pragmatic language assessments; an assessment of the Student's emotional status that includes anxiety and depression; a social-skills assessment designed to assess the impact of the Student's autism on his receipt of an educational benefit; an adaptive skills assessment; and an assistive technology assessment.

53. The Parents request a facilitated IEP meeting to develop an appropriate IEP for the Student. Parents' Brief p70. This is also a necessary and appropriate component of the Student's educational planning, particularly in light of prior IEPs for the Student that have been determined inappropriate and denied the Student FAPE. After completing the comprehensive evaluation of the Student, **the District shall convene a facilitated IEP team meeting and pay for the participation of a facilitator for up to three hours, at a rate not to exceed 110% of the customary rate for qualified facilitators in the District's local professional community.** The facilitator shall be selected as follows. The District and the Parents shall each nominate three individuals. Beginning with the Parents, the parties shall alternate striking one name from the list of six nominees. The last nominee remaining will facilitate an IEP team meeting that complies with all regulations at WAC 392-172A-03090 through 392-172A-03115.

54. The Parents request an order that all District staff "involved with" the Student be trained in the proper development and implementation of evaluations, IEPs and behavior support or improvement plans (BIPs). Parents' Brief p73. By the time this order is entered, it will be approximately three calendar years since the Student last attended school in the District. And the Student may not immediately return to the District, as discussed below. Given the typical turnover in school districts' staffing and in light of the guidance provided to the District with this decision and order regarding the Student's appropriate education in the District, it is concluded that this Parents' requested remedy is not warranted. The Parents' request for District staff training is **DENIED**.

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

*Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9<sup>th</sup> Cir. 1994). Flexibility rather than rigidity is called for. *Reid v. District of Columbia*, *supra*, 401 F.3d at 523-524. Given compensatory education is an equitable remedy, an administrative tribunal may consider the equities existing on both sides of the case. *Reid v. District of Columbia*, *supra*, 401 F.3d at 524.

56. The Parents request compensatory education in an amount equal to the SDI the Student should have received but for the District's denial of FAPE during the 2016-2017 and 2017-2018 SYs. Parents' Brief pp71-73. Given the undersigned ALJ's decision regarding prospective placement of the Student at YWA and reimbursement for the Parents, below, it is concluded that an award of the Parents' request for compensatory education would not be equitable. The Parents' request for compensatory education is **DENIED**.

57. The Parents request reimbursement for the expenses of YWA tuition, all associated costs, and mileage reimbursement since August 30, 2016, and until such time as the District conducts an appropriate evaluation and develops an appropriate IEP and behavior plan for the Student. Parents' Brief pp73-74. This request is considered under the umbrella of "other equitable remedies as appropriate." See, Statement of the issues and requested remedies for the due process hearing at (e)(vi).

58. Parents who unilaterally enroll a student in a private school are entitled to reimbursement only if: (1) the district placement violated the IDEA; and (2) the Parents' private school placement is "proper" under the IDEA. *Florence County Sch. Dist. v. Carter*, 510 U.S. 7, 15, 114 S. Ct. 361 (1993). Once a district fails to develop an IEP that makes FAPE available, the proper private placement need only confer some educational benefit to the student. *C.B. v. Special Sch. Dist. No. 1* 56 IDELR 187 (8<sup>th</sup> Cir. 2011); and *Warren G. v. Cumberland County Sch. Dist.* 31 IDELR 27 (3<sup>d</sup> Cir. 1999). A private school placement does not need to maximize the student's potential or provide every special education service and support she needs to be deemed proper or "appropriate" for reimbursement purposes. See, e.g., *C.B. v. Garden Grove Unified Sch. Dist.*, 56 IDELR 21 (9<sup>th</sup> Cir. 2011), *cert. denied*, 111 LRP 68912, 132 S. Ct. 500 (U.S. 2011). A unilateral private placement is "appropriate" for reimbursement purposes if it offers instruction that is specially designed to meet the student's unique needs as well as the support services the student requires to benefit from that instruction. *M.N. v. State of Hawaii, Dep't of Educ.*, 60 IDELR 181 (9<sup>th</sup> Cir. 2013, *unpublished*). A private placement does not need to satisfy the IDEA's least-restrictive environment requirement to be proper under the Act. *C.B. v. Special Sch. Dist. No. 1*, 636 F.3d 981, 991 (8<sup>th</sup> Cir. 2011).

59. It has already been concluded that the District denied the Student FAPE during the 2016-2017 and 2017-2018 SYs at IMS. The Student has clearly benefited from his enrollment at YWA. He no longer refuses to attend school, and participates in the learning process at YWA. The Student's 1:1 instruction at YWA is specially designed to meet his unique needs. While it is difficult to compare grades between YWA and IMS, especially since the Student received at least some modified grading at both placements, it is clear the Student has received "some educational benefit" from his enrollment at YWA. Furthermore, Dr. Fay's opinion that YWA is a good fit for the Student is given great weight. It is concluded that YWA is a "proper" placement for the purpose of tuition reimbursement for the Parents.

60. The Parents have paid a total of \$153,839.56 for the Student's tuition at YWA. **The District shall reimburse the Parents in the sum of \$153,839.56 for the expense of tuition at YWA.** However, given the very significant amount at stake, the District may request reasonable verification of these payments to YWA prior to reimbursing the Parents. Such reasonable verification can include, but is not limited to, cancelled checks, records of electronic funds transfers, or invoices/statements from YWA reflecting payments made by the Parents. If the District requests such reasonable verification, the District will reimburse the Parents within 45 calendar days of receiving the verification from the Parents.

61. The Parents have incurred an expense of \$7,640.46 for transporting the Student back and forth to YWA through March 31, 2020. The Father's calculation of this amount appears reasonable and likely accurate. **The District shall reimburse the Parents in the sum of \$7,640.46 for their transportation expense.** The reimbursement shall be paid to the Parents within 45 calendar days of entry of this Final Order.

62. The Parents request for reimbursement of "all associated costs" at YWA is **DENIED**. There is little to no evidence establishing what these associated costs are, or how they are associated with or necessary for the Student's attendance or proper education at YWA.

63. The Parents also request reimbursement for providing "appropriate evaluations," apparently a reference to Dr. Fay's reevaluation of the Student. The Parents paid a total of \$1,300.00 for Dr. Fay's evaluation. Had the District provided the Student FAPE, Dr. Fay's evaluation would have been unnecessary. **The District shall reimburse the Parents in the sum of \$1,300.00 for Dr. Fay's evaluation of the Student.** The reimbursement shall be paid to the Parents within 45 calendar days of entry of this Final Order.

64. The Parents request prospective placement of the Student at YWA with transportation to and from YWA at the District's expense. Having concluded the District denied the Student FAPE for two schools prior to the Parents placing him at YWA, and having concluded YWA is a proper placement for the Student, the Parents' request is **GRANTED**. **The District shall assume the expense of the Student's tuition and reimburse the Parents for their transportation of the Student to and from YWA immediately.** The District's liability for tuition at YWA and transportation shall continue until such time as the District conducts a comprehensive and appropriate evaluation and develops and offers an appropriate IEP to the Student. The Parents shall cooperate and provide their consent for the District's evaluation of the Student. If the Parents refuse consent, the District may request a due process hearing under the IDEA to seek to override the Parents' refusal to consent to the evaluation.

65. In the event there is any future dispute between the Parents and the District over the appropriateness of the District's evaluation or proposed IEP for the Student, **YWA shall be the Student's Stay-put placement** during the pendency of any dispute resolution under the IDEA.

66. The Parents also request an award of attorney fees and costs. Parents' Brief p74-75. Administrative Law Judges in the Washington State are not authorized to award attorney fees or costs. As the prevailing party in this matter, the Parents' attorneys may seek a determination and award of attorney fees and costs in the appropriate judicial forum.

**FINAL ORDER**

The Issaquah School District violated the Individuals with Disabilities Education Act and denied the Student a free appropriate public education during the 2016-2017 and 2017-2018 school years. The Parents are awarded the remedies in Conclusions of Law #53-54, #61-62, and #64-66, above. All other remedies are denied.

Served on the date of mailing.



MATTHEW D. WACKER  
Administrative Law Judge  
Office of Administrative Hearings

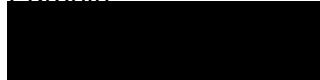
**Right To Bring A Civil Action Under The IDEA**

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 this 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 March 2, 2021, at Seattle, Washington.

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

cc: Administrative Resource Services, OSPI