

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

MAILED
JUN 28 2020

IN THE MATTER OF:

SHORELINE SCHOOL DISTRICT

OSPI CAUSE NO. 2019-SE-0090 OAH - SEATTLE

OAH DOCKET NO. 06-2019-OSPI-00796

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

A due process hearing was held before Administrative Law Judge (ALJ) Anne Senter on April 16, 17, 22, and 27, 2020, by videoconference. The Parent of the Adult Student (Student) whose education is at issue¹ appeared and represented herself. The Shoreline School District (District) was represented by Lynette Baisch and Elizabeth Robertson, attorneys at law. Also present was Scott Irwin, director of secondary student services.

STATEMENT OF THE CASE

The Parent filed a Due Process Hearing Request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on June 11, 2019. The Complaint was assigned Cause No. 2019-SE-0090 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered June 13, 2019, which assigned the matter to ALJ Anne Senter. The District filed its Response to the Complaint on June 18, 2019.

Due Date for Written Decision

As set forth in the Prehearing Order dated July 18, 2019, the due date for a written decision in this case is 30 days after the record of the hearing closes. As the record closed when the parties submitted their post-hearing briefs on May 29, 2020, the due date for the written decision in this case is **June 28, 2020**.

Evidence Relied Upon

Exhibits Admitted:

District's Exhibits: D1 - D17; and

Parent's Exhibits: P1 - P3, P5 - P15, P17 - P30, and P-B.²

¹ The Parent is also the Student's legal guardian. To ensure confidentiality, names of parents and students are not used.

² The Parent submitted Exhibits P32 - 42 after the five-day period for the submission of documents had ended. She explained that they were responsive to exhibits submitted by the District. The exhibits were denied as untimely presented but, given the Parent's explanation of their purpose, it was determined she

Witnesses Heard (in order of appearance):

Jeanette Cohen, attorney at law (by declaration and live testimony);
The Parent (by declaration and live testimony);
Scott Irwin, District director of secondary student services;
Weston Lucas, District assistant principal;
Brent Busby, District special education teacher;
Stacia Tellefson, former District general education teacher; and
Steve Hirsch, District school psychologist.

ISSUES

As set forth in the Seventh Prehearing Order, the issues remaining for hearing after the issuance of the summary judgment order are:

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) in the following ways:
 - I. Current IEP does not align with Student's post-secondary academic environment and goals;
 - II. Refusal of the District to adopt Student's job goals and align education/placement to support his job goals and post-secondary education;
 - III. District threatening to "force/implement" the Student's IEP which is the District's offer of FAPE as a full-time student;
 - IV. District denying Student Washington State graduation requirement of Washington State History;
 - V. District issuing a certificate of individual achievement when the Student is homeschooled and working to achieve a certificate of academic achievement;
- b. Whether the Parent is entitled to her requested remedies:
 - I. Compensatory services:
 - A. Private tutoring services in the areas of reading, writing, and math;
 - B. An online science credit recovery course;
 - C. An online Washington state history course;

could seek to admit them as rebuttal documents. The Parent later withdrew these proposed exhibits and submitted proposed rebuttal exhibits P-A through P-R instead. Exhibit P43 was not admitted.

- II. Removal of the certificate of individual achievement from the Student's transcript and the District's record;
- III. And/or other equitable remedies, as appropriate.

FINDINGS OF FACT

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

Background

1. The Student initially qualified for special education services in 2003 when he was in preschool. Exhibit D1, p. 1. He received special education services from the District until the Parent withdrew her consent for services in June 2019. Exhibits D12, D15, D16. He initially qualified as developmentally delayed and his eligibility category was later changed to health impaired after he was diagnosed with having a terminal deletion of a particular chromosome, a history of mild to moderate intellectual disability, height/weight below the 5th percentile, and mild dysmorphism. Exhibit D1, p2. At the time of the hearing, the Student was 20 years old. See Exhibit D1, p. 1.

2. The Student took and passed the Washington Access to Instruction & Measurement assessment (WA-AIM), an alternate assessment, in the spring of 2017. Exhibit P1. None of the Student's IEPs from before that assessment are in the record so it is not clear when it was determined that the Student would take this assessment.

3. The Student's IEP was reviewed in January 2018 when he was in the twelfth grade at Shoreline High School. Exhibit D2. With respect to statewide or district assessments, the IEP stated that the Student had passed all portions of the WA-AIM in 2017 and there would be "no further district-wide or state assessments." *Id.* at 5. The IEP stated that the Student would graduate in 2021. *Id.* at 4.

4. At this time, the Student's secondary transition plan was that he would remain at Shorewood through the 2018-2019 school year, taking academic, adaptive/daily living, vocational skills, and general education elective classes and then attend the District's transition program at Shoreline Community college for work experience training during the 2019-2020 and 2020-2021 school years. Exhibit D2, p. 11.

5. The District agreed to fund an independent educational evaluation (IEE) of the Student because the Parent was concerned about the District's most recent evaluation of the Student in 2017. Exhibit D4. A clinical neuropsychology IEE was conducted by Nora M. Thompson, PHD, ABPP, in February 2018. *Id.* Dr. Thompson conducted the Stanford Binet Intelligence Scales - Fifth Edition, which resulted in a full-scale IQ score of 50, which is below the .1st percentile and falls in the moderately impaired range of intellectual functioning compared to same-age peers. *Id.* at 5. The Woodcock-Johnson tests of Achievement - Third Edition demonstrated that the

Student's reading, math, and written expression scores are all below the first percentile. *Id.* at 6-7. His reading skills and written expression skills are roughly at the first grade level. *Id.* at 6, 8. Math is a relative strength, and his overall math skills place him roughly at the second grade level. *Id.* With respect to adaptive behavior, as measured by the Vineland Adaptive Behavior Scales, Second Edition, the Student's overall adaptive behavior composite scores fell in the low range relative to age expectations. *Id.* at 9.

6. Dr. Thompson's recommendations included a blended program for the Student, including special education services as well as opportunities for supported participation in carefully selected classes and activities within the general education setting. Exhibit D4, p. 12. Because the Student is a visual learner, instruction and directions should include heavy use of visual cues and supports, making sure that any words or phrases including on the visual supports are those the Student can read and understand. *Id.* She recommended that the Student "will do best when academic and vocational learning activities are grounded in 'real-life' experience, with strong utilization of concrete visual cues and step-by-step directions diagramed on a picture checklist." *Id.* She recommended a "functional academic program" that can prepare him for "future vocational and community settings." *Id.* Because the Student's difficulty with reading is due to the presence of multiple processing deficits, the use of visually-based reading instruction targeting sight-word recognition and memorization were recommended as most appropriate for him. *Id.* With respect to writing, it was recommended that opportunities be sought to teach him to use his writing skills in a variety of practical communication settings, such as writing himself a reminder note, making a sign, writing down important information given in class like a project due date, making a checklist of tasks to be accomplished, and writing letters to others. *Id.* at 13. With respect to math, Dr. Thompson recommended instruction in basic concepts of fractions and division in a variety of practical settings using real objects, such as determining equal shares of pizza. *Id.* She noted that the Student was likely to have much more difficulty mastering strictly numerical calculation procedures with fractions. *Id.* Dr. Thompson recommended opportunities to participate in activities including art, photography, and technology because of the Student's visual strengths and interests. *Id.*

7. Additionally, a vocational assessment IEE was conducted by Peter McBride of Provail in May and June 2018, to focus on the Student's strengths, barriers, vocational interests, and potential accommodations. Exhibit D5. Mr. McBride identified as strengths the Student's energy, passion for connecting with people, motivation to complete tasks, sociable nature, and eagerness to participate in group tasks. *Id.* at 1. He noted that the Student could navigate well and perform basic spreadsheet tasks on a computer or iPad after watching a demonstration, although he struggled to apply the same technique to a different set of data without prompting. *Id.* The barriers identified for the Student were difficulty understanding conceptual ideas, a relatively short attention span, loss of focus when triggered by loud noises, and a possible lack of understanding of appropriate social boundaries regarding female students. *Id.* at 2.

8. With respect to vocational interests, the assessment determined that the Student was not currently pursuing a specific job or industry. Exhibit D5, p. 2. When asked about career interests, he gave general answers, including working in an office, helping a sports team, and describing his work at the school library. *Id.* When prompted with specific industries, he identified so many of interest that it was unclear which appealed to him. *Id.* The evaluator noted that the Student needed significant one-on-one guidance and instruction when participating in lessons or group activities and that he could learn the basic Microsoft suite products through classroom instruction

or perhaps by working on his own, but would need more one-on-one instruction for conceptual tasks or point of sale systems. *Id.* It was determined that physically stationary and routine jobs, including long periods sitting at a desk, would be challenging for the Student and that frequent and new tasks, especially if they involve social interaction, such as a help or reception desk, would boost his productivity. *Id.* It was also noted that the Student would excel with direct or nearby supervision available throughout his shift to assist with redirecting him back on task and to recognize when he needs more detailed instruction. *Id.* at 3. It was recommended that the Student take advantage of services that would help him get more focused attention on potential careers for after high school. *Id.*

9. In June 2018, the Parent filed Special Education Citizen Complaint No. 18-68 with OSPI, alleging a number of violations. Exhibit D3. Following an investigation, OSPI found a number of violations, including that the District had unilaterally "waived" the graduation requirement for the Student to take Washington State History. *Id.* at 26. The decision to waive graduation requirements should have been an IEP team decision. *Id.* As a corrective action with respect to the secondary transition plan, OSPI required the District to reconvene the IEP team to review the course of study and, with the Parent's input, determine what graduation requirements, if any, should be waived. *Id.* at 32, 34.

10. An IEP team meeting was held in September 2018, in part to address the corrective action required by OSPI related to the citizen complaint. Exhibit D7. By this time, the Student was attending Shorecrest High School, a different school in the District. Exhibit D8, p. 3.

11. The IEP team addressed the District's prior decision to waive the Washington State history requirement in middle school. Exhibit D8, p. 32. The team determined that the Student's senior civics graduation requirement should not be waived as it would enable him to participate in voting and civic life after high school. *Id.* In contrast, it determined that taking the middle school Washington state history class would not be appropriate at his point and declined to reinstate it. *Id.*

12. The IEP's secondary transition plan identified the following post-secondary goals and outcomes with respect to the Student's education/training and employment:

Content area: Education/Training

Upon leaving public school, [the Student] will receive on the job training from an employment specialist to help him learn new skills and maintain employment, and parent would also like him to take classes at Shoreline Community College.

Transition Services

Job training will include continued exposure and training in varying employment options. If this area continues to be of interest to [the Student], there will be a focus on different positions available in Office related jobs, and in different types of office locations. Parent requests that "[the Student] will receive progressive goals and instructional (sic) in the areas of Reading, Writing, Math, Computer Applications, and organization/note taking."

Content area: Employment

Upon leaving public school, [the Student] will obtain employment in a position that allows him to work in an environment suitable to his needs, interests and preferences.

Parent describes [the Student's] Employment Goal as Office Management.

Parent requests that "[the Student] will obtain a position in Office Management."

Transition Services

[The Student] will receive career related education such as course work in Computer Applications, and office productivity tools, and a job experience in an office setting. He will also have job placement in office settings to apply skills achieved in course work.

Exhibit D8, p 10. The IEP stated that the Student would take adaptive/daily living, essential math, essential English, essential reading, and vocational skills classes and a gen education elective (science) during the 2018-2019 school year at Shorecrest as well as Senior Civics in the spring semester. *Id.* at 11. It stated he would attend the District's transition program at Shoreline Community College for work experience training during the 2019-2020 and 2020-2021 school years. *Id.*

13. The Parent filed another Special Education Citizen Complaint, this one assigned No. 18-86, in September 2018. Exhibit D10. The Parent again raised the issue of the Washington state history requirement. Exhibit D10. OSPI determined that the IEP team followed the appropriate procedures to discuss graduation requirements and that there was no violation. *Id.* at 17.

14. The Parent also challenged the transition plan and course of study in the September 2018 IEP. Exhibit D10, p. 17. The Parent argued that the Student's post-secondary goals are to work in office management, and she requested that he continue in his current high school classes for the 2018-2019 school year and then take four classes at the high school, including senior civics during the 2019-2020 school year and then spend the rest of the time at an off-site vocational placement. *Id.* The Parent objected to the District's plan that the Student would take senior civics in the spring of 2019 and then participate in the District's transition program for the next two school years. *Id.* OSPI determined that the IEP team considered of the benefit of the Student moving from Shorecrest to the transition program with his with his peer group, the recommendations of the IEE, and the importance of a functional setting and real-life applications for learning. *Id.* at 18. OSPI found "no compelling reason to question the IEP team's decision." *Id.* at 19.

The January 2019 IEP

15. An IEP team meeting was held in January 2019 to review the Student's annual IEP. Exhibit D11. The secondary transition plan includes the same post-secondary goals and outcomes with respect to education and training and employment as in the September 2018 IEP. Exhibit D12, p. 8. As far as classes, the team determined that spring semester he would take Senior Civics, as determined in the September 2018 IEP. *Id.* at 22. The IEP team also wanted to change him from a math skills class to essential math, a different special education class the team felt was a better match to his skills. *Id.* He was not able to participate with his peers in the math skills class because he was not at the same content level. *Id.* Because the math classes were offered different periods and because the general education Senior Civics class was offered

a different period than the general education science class he had taken the previous semester, his schedule changed. This Student was not able to continue in his yearbook class under this schedule, so it was provided to him as an independent study in a general education digital photography class. *Id.* The secondary transition plan called for him to participate in the District transition program at Shoreline Community College for the 2019-2020 and 2020-2021 school years. *Id.* at 9. The transition program allows students to work on functional academic skills, social skills, and vocational skills through internships. Busby, Tr. 354.

16. The IEPs contained a reading comprehension goal designed to increase the Student's comprehension by grade level, a reading comprehension goal involving reading office documents in various formats, a daily living/adaptive goal of completing online or paper forms, a written expression goal to write an email or office document, a written expression goal to accurately proofread written email messages or office documents, a math goal related to using money, a math goal related to computation problems for the purchase or distribution of office materials using addition, subtraction, multiplication, and division. *Id.* at 12-13. In addition to these academic goals, the IEP contained two vocational goals: a workplace communication goal to create a task list improving workplace communication skills, and a workplace productivity goal related to self-initiating non-preferred tasks. *Id.* at 14.

17. The Parent did not want the Student to move into the transition program. She wanted him to remain in all the same classes as first semester and wait to take Senior Civics until the fall of 2019. During the 2019-2020 school year, she wanted him to stay at Shorecrest for several academic classes to continue to build his traditional academic skills and then have an independent vocational activity that was not part of the District's transition program. Exhibit D12, p. 22.

18. On February 1, 2019, the Parent notified the District that she would begin home schooling the Student beginning at the start of the second semester. Exhibit P22. She stated that the Student would take essential reading, essential English (writing), and adaptive living at Shorecrest during the first three periods of the day as well as attending home room and participating in spring sports/track. *Id.* In response, the District issued a prior written notice stating that Shorecrest would implement the part-time schedule requested by the Parent. Exhibit P23. It noted that the Student's IEP continued to be available to him, including a full day of school, and warned that it was expected he would not meet all the annual goals in his IEP if he did not access all of its services. *Id.*

19. The Parent filed a prior due process hearing request, Cause No. 2019-SE-0011, with respect to the January 2019 IEP, which was later withdrawn. The Parent stated in her declaration that the District's attorney threatened in a prehearing conference in that case in April 2019 to "force implement" the January 2019 IEP and force the Student "to transition," presumably to the transition program at the community college. Parent Decl., p. 8. The audio recording of that prehearing conference does not support this allegation. Exhibit P15. The only conversation the Parent could have been referring to took place when the Parent was discussing her requested remedies. *Id.* The Parent explained that, because she was homeschooling the Student, she would be able to enroll him the special education placement she desired, rather than that in his IEP, so she did not need to include the desired placement as a requested remedy. *Id.* The District's attorney spoke up to explain that the District disagreed with the Parent's assumption that

she would be allowed to choose the special education placement and she would need to request that as a hearing remedy. *Id.*

20. The Parent filed the instant case on June 11, 2019. Exhibit P30. On June 20, 2019, the Parent revoked her consent for the Student to receive special education services. Exhibit D15. The Parent did this because she mistakenly believed that her request for stay-put needed to be heard by the ALJ before the date in the IEP on which the Student's placement would change from Shorecrest to the transition program, even though the transition program was not scheduled to begin until the fall. Parent Decl., p. 16.

21. A number of the Parent's issues in the instant case were grounded in her belief that she could unilaterally choose the Student's special education program when the Student was enrolled in the District part time. See Exhibit P30. These claims were dismissed on summary judgment because the ALJ lacks authority to address claims under the "Learning by Choice Law," and because, under special education law, the IEP team remains responsible to determine the Student's special education services, and the Parent may not unilaterally make those decisions. Order on District's Motion for Summary Judgment (November 2019).

22. The District noted on the Student's transcript that he has received a certificate of individual achievement (CIA). Exhibit P20, p. 2. Dr. Irwin has explained to the Parent that the Student could obtain a certificate of academic achievement (CAA) in addition to the CIA he has already received if he successfully pursues additional assessments. Exhibit P26, p. 1. He also provided her with the information about how to schedule additional testing. *Id.*

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

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

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

The IDEA

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

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

Id. at 206-07 (footnotes omitted).

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

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

Id. at 188-89. A district is not required to provide a "potential-maximizing" education" in order to provide FAPE, but only a "basic floor of opportunity" that provides "some educational benefit" to the Student. *Id.* at 200-01.

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

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

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

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

M.C. v. Antelope Valley Union High Sch. Dist., 852 F.3d 840 (9th Cir. 2017)(citation omitted).

Effect of OSPI decisions regarding the Parent's citizen complaints.

6. The non-adversarial citizen complaint process does not contain the due process protections of a due process hearing, such as the opportunity to cross-examine witnesses, and the party seeking relief does not bear the burden of proof in the citizen complaint process. See *Letter to Reilly*, 114 LRP 49672 (OSEP 2014) (*Schaffer v. Weast* burden of proof does not apply to state complaints). For these reasons, decisions in citizen complaints are not determinative in due process hearings on the same subject, although they are persuasive.

The IEP and the Student's transition planning

7. Because the first two issues identified by the Parent are interrelated, they are addressed together. The first of these issues is that the Student's January 2019 IEP does not align with the Student's post-secondary academic environment and goals. The second is the District's refusal to adopt the Student's job goals and to align his education and placement to support his job goals and post-secondary education. Thus, the Parent argues that the District has not adopted appropriate post-secondary goals for the Student and that the program and placement established in the January 2019 IEP does not appropriately align with the Student's post-secondary goals.

8. IEPs must include, beginning not later than the first IEP to be in effect when a student turns 16, "appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills. WAC 392-172A-03090(1)(k). They must also include the transition services, including courses of study, needed to assist the student in reaching those goals. *Id.*

9. Transition services are "a coordinated set of activities for a student eligible for special education" that are "focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to post-school activities, including postsecondary education and employment." WAC 392-172A-01190. They must be based on the student's individual needs, taking into account the student's strengths, preferences and interests, and include instruction, related services, community experiences, the development of employment and other post-school adult living objectives. *Id.*

10. The training/education and employment goals in the January 2019 IEP reflect the results of the transition assessment in which the Student did not identify a particular job or education goal, while incorporating the Parent's expressed plan that the Student work in an office. Transition goals must be based on a student's needs, including strengths, preferences, and interests, not simply the parent's wishes.

11. As to the IEP's support for the education/training and employment goals, the Student's IEP goals focus on functional academics that would be useful in an office setting as well as continuing to work on a traditional reading comprehension goal. This focus on functional academics at Shorecrest in the spring of 2019 and then in the community transition program in the fall reasonably address the Student's needs as demonstrated by the transition assessment and honor the Parent's desire that he work in an office. OSPI previously determined with respect to the transition goals in the September 2018 IEP that it found no compelling reason to question

the IEP team's decision. Likewise, here, the Parent has not demonstrated that the IEP was not reasonably calculated to provide the Student an educational benefit.

District's threat to "force/implement" the IEP

12. The Parent argues that the District threatened to "force implement" the Student's IEP and force him "to transition," presumably to the community-based transition program. Specifically, the Parent contends that the District's attorney made this statement in a prehearing conference in an earlier case on April 5, 2019. As found above, the audio of the April prehearing conference, submitted as an exhibit by the Parent, demonstrated that the District's attorney did not threaten to "force implement" the Student's IEP.

13. It is not entirely clear what it is the Parent believed the District was going to "force implement." The Parent appeared to believe that the District was threatening that the Student would have to attend school in the District full time despite the Parent's desire to homeschool the Student and have him attend school only part time. Parent, Tr. 52. The District had already acknowledged, however, at the time of that prehearing conference, that the Student was only attending school in the District part time and that the IEP, "including a full day of school," continued to be "available" to him. Thus, it is evident the District was not "force implanting" full-time enrollment on the Student.

14. Alternately, the Parent also appears to have been concerned that the District was going to require the Student to participate in the special education services identified in his IEP, rather than other services selected by the Parent. Parent, Tr. 52-53. As determined on summary judgment, the Student's part-time status does not allow the Parent, rather than the IEP team, to determine what special education services are appropriate. Thus, the District's attorney's statement to this effect in the prehearing conference was an accurate statement of the District's obligation under the law and not an inappropriate threat.

Denying Washington State History graduation requirement

15. Substantive standards for high school graduation are set by state law and school district policies, not by the IDEA. *Letter to Anonymous*, 22 IDELR 456 (OSEP 1994). Diploma requirements may be waived for students with disabilities if the modification is made on an individual basis in the student's IEP. *Camas School Dist.*, 106 LRP 2398 (SEA WA 2003); see also *Letter to Runkel*, 25 IDELR 387 (OCR 1997).

16. Washington state history and government is a required course for graduation. WAC 180-51-067. However, prior to December 2019, WAC 180-51-115 allowed individual students to be exempted from graduation requirements if, due to the student's limitations, those requirements impeded the student's progress toward graduation:³

(1) No student shall be denied the opportunity to earn a high school diploma solely because of limitations on the student's ability. The board of directors of

³ WAC 180-51-115 has since been amended to state that a graduation credit and subject area requirement "may be *substituted* with comparable course work" by an IEP team, rather than waived. (emphasis added).

districts granting high school diplomas shall adopt written policies, including procedures, for meeting the unique limitations of each student. Such procedures may provide for:

- (a) The extension of time the student remains in school up to and including the school year in which such student reaches twenty-one years of age;
- (b) A special education program in accordance with chapter 28A.155 RCW if the student is eligible; and
- (c) *Special accommodations for individual students, or in lieu thereof, exemption from any requirement in this chapter, if such requirement impedes the student's progress toward graduation and there is a direct relationship between the failure to meet the requirement and the student's limitation.*

(Emphasis added).

17. Thus, where a school district adopts a policy that allows modification of graduation requirements consistent with a special education student's particular disabilities, it has the authority to award a diploma based upon modified requirements. *Camas, supra.*

18. Here, OSPI ordered the IEP team to determine whether waiver of the Washington state history course was appropriate for the Student after the first citizen complaint. The IEP team determined that Senior Civics was an appropriate course for the Student to ready him to participate in voting and civic life and, in contrast, determined that Washington State history was not appropriate, and declined to reinstate the requirement that had previously been waived in middle school. In addressing the second citizen complaint, OSPI determined that the IEP team followed proper procedures to discuss the graduation requirements. The IEP team's decision that Senior Civics was more relevant to the Student's program and future needs as a citizen was consistent with recommendations that his program focus on functional learning and preparation to transition to independence. The Parent has not demonstrated that the District lacked or violated a District policy in making this decision and has not proven a violation of the IDEA or a denial of FAPE regarding the waiver of the graduation requirement.

19. The Parent also argues that, since she withdrew her consent for the Student to receive special education, he is now required to complete the course as a general education student. The ALJ only has authority to address violations of special education law and therefore cannot address a claim related to the District's responsibilities to educate the Student after the revocation of consent.

Issuing certificate of individual achievement

20. The Parent argues that the District should not have issued a certificate of individual achievement (CIA) for the Student because she states that he is instead working to achieve a certificate of academic achievement (CAA). In order to graduate with a high school diploma, students graduating in or before 2019 were required to earn either a CAA or a CIA in addition to other graduation requirements. RCW 28A.655.061; RCW 28A.155.045. In 2019, additional graduation pathways were established. RCW 28A.655.250. A CAA demonstrates that a student

met state academic standards according to statewide assessments. RCW 28A.655.061. A CIA is available to special education students who are not appropriately assessed by the Washington statewide high school assessment system or the new graduation pathways available since 2019. RCW 28A.155.045; RCW 28A.655.250. The CIA may be earned using multiple alternate ways to demonstrate skills and abilities “commensurate with [students’ IEPs].” *Id.* The determination of whether the high school assessment system is appropriate for a student shall be made by the student’s IEP team. *Id.*

21. OSPI is responsible to develop guidelines for determining which students should not be required to participate in the in the high school assessment system and which types of assessments are appropriate. RCW 28A.155.045. OSPI’s website states that a Student’s IEP team will determine which assessment option is appropriate for a special education student based on the student’s learner characteristics, and taking into consideration the student’s present levels of academic achievement and functional performance (PLAAFP), post-secondary goals, and previous testing history. Exhibit P-E at 1.⁴ OSPI describes the WA-AIM, the assessment the Student passed in 2017, as an appropriate alternate assessment for students with significant cognitive disabilities. *See OSPI, Assessment for Students with Cognitive Disabilities (WA-AIM).*⁵

22. The Parent does not argue that the WA-AIM was an inappropriate assessment for the Student or that there was any procedural violation with respect to how it was selected for him. By virtue of having passed the WA-AIM, the Student is entitled to a CIA. Moreover, the District has explained to the Parent that the Student may pursue further testing to obtain a CAA as well as the CIA. The Parent has not demonstrated a violation of the IDEA or a denial of FAPE with respect to the issuance of the CIA.

23. To the extent the Parent is arguing that the Student should not receive a CIA because she has a right to determine that he obtain a CAA instead because she is homeschooling him, it has already been determined that the ALJ lacks the authority to address the laws regarding homeschooling.

24. The Parent raises a number of issues in her post-hearing brief that were not identified as issues in her due process request or in the statement of the issues, including entering false information in the Student’s record, predetermination, and failing to include certain information in prior written notices. These issues are not considered. All arguments made by the parties related to the relevant issues have been considered. Arguments not specifically addressed herein have been considered, but are found not to be persuasive or not to substantially affect a party’s rights.

ORDER

The Parent has not proven that the Shoreline School District violated the Individuals With Disabilities Education Act or denied the Student a free appropriate education. The Parent’s requested remedies are denied.

⁴ Exhibit P-E was not admitted as it was not provided to the District in compliance with the 5-day rule, but the District agreed that the ALJ could take judicial notice of its contents.

⁵ This document is available at www.k12.wa.us/student-success/testing/state-testing-overview/assessment-students-cognitive-disabilities-wa-aim.

Served on the date of mailing.

Anne Senter

Anne Senter
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served this document on each of the parties listed below. I emailed a copy to the parties at their addresses of record.

Parent

[REDACTED]

Scott Irwin, Director of Secondary Student Services
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Shoreline, WA 98155-2148

Adult Student

[REDACTED]

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Dated June 28, 2020, at Seattle, Washington.

Anne Senter

Representative
Office of Administrative Hearings
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cc: Administrative Resource Services, OSPI