

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

IN THE MATTER OF:

OSPI CAUSE NO. 2020-SE-0028

OAH DOCKET NO. 01-2020-OSPI-01001

MERCER ISLAND SCHOOL DISTRICT

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

A special education hearing was held by video conference before Administrative Law Judge (ALJ) Janice E. Shave on July 7, 8, 9, 23, 30, August 10, 13, and September 3, 15, 16, and 17, 2020. The Parents of the Student whose education is at issue¹ appeared and were represented by Christopher Henderson and Katrina Durkin, attorneys at law. The Mercer Island School District (School District) was represented by Carlos Chavez, attorney at law. Erin Battersby, School District Executive Director of Compliance, Legal Affairs, and Human Resources, participated on behalf of the School District.

STATEMENT OF THE CASE

Procedural History

The Parents filed a Request for Special Education Hearing (Complaint) with the Office of Superintendent of Public Instruction (OSPI) on January 29, 2020. The Complaint was forwarded to the Office of Administrative Hearings (OAH) the same day for the assignment of an ALJ. A Scheduling Notice was issued on January 31, 2020. The School District filed a Response to the Complaint on February 7, 2020.

The matter was assigned to ALJ Shave on February 11, 2020. A prehearing conference was held March 2, 2020, during which scheduling of the Parent's Motion for Summary Judgment was addressed. Oral argument was heard on the Parents' Motion on April 3, 2020. An Order on Parents' Motion for Summary Judgment was issued April 17, 2020, denying the Parents' motion, noting significant material facts remained to be determined.

The Parents filed a Motion to Compel Discovery Responses from Respondent School District on June 18, 2020. The Parents' Motion to Compel was denied in the Seventh Prehearing Order, issued June 26, 2020.

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

The Parents filed a Prehearing Brief on June 29, 2020.

The due process hearing in this matter was postponed on a number of occasions due in part to the Parents' preference for an in-person hearing in the context of COVID-19 public health restrictions.

The Mother requested accommodations be provided to her by OAH in order for her to participate in the due process hearing. That request is handled through a confidential process within OAH by an assigned state-wide accommodations coordinator, not by the ALJ assigned to preside at the hearing. No information from that confidential process is shared with the assigned ALJ, other than the decision of what, if any, accommodations OAH will provide.

Accommodations provided by OAH to the Mother for this proceeding included: a maximum hearing length of 4 hours in the event of consecutive days of hearing; an audio recording and an electronic transcript of each prehearing conference; an audio recording and real-time simultaneous transcript of the due process hearing via Communication Access Realtime Translation (CART); permission to consume snacks and beverages during the hearing. No information about the specifics of the request or information reviewed by the OAH accommodations coordinator was provided to the assigned ALJ, or to the School District.

The Mother requested and was provided a [REDACTED] interpreter who participated in-person with the Mother. Consistent with the Mother's request, the interpreter was present for the first eight days of the due process hearing. However, the interpreter sat silently, and provided interpretation only for a few individual words requested by the Mother throughout the eight days of her attendance. The Parents and counsel waived any objection to the method of interpretation, since it was provided consistent with their specific request. The School District did not object to this manner of interpretation in light of the waiver.

Due Date for Written Decision

During the March 2, 2020, prehearing conference, the Parents requested the 45-day deadline for issuance of a written decision be continued to the close of record plus thirty (30) days in order to accommodate their motion for summary judgment and discovery schedule. The School District did not object. Good cause was found to exist to grant the request. The record closed October 16, 2020, when both parties filed post-hearing briefs. Therefore, the written decision is due November 15, 2020.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Joint Exhibits: J1-J13;

Parents' Exhibits: P4-P12, P15-P18, P20-P24, P25 pages 1-4 only, P26-P30, P32, P34, P36, P38-P39, P45-P46, P47 page 1 only, P50, P53-P54.

The Parents filed an updated exhibit log on August 7, 2020, pursuant to the ALJ's request and without objection by the School District.

The parties stipulated that school closed for in-person instruction March 13, 2020, pursuant to an order by Washington State Governor Jay Inslee.

The following witnesses testified under oath or affirmation, in order of their appearance:

Father;

Olivia Willingham, private occupational therapist (OT);

Kendra Wagner, private literacy specialist;

Mother;

Sue Ann Bube, Education Doctorate (EdD), School District Director of Special Services;

Lina Bluteau, School District OT;

Devin Kubat, School District speech and language pathologist (SLP);

Alyson Kluskowski, School District special education teacher and the Student's case manager.

ISSUES AND REMEDIES

The issues and requested remedies in the Complaint were presented in a narrative manner interspersed with factual allegations. The issues were summarized in the First Prehearing Order issued March 9, 2020, which also directed the parties to review the Complaint for further details. Neither party objected to the statement of the issues and requested remedies contained in the First Prehearing Order. Although the Parents submitted other statements of the issues and requests for relief, the issues and relief requested are controlled by the First Prehearing Order, as it was not objected to.

The issues and requested relief are as follows:

- a. Whether the School District denied the Student a free appropriate public education (FAPE) based on its prior written notice (PWN) dated January 27, 2020, when it:
 - i. Committed procedural violations: failed to provide prior written notice of its intent to change the Student's placement with sufficient time before the intended change when it issued a Prior Written Notice (PWN) on January 27, 2020, after 5:00 PM to notify of a change to be effective January 28, 2020;

ii. Failed to ensure meaningful parental participation in the individualized education program (IEP) process by not consistently providing appropriate accommodations to the Student's Mother, including rejecting numerous Parental requests for written materials at least two (2) days prior to meetings, numerous Parental requests for written transcriptions of meetings, and not promptly producing agreed-upon notes from the January 21 and 23, 2020, facilitated IEP meetings (not provided until attached to the prior written notice issued after 5:00 p.m. January 27, 2020);

iii. Committed substantive violations by: including substantive changes from the draft IEP to the PWN specifically, new baseline and goal data, failing to include some baseline data entirely, and not stating consideration of and the basis for rejection of Parents' 1st, 2nd, and 6th requested goals identified on page 21 of the January 27, 2020, prior written notice (PWN). Specifically, the Parents allege the School District did not include their requested literacy services (1st requested item) and private Occupational Therapy (OT) reports, baseline data and goals in all five (5) CASE(L) domains (2nd requested item), and did not include language in the proposed IEP noting special education services and support must not require the Student's removal from general education, or at least no removal from language arts in order to ensure education in the least restrictive environment (6th requested item).

b. The Parents requested the following remedies:

i. The School District be required to include Parents' proposed changes to the Student's IEP requested in the Parents' 1st, 2nd, and 6th items;

ii. The School District be required to permit audio recording of all future IEP meetings and reimburse the Parents for the cost of immediate transcription, or be required to provide a court reporter or similar instantaneous transcription;

iii. The Student be allowed to remain in his stay put placement, which is per the IEP dated October 21, 2019, as referred to in December 12, 2019, correspondence from the School District;

iv. Leave to amend their Complaint;

v. And an award of attorney's fees and costs.

In its Response to the Parents' Complaint, the School District agreed to provide stay-put educational services while this case is pending. In their Closing Brief at page 3, the Parents note they did not raise the sufficiency of the School District's implementation of the stay-put placement during the due process hearing, and they did not seek additional relief regarding leave to amend. They also conceded the appropriate place to raise their request for attorney's fees is in Federal District Court, rather than this administrative proceeding.

FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness and plausibility of the evidence was 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 and Parents have resided outside the School District boundaries at all times material to this proceeding. Father T33.² The Student began receiving special education services from the School District in September 2018. Father T 344; Exhibits J1.8; P48.³ The Father is an employee of the School District; the Mother is a contract employee on an occasional basis with the School District. Father T36, T344; Mother T734.
2. The Student was 14 years old and attended Islander Middle School (Islander MS) as an 8th grader during the 2019-2020 school year (19-20 SY) at issue in this proceeding. Father T344, Mother T913, Exhibit J1.
3. The Student received special education services in 7th grade at Islander MS during the 2018-2019 SY. Exhibit J1. He qualified for specially designed instruction (SDI) in the areas of organization/study skills, social/emotional behavior (SEL), and written expression. His special education teacher and case manager was Alyson Kluskowski. Kluskowski T1366; Exhibit J1. English is his primary language; he also speaks ██████ Exhibit J2.5.
4. The Student received special education services from the Seattle School District (SSD), his home district, during the 2017-2018 SY. Exhibit J2.19. The most recent full evaluation for special education was performed by the SSD and dated October 16, 2017. Exhibit J7.
5. The Student's diagnoses include attention deficit/hyperactivity disorder (AD/HD) consistent with inattentive type, adjustment disorder with anxiety and depressed mood, disorder of written expression, and autism spectrum disorder (ASD). Exhibit J7.6.

² Citation to the testimony of record is by last name of the witness, except in the case of the Father and the Mother, and by the transcript page number where the testimony appears. For example, citation to "Father T23" is a citation to the Father's testimony at page 23 of the transcript.

³ Citation to the exhibits of record are by the party ("P" for the Parents, and "J" for exhibits submitted jointly by both parties) and page number. For example, citation to "J1.1" is a citation to Joint Exhibit 1, page 1. The School District did not submit separate exhibits.

Mother's Requested Communication

6. When the Student enrolled in the School District, the Mother requested permission to record the audio of meetings with School District staff, and requested verbatim written transcripts be provided, as accommodations to her. Mother T567, T578; Exhibits P16.3, P9, P21.7, P22. The Mother also requested documents be provided to her in electronic/searchable format at least one week prior to any meeting to discuss the document. Mother T745. She provided varying requests, and varying explanations for her requests, based on her claimed learning disorders/disability, ADHD, dyslexic traits, and "anxiety maybe." Mother T568, T744-747; Exhibit P16. A great deal of testimony focused on the Mother's claimed disabilities, however, no diagnosis from a health care provider was submitted to substantiate the claims.

7. The Mother completed her schooling and became a registered nurse (RN) in the [REDACTED] Mother T513, T737. She last worked as a [REDACTED] in 2002; the job required 12-hour work shifts. Mother T740. She was given the accommodation of receiving documents for presentations in writing, and sometimes working a shorter shift if she requested. Mother T741.

8. Due to licensing requirements related to her foreign education, the Mother cannot work in the US as an RN, so she worked as a medical assistant (MA) in a pain management clinic. Mother T737. Her duties included interviewing patients, taking medical histories, preparing medical files, ensuring medication prescriptions were provided, communicating with pharmacies, insurance companies and other medical providers, cleaning, receiving deliveries of medication, and other unspecified tasks. She received accommodations from her employer as an MA including a raised desk, work from home when work did not require her presence in the office, and additional time to write. If she had difficulty understanding a patient (due to not hearing or being able to see documents at the same time as the conversation) other staff made telephone calls for her. Mother T737-741.

9. The Mother volunteers as an educational advocate for special education families, attending meetings and many classes online, by telephone, and in-person. Mother T741-744. The Mother started an advocacy group in 2019 to help special education parents understand their rights. She has served two years on the board of the Seattle Special Education PTSA where she is in charge of family and community engagement. Mother P513. She watches video trainings sponsored by OSPI staff, the Arc of Washington State, and other agencies and organizations. She considers herself an educated, involved parent, and described herself as "a researcher" in the area of prior written notice. Mother T513-519, T639, T741-744. As an educational advocate for other special education families she attends meetings including IEP meetings, takes notes, reviews documents, makes IEP recommendations to parents, and refers parents to resources. Mother 743. She does not request recordings of the special education meetings she participates in as an advocate, because those are less stressful for her than when her child is the subject of the meeting. Mother T743-744.

10. The School District denied the Mother's requests to record IEP meetings and to provide a verbatim transcript. Instead, it provided a note-taker at the meetings, with the plan to review the notes during the meeting in order to obtain the Mother's participation at the time of the meeting, rather than after the fact and after a subsequent review of a recording. Bube T1014-1016; Exhibits P16-P18, P20, P21.8.

11. During the 18-19 and 19-20 SYs the School District did not provide audio recordings or transcripts of IEP meetings to the Mother. Instead, it provided note-takers for the Student's IEP meetings, and the notes were projected onto a screen for the entire team to see, review, and correct. Bube T1012. The Mother was provided draft documents in advance of the meetings, and frequent breaks during the meetings. Bube T1011-1013, Exhibits J10, P5, P8.

12. The Father did not report a need for accommodations for himself for the Student's meetings, nor did the Parents' attorney, educational advocate, consulting OT, or consulting literacy specialist, who attended IEP meetings with the Parents. Father T46. He admitted the recordings of IEP meetings the Mother received while the Student was enrolled in the SSD "didn't help as much in the moment" but helped the Parents in retrospect because they could review the recording later at home, and determine whether they had heard the same things. Father T216, T346.

13. The Father criticized the School District's use of meeting notes and the review of the notes during the IEP meetings. Initially he testified the review of the notes during the meeting did not help productivity at the meetings "at all." Father T217. He noted review of the notes caused the Mother to miss the side discussions (crosstalk between School District staff, the Parents, and the Parents' advocates) which were often relevant to the IEP meeting. Father T217. According to the Father, "the purpose of the notes is for the Mother to be able to fully understand what's happening, what was going to happen as a result of the meeting we just had." Father T47.

14. However, the Father also conceded "everyone could see the notes and it helped to – helped to clarify the record. Yes. I mean, people were clarifying what they, themselves, had said in the meeting. Yes." Father T354. The meeting notes and review of them during IEP meetings helped "a little bit that things are more precise in the end," but the Father testified the notes did not help the Parents agree on what just happened after the meeting. Father T217. He noted delays in receiving a copy of the meeting notes were also a problem. Father T217. The notes taken by Ms. Waight at the October 17, 2019, IEP meeting were not offered into evidence. The Parents did not provide evidence of, or allege any point of discrepancy between, Ms. Waight's notes and those provided by the School District.

15. During the 18-19 and 19-20 SYs both Parents actively participated in all of the Student's IEP team meetings. Kluskowski T1375. They provided information about the Student, posed questions, made requests for changes, and commented on the School District's information. Mother T791, Father T346, Kluskowski T1375. After an IEP team meeting held in September 2018 the Parents sent the School District line-by-line edits of the notes with the Parents'

recollection of the meeting. Mother T789; P16.1. During the 19-20 SY Dr. Bube became aware of the effect the crosstalk (side discussions) at IEP meetings was having on the Mother's participation. Bube T1011.

16. On January 15, 2020, Dr. Bube emailed the Parents a list of accommodations the School District would provide for the January 2020 IEP meetings. Bube T1012; Exhibit P5.1-2. These accommodations included provision of draft documents in advance, a note-taker, Sound Options facilitator to ensure the notes taken capture the spirit of the conversation, extended time (meeting stretched over two days) to allow time to pause and process information as needed, and agreement that all meeting participants may stand during the meeting. Exhibit P5.1-2.

January 2019 IEP

17. The Student's IEP team developed and implemented a new annual IEP for the Student, dated January 28, 2019 (January 2019 IEP). J1. The team agreed the Student would spend 85.09% of the school day in a general education setting, and the remainder receiving special education services in a special education setting. Mother T772; J1.18-19. IS THIS NEEDED The percentage of time in general education was consistent with the previous IEP from SSD. Exhibit P48. The Present Levels of Educational Performance (PLEP) noted School District staff did not have concerns about the Student's peer interactions or social behaviors, but he was "often slower than his peers to start classroom assignments." Exhibit J1.9.

April 2019 Speech and Language Reevaluation

18. At the Parents' request, the School District conducted a partial reevaluation for speech and language (April 2019 Reevaluation), only. Exhibit J2. Devin Kubat, a first-year Speech and Language Pathology therapist (SLP) with the School District, conducted the April 2019 Reevaluation in the spring of 2019. Ex J2. The Evaluation Summary recommended the Student receive SDI in social/emotional learning (SEL), organizational/study skills, and written expression. Exhibit J2.3.

19. Ms. Kubat obtained her bachelor's degree in communication science and disorders and master's degree in speech language pathology from Ohio University in 2015 and 2018, respectively. She holds Washington State educational staff associate certification as an SLP.

20. At the time she completed the Student's communication evaluation in or about April 2019, Ms. Kubat's qualifications were listed as MA, CF-SLP, meaning master of arts, clinical fellow in speech and language pathology. 'Clinical fellow' (CF-SLP) denotes the first year of work for an SLP working toward a certificate of clinical competency (CCC-SLP). Certification is controlled by the American Speech and Hearing Association (ASHA). A clinical fellow must complete 18 hours of directly-supervised work plus 18 hours of indirectly supervised work to obtain a certificate of clinical competency (CCC-SLP). Kubat T1295, T1313-1317. A draft of Ms.Kubat's report was reviewed by the School District's lead SLP, Kris LaFramboise. Kubat T1310.

21. An evaluation team meeting was held April 2, 2019. The Evaluation Summary noted the source of information for the remainder of the evaluation (the non-SLP section) was directly from the SSD evaluation completed October 16, 2017. J2.1. The Student's intellectual functioning, comprised of full scale and general ability index scores, was in the superior range. Exhibit J2.9. The Evaluation Summary noted the Student presented with significant problems in planning and maintaining his organization relative to writing, and these struggles might be related to his executive functioning (AD/HD). He did not exhibit any problems with writing mechanics, grammar, or sentence structure. A diagnosis of Disorder of Written Expression was found to be warranted. Exhibit J2.1-2

22. The Student denied any significant fears, obsessive thoughts, physical symptoms of distress, compulsive/ritualistic behaviors, worry about social relationships and how others see him, about separation, or about making mistakes. However, "he exhibited tension and inflexibility regarding perfectionism and worry about making mistakes in the testing session. He also reported worry and discouragement about his ability to perform and complete academic work with sufficient dispatch." Exhibit J2.2.

23. The Communication portion of the Reevaluation contained an error or inconsistency in scoring for pragmatic language. Exhibit J2.11. Ms. Kubat testified the Student's general education teacher had never completed this pragmatic profile before, and inverted the scoring. Kubat T1297-1302, 1328-1329. This resulted in the Student's pragmatic language skills at the 2nd percentile. This score was rejected as invalid by SLP Kubat, but not corrected, and the Parents were not informed of the scoring error. Kubat T1327-1329. The record does not show other School District personnel were informed of the error. Whether the score was inverted, or merely an extreme outlier is not determinative to the outcome of this matter, as Ms. Kubat rejected that one score as an outlier following discussion with the general education teacher who provided it, and did not consider it in her recommendations. Kubat T1297-1302- 1328-1329. However, the uncorrected and unexplained score significantly undermined the Parents' trust in the School District. Mother T547-551.

24. Ms. Kubat provided direct SLP services to the Student toward the end of the 18-19 SY, and indirect SLP services for his benefit to his special education teacher, Ms. Kluskowski, beginning approximately October 2019. Kubat T1318-1323, T1339-1340. These services are not at issue in this proceeding; they are addressed to provide the basis for Ms. Kubat's testimony.

25. The Parents did not sign the April 2019 Reevaluation. The Mother participated in the meeting by telephone; she expressed disagreement with the testing results and report, then ended her participation and hung up after only 5 - 10 minutes, while the team was still discussing the test results. Kubat T1303. The Father declined to sign without the Mother present. Exhibit J2.26.

26. The April 2019 Reevaluation team found the Student continued to be eligible for special education. Exhibit J2. The Reevaluation team agreed he would continue to receive SDI in the areas of SEL, study/organization, and writing. J2.3. The School District uses the term “organization/study skills” also “study skills/organization” to address what are sometimes referred to as “executive functioning” skills; it does not utilize the term ‘executive functioning’. Kluskowski. T1373-1374.

27. A prior written notice (PWN) was issued April 16, 2019, noting the Student did not qualify for special education series in the area of communication, did not meet the eligibility criteria for a language impairment, and all communication functioning fell well within expected ranges. Exhibit J2.26. The April 2019 Reevaluation team found the Student did not qualify for SLP or OT services. Exhibit J2.13, J2.26.

May 2019 IEP Amendment

28. An IEP amendment meeting was held May 23, 2019, in part to address the Student’s social/emotional behavior, and organization/study skills. Exhibit J4. A number of changes were made to the IEP: 2 hours per week of paraprofessional support in the general education environment were added, as well as a supplementary aid/service of 30 minutes per week by an SLP for speech starting with the 19-20 SY. Extended school year (ESY) services in the form of 1 hour per week of counseling was also added. An additional social/emotional goal was added in accordance with the recommendations obtained by the Parents from an outside speech evaluation. A PWN was issued May 23, 2020, with an implementation date for the Aemended IEP of June 4, 2019. Exhibit J4.23.

September and October 2019 IEP Team Meetings, Amendment

29. An IEP team meeting was held September 19, 2019, to address Parents’ concerns. Exhibit J4. Both Parents attended with their educational advocate, Lori Waight; the School District provided a note-taker, but no recording or verbatim transcript. Exhibit J5.2-3. The team discussed the Student’s social/emotional services, and an assessment from Parents’ private Occupational Therapy (OT) consultant, Olivia Willingham, of Seattle Therapy. Exhibit J5.2. Based on Ms. Willingham’s assessment, the Parents requested the IEP include provision of OT services related to executive functioning. Bube T1175; Exhibit J5.

30. SueAnn Bube is the School District’s director of special education. She began that position at the beginning of the 19-20 SY. Exhibit J13.1. She earned a bachelor’s degree in mathematics from the University of Evansville in 1990, a master’s degree in Effective Teaching and Leadership at Butler University in 2008, and a doctorate in education, Educational Leadership: Educational Administration from Seattle University in 2014. She holds Washington State certification as a mathematics teacher grades 5-12 and a special education teacher grades K-12, and as an administrator. She became certificated by the National Board as an exceptional needs specialist in 2008. Dr. Bube was the special education supervisor at Clover Park School District from 2017-

2019. She worked as a mathematics teacher in public school in Indiana, and as a special education teacher in Washington State in elementary and middle schools. She was a teacher of the deaf in elementary school in Washington State. She is the founder and past president of the United Mitochondrial Disease Foundation of Indiana. She has published two articles related to special education, received a number of awards, and presented on special education topics at many academic and other educational conferences. Bube T993-1006, T118; Exhibit J13.

31. Dr. Bube recommended the Student's organization/study skills (referred to by Ms. Willingham and the Parents as 'executive functioning' throughout) be addressed using the Collaborative for Academic, Social, and Emotional Learning (CASEL) model, rather than through an OT. Bube T1177. The CASEL model is designed as a systematic approach for providing social and emotional learning in a comprehensive and inclusive manner. It consists of 5 core competencies: self-awareness, self-management, responsible decision-making, relationship skills, and social awareness. Bube T1184; J7.7. Under the School Districts proposed CASEL method, the organizational/study skills needs referred to by the Parents as executive functioning would be addressed by the special education teacher, not by an OT. Bluteau T1280, Kluskowski T1374, Bube T1175; Exhibit J5.

32. The Student's IEP team reconvened to discuss an amendment to the Student's IEP on October 19, 2019. Exhibit J7. Both Parents attended, along with their educational advocate, Ms. Waight (who took notes for the Parents' use), and OT consultant, Ms. Willingham. Father T353; Exhibit J8. The School District provided a note-taker; the notes consisted of two pages. Exhibit J8. The notes were reviewed at length during the meeting. Willingham T85. The Parents were concerned about the Student's abilities to communicate socially, express himself in writing to his intellectual capacity, self-advocate, and complete complex projects. They were also concerned about his organizational skills, and their impact on his access to "assertive" technology, as well as a grade of C+ in social studies. Exhibit J7.4.

33. Ms. Willingham earned a bachelor's degree in child development and a master's degree in occupational therapy from unidentified schools. Willingham T72; Exhibit P30.1. She is a licensed OT; she worked in a pediatric OT intervention outpatient clinic for two years, then worked one year in an adult OT outpatient clinic as of the time of the due process hearing. She worked for six years as a math tutor prior to becoming an OT, and has never worked as an OT for a public school. She is not certificated as a teacher or as a school SLP or OT. Willingham T121.

34. Ms. Willingham did not provide any direct OT services to the Student; she provided advocacy services to the Student and Parents, only, starting with a 97-minute telephone interview with the Mother in June 2019. Exhibits P26, P30. She had never previously used the school functional assessment she used for the Student, and the template is not designed for his age. Willingham T126-127; Exhibits P26, P28. She recommended the Student receive OT services through his IEP. Exhibit P26.

35. Ms. Willingham also conducted a non-standardized occupational assessment and wrote a report regarding the Mother's OT needs. Exhibit P27.11-13. The Parents did not offer copies of documents reviewed by Ms. Willingham in her assessment of the Mother as exhibits. Prior to her advocacy for the Student and Mother, Ms. Willingham had done only 1 other advocacy evaluation. Ms. Willingham did not provide a real-time transcript or language interpreter to the Mother during the 97-minute telephone interview which formed the basis of her recommendations about the Mother, and admitted she did not experience any difficulty communicating with the Parent during the lengthy June 2019 telephone call. Willingham T124.

36. At the September 12, 2019, IEP team meeting, the participants discussed Ms. Willingham's report, and the Parents' request to include goals in the IEP in all five CASEL domains. Exhibit J5.2. School District staff explained why they disagreed with the request for instruction in all five CASEL domains, and expressed their belief that the domain of Relationship Skills was the foundation for the remainder of the CASEL standards for the Student. Bube T1178, 1185; Kluskowski T1376; Exhibit J8.1. The School District IEP team members explained the School District's use of the term "organization/study skills" rather than "executive functioning" for a school child. Exhibits J7.2, J8.2. The School District noted whole-group social skills instruction was part of the curriculum, including social stories, games, and daily mood meter check-ins, all aimed at addressing the Student's social emotional IEP goals. Exhibit J8.1.

37. Lina Bluteau earned a bachelor's degree in occupational therapy from the University of Ottawa in 2005. She worked in Canada providing OT services for work-related injuries, for an unidentified time, then worked in the US in nursing homes for a few years, after which she moved to Denmark and began working with children; she moved to the US in 2014. She obtained national certification as an OT in 2006, and became certificated to provide OT services in public schools in Washington State in 2014. Bluteau T1248-1249, T1261, T1279. Ms. Bluteau worked as a contract OT for the School District in the 19-20 SY.

38. Ms. Bluteau attended the Student's September and October 2019 IEP meetings. Bluteau T1250-1251, T1266. It is Ms. Bluteau's professional opinion that the Student did not qualify for OT services and did not need direct support from an OT during the 19-20 SY. Bluteau 1253; Exhibits J2, J5. Pursuant to the Student's IEP in effect prior to January 2020, she provided support to the Student's special education teacher related to the Student's need for assistive technology, and discussed the same subject with the Student directly. Bluteau 1270-1271.

39. Ms. Bluteau was present at the September 2019 IEP meeting when Ms. Willingham presented her report and recommendations regarding the Student. Bluteau T1253-1259; Exhibits J2, P5, P25.

40. The IEP team agreed to amend the IEP to provide a visual plan for self-calming, rewrite the present levels of performance (PLEP) in the SEL portion of the IEP using CASEL social/emotional standards, add social/emotional instructional minutes concurrently in the general education setting via a paraprofessional in order to integrate that instruction into multiple settings,

and change OT services from support to school personnel to a supplementary aid/service. Exhibits J7, J8. Specifically, the School District OT would work with the special education teacher and staff, not provide direct services to the Student. Exhibit J7.18. The School District refused the Parents' request to prepare a behavior intervention plan (BIP). The School District issued a PWN dated October 17, 2019, noting it intended to implement the changes on October 21, 2019. Exhibit J7.18-19.

November 2019 PWN

41. Following the September and October 2019 IEP team meetings, the School District issued a PWN dated November 19, 2019. Exhibit J9. The PWN informed the Parents the School District was refusing the Parents' request to change the Student's school schedule to eliminate the Lab (resource room) class where the Student received his SDI. Exhibit J9. The stated reason for the School District's rejection of the Parents' request was that the Student still required SDI in study/organization, social/emotional/behavioral development, and written expression. Exhibit J9.1. The PWN noted the annual IEP was due January 30, 2020, and the Parents had requested both mediation and a facilitated IEP. Exhibit J9.1. The PWN noted the changes/refusal of the Parents' proposed change would be initiated that same day, November 19, 2019. Exhibit J9.1. The PWN further noted the Parents' request to eliminate Lab/Resource class would be reconsidered during the next IEP team meeting. Exhibit J9.1.

January 2020 IEP Meetings

42. The Student's annual IEP revision due date was listed variously as January 28, 29, and 30, 2020. Exhibits P48, J1.1, J4.1, J5.1, J7.1, J9, J10.1. The School District proposed holding the annual IEP meeting January 13, 2020, but the parties did not agree to that date. Exhibit P48.3. The parties agreed the IEP meeting would include a facilitator from Sound Options Group. Exhibit P48.3. The parties and facilitator agreed the meeting would be held over two days on January 21 and 23, 2020. Exhibit P4.3.

43. The Student's IEP case manager and pull-out services Lab (resource room) special education teacher for the 18-19 and 19-20 SYs was Alyson Kluskowski. On January 7, 2020, Ms. Kluskowski sent the Parents a list of participants and a draft agenda for the IEP meeting. Exhibit P4.3. The Mother acknowledged Ms. Kluskowski's email, and noted she had requested extra breaks during the IEP meeting "as accommodation of my disability" but that sometimes just standing for a while is enough for her. The Mother stated she planned to ask for breaks only if she needed them. Exhibit P4.2.

44. Alyson Kluskowski earned her bachelor's degree from the Evergreen State College in 2016, and obtained a master's degree in an unidentified area and a teaching certificate from Antioch University in an unidentified year. She worked two years as a paraprofessional and was emergency-certified as a teacher at a specialty school for students with emotional and behavioral difficulties while still a student in her master's program. She was the lead teacher in that program

one year. She also taught general education for one year in the Kent School District; she became employed by the School District for the 18-19 SY.

45. On January 15, 2020, the Mother and Dr. Bube exchanged emails about the annual IEP meeting. Exhibit P20. The Mother suggested postponing the meeting, noted some missing documents were needed for parental review, and reiterated her requests for accommodations for her participation. Exhibit P20. The same day, Dr. Bube mailed the Parents a draft of the proposed IEP along with an explanation of some of the School District's points, some requested educational records, and a review of accommodations the School District would provide for the Mother's participation. Exhibits P5.2, P20. Those included the draft IEP in advance (January 15 for a January 21 meeting), a note-taker, Sound Options facilitator, extended meeting time over two days to allow the Mother time to process as needed, and permission for all attendees to stand as needed. Dr. Bube stated audio recording would not be allowed. Exhibit P2.

46. Based on complaints from the Mother about difficulty participating in IEP meetings during the 18-19 SY the School District had previously decided additional practices (ground rules or "norms") governing meetings with the Parents were necessary. Bube T1011. They included limitations on the crosstalk which had occurred with School District employees, the Parents, and their advocates. Bube T1011.

47. In her January 15 email, Dr. Bube reiterated the School District was not proposing goals in all five CASEL domains for social/emotional behavior, and instead had chosen two goals it determined were "foundational to learning more material or accessing education." Exhibit P5.1. The email also noted the Student did not currently qualify for OT services, but OT had been added as a supplementary aid/service so that the OT could consult with school staff. Since there was no direct provision of service from the OT to the Student, there were no standardized or non-standardized assessments related to OT to discuss.

48. The Student was out of school part of the week prior to the January 21/23 2020 IEP meetings due to illness. Kluskowski T1382, T1421. As a result of his absence, special education teacher and IEP team member Ms. Klukowski was not able to complete all PLEPs in time to be included in the IEP draft, or even in time for the two January 2020 IEP meetings. Kluskowski T1383, T1421-1423. Ms. Kluskowski also needed the Student's input on the transition services portion of the IEP, so that was not completed or provided to the Parents in advance of the January 21 meeting. Bube T1150, Kluskowski T1382, T1421.

49. The two January 2020 IEP meetings together lasted approximately 7 hours. The first of the two January 2020 IEP meetings was held January 21, 2020, and lasted approximately 3 hours. Sound Options facilitated the meeting. The Parents were represented by their attorney, Christopher Henderson, and were accompanied and advised by their non-attorney educational advocate, Lori Waight, consulting OT Olivia Willingham, and consulting literacy specialist Kendra Wagner. Father T354, Exhibit J10.1. Participants were scheduled to participate in-person,

however, on the day of the meeting the Mother unexpectedly participated by telephone because of her illness. Father T53, T488, Kluskowski T1375.

50. The School District provided a note-taker for both days. Exhibit J11. The notes were projected onto a screen in the meeting room as they were being written. Bube T1019, Father T353. The Mother communicated with Dr. Bube and through her with the IEP team via a Zoom chat. Willingham T133; Exhibit P48. The team paused discussion many times during the meeting to review the notes and make corrections. Kluskowski T1417; Exhibits J11, P48.

51. Early in the January 21 IEP meeting the Mother pointed out the meeting agenda sent to her earlier in January did not include time for either of the Parents' private consultants, Ms. Wagner and Ms. Willingham. Exhibit J11.1. These were added to the agenda for January 21, 2020. Wagner T175-177; Exhibit J11.1. Ms. Wagner's portion of the meeting lasted approximately ten minutes. Wagner T169, T178, T193, T201-202.

52. During the January 21, 2020, IEP team meeting the draft IEP was reviewed, including the Team Considerations page, the general education language arts (LA) teacher report, the adverse impact summary, and the PLEP and related proposed annual writing goal. J11.1-5. Transition services for the Student were addressed, although the Power Point presentation on this subject had technical problems. Kluskowski T1416; Exhibit P22. Significant time was spent discussing the Written Expression goals and SEL goals. Exhibits J11, P48. The School District asserted too many goals would be too stressful for the Student. Exhibit J11.5. There was give-and-take, back-and-forth about the goals and methods preferred by each party. Exhibit J11.

53. The Parents were upset the transition services Power Point presentation had not been provided to them in advance of the January 21, 2020, meeting. Father P22.4. They were also upset the Student had been pulled from his general education Language Arts (LA) class the Friday prior to that meeting for Ms. Kluskowski to speak with him about his transition services. Father T54; Exhibits J11.1, P22.4.

54. The Parents' consulting literacy specialist Kendra Wagner earned a bachelor and master degree from unidentified schools. She holds several unidentified certifications, licenses, or other credentials in Orton-Gillingham-based reading and in unidentified writing programs. Wagner T156; Exhibit P24. Ms. Wagner has worked as a reading specialist, literacy coach, and staff developer. From 2002 until a few years prior to the hearing she was certificated as a general education teacher with an endorsement in reading in Washington State and California. She taught in the Shoreline, Edmonds, and Tukwila school districts, as well as in California, for a total of eight years in public schools. She has never taught as a special education teacher. Wagner T156, T184; Exhibit P24.

55. In preparing her report and recommendations, Ms. Wagner spoke with the Mother, and reviewed documents sent to her by the Mother, including some assignments, IEPs, progress reports, work samples, and some teacher commentary and report cards. Wagner T158-159;

Exhibit P23. She did not observe the Student in school or speak with any of the Student's teachers, as she felt she had enough information to evaluate the Student and make recommendations. Wagner T186. She usually does have teacher interaction when she is working one-to-one with an individual. Wagner T185. She also did not have an opportunity to develop rapport with the Student as much as she usually does. Wagner T186.

56. Ms. Wagner also assessed the Student in his home by administering a short "on demand" evaluation to the Student, instructing him to write for five minutes on a subject. Wagner T167. She did not administer a planned 2nd "on demand" writing task to the Student because he reported he was too tired. Wagner T187.

57. According to Ms. Wagner, the Student's writing made sense, was grammatically correct and accurately written, but demonstrated only basic word choice, and was somewhat choppy. Wagner T167. She provided consultation only, no direct services to the Student. Wagner T186. Based on the documents she reviewed including writing samples, and information provided to her by the Mother and the Student, Ms. Wagner concluded the Student was not writing at grade level, and his verbal strengths, including a strong spoken vocabulary and high IQ, were not apparent in his writing. Wagner T169, T171; Exhibit P 23. She described the Student as having "sort of an engineering mind," and speaking at a much higher level than he demonstrated in writing. Wagner T205. Her report and recommendations included goals and instruction in all five CASEL domains. Exhibit P23.

58. Ms. Wagner criticized the October 2019 Progress Report as only "minimally helpful." Wagner T171. Although it reported the Student demonstrated correct punctuation, grammar, and spelling, she believed it was based on writing samples that were too short, and it did not provide sufficient indicators of the quality of writing, including descriptions of the Student's word choice, sentence length, and use of academic language and transition words. Wagner T171. The School District relied in large part on the Student's general education language arts (LA) teacher's assessment of the Student's responses as acceptable. Exhibit P23. Ms. Wagner noted no lengthy writing sample was used as data for the LA teacher's assessment. Wagner T180-181. She felt a longer writing sample should have been obtained and used, and the IEP team should rely on the Common Core, which is the expected standard. Wagner T181-182. She noted the Progress Report showed the Student had made some progress toward his writing goal, but was still not at grade level. Wagner TP171; Exhibits J11.4, P23. The Mother wanted "a goal around writing an essay which is a 9th grade expectation." Exhibit J11.4.

59. Ms. Wagner recommended an SLP should help the Student with expressive language, because she has seen this methodology used in many other students' IEPs. Wagner T203. She conceded a special education teacher might have the training, knowledge, and skills to assist a student. Wagner T203.

60. Ms. Wagner admitted "I agree there shouldn't be nine goals. That's a lot. But two is not very many. I wanted something in between." Wagner T207. The two writing goals that were put

into the January 2020 IEP were chosen after significant discussion including Ms. Kluskowski, the Parents, Dr. Bube, and Ms. Wagner. Exhibit J11. Ms. Wagner testified that Dr. Bube chose the two specific goals after “looking at them closely and choosing the ones that fit.” Wagner T207. Ms. Wagner testified nine written expression goals, as advocated by the Parents, would require the Student to be outside the general education classroom too much. Wagner T207-208; Exhibit J11.4-5. At the IEP meeting she stated the Student’s instruction should start at the sentence level, and work up. Wagner T201, T205; Exhibits J11.4, P24, P25.

61. Ms. Wagner acknowledged there was nothing she was not able to present to the team, but she felt the School District included only a small percentage of her recommendations in the IEP. Wagner T178. She acknowledged the School District staff asked her clarifying questions about her report during the January 21, 2020, IEP meeting, and made changes to the draft IEP after discussion and based upon her recommendations. Wagner T 178-180, T201; Exhibits J11.1, P23, P24. She understood the basis of the School District’s proposal to include only two ‘foundational’ goals. “There was a perception on my part that the executive function was so much more of a need than the writing so that was partly why they were rejecting some of my recommendations. ...[T]he level of production that he was struggling with was not related to his own writing skills but it was his own ability to get started and stay focused. ... They might have said datawise [sic] they have watched him struggle with getting started.” Wagner T178-180.

62. Regarding his understanding of the selection of the two written expression IEP goals, the Father testified Ms. Wagner was asked by the School District team members to choose “the two most important.” He agreed the two chosen were “a good place to start but they’re not at all going to cover the bases.” Father T249.

63. Based on Ms. Wagner’s report and recommendations, and the team discussion, the objectives of the Written Expression portion of the IEP were changed. Wagner T178; Exhibit J11.

64. The Parents requested weekly writing samples, according to the meeting notes from January 21, 2020. Exhibit J11.4. The School District agreed to send the Parents information Ms. Kluskowski was already collecting weekly for data collection and progress reporting. Exhibit J11.4.

65. Regarding the Student’s SEL needs, the School District proposed only two CASEL domains be selected (Reasonable Decision Making and Self Management), and the SDI be administered by the special education teacher. It did not propose a phase-in of further goals. Exhibits J10.9, J11.

66. The Parents’ private OT consultant, Ms. Willingham, attended the September 12, 2019, IEP meeting, and presented her opinion, and also attended and spoke at the January 21, 2020, IEP meeting. She observed the Student on two occasions at IMS prior to the January 21, 2020, meeting. Willingham T116, Exhibits J11.5, P25. The Parents did not provide IEP team members with a copy of Ms. Willingham’s report prior to the January 21, 2020, IEP team meeting, so the team was unable to review it prior to the meeting. Exhibit J11.5. The parties dispute the

appropriateness of the timing of the School District's provision of educational records to Ms. Willingham. She received the requested records January 15, 2020. Willingham T397, Mother T933.

67. Ms. Willingham recommended, in part, that the Student receive OT services and be reevaluated by an SLP and an OT. Exhibit P26.4-5. Because the Student was not eligible for OT services, the School District did not adopt Ms. Willingham's recommendations. Bluteau T1259, T1267-1268.⁴

68. Lina Bluteau earned a bachelor's degree in occupational therapy from the University of Ottawa in 2005. She worked in Canada providing OT services for work-related injuries, for an unidentified time, then worked in the US in nursing homes for a few years, after which she moved to Denmark and began working with children; she moved to the US in 2014. She obtained national certification as an OT in 2006, and became certificated to provide OT services in public schools in Washington State in 2014. Bluteau T1248-1249, T1261, T1279. Ms. Bluteau worked as a contract OT for the School District in the 19-20 SY.

69. In addition to attending the Student's September and October 2019, IEP meetings, Ms. Bluteau attended the January 21 and 23, 2020, IEP meetings. Bluteau T1253-1259; Exhibits J5, J8, J10, J11, P25. Pursuant to the Student's IEP in effect prior to January 2020, she provided support to the Student's special education teacher related to the Student's need for assistive technology, and discussed the same subject with the Student directly. Bluteau 1270-1271.

70. In order to be eligible for direct OT services as a special education student an individual must score in the 7th percentile or below, or be so deeply affected by their disability as to be unable to attend to a test. Bluteau T1283-1284. It is Ms. Bluteau's professional opinion that the Student was not eligible for OT services during the 19-20 SY because standardized testing from the most recent three-year evaluation showed he was above the 7^h percentile. Bluteau T1250-1251, T1253, T1266, T1283; Exhibit J2. According to Ms. Bluteau, the School District offered to conduct an OT evaluation of the Student sometime after the October 2019 IEP meeting, but the Parents did not agree. Bluteau T1267-1268.

71. Ms. Bluteau participated in two observations of the Student done by Ms. Willingham in December 2019 and January 2020. Bluteau T1253-1256; Exhibits J2, P25. Ms. Bluteau did not accord full weight to Ms. Willingham's input presented at the January 21, 2020, IEP meeting because it was based on Ms. Willingham's observations of the Student, and on Ms. Willingham's review of records which did not support eligibility, and was not based on standardized testing performed by Ms. Willingham or others that supported eligibility. Bluteau T1258-1259, T1267.

⁴ The School District's offer to conduct a reevaluation of the Student a bit earlier than the triennial reevaluation was due, and the Parents' refusal to consent, are not at issue in this proceeding. They are mentioned to explain the limited attention the School District accorded to Ms. Willingham's report and recommendation.

72. Dr. Bube emailed the Parents a copy of the day's meeting notes, a revised and highlighted copy of the draft IEP, and the 8th grade writing rubric on January 21, 2020, at 5:48 PM. Bube T1143-1144, T1151, Father T355; P8. The Parents expected to receive a copy of the January 21, 2020, meeting notes immediately when the meeting ended. Father T15, T59.

73. The facilitated IEP team meeting reconvened on January 23, 2020. Both Parents participated. Exhibits J10, J11. The Mother again unexpectedly participated by telephone; the School District offered to postpone the meeting in order to ensure they were meeting everyone's needs/accommodations, but the Parents' attorney suggested they proceed since everyone was already at the meeting. Kluskowski T1417; Exhibits P48.4, J11.6. The Father reported the Mother was not getting breaks, the Mother's renewed request to record the audio of the meeting was declined by the School District, and the facilitator inquired whether all team members would like breaks. Exhibit J11.6. The Parents were again represented by their attorney, and accompanied and advised by their non-attorney advocate. J11.6. The School District provided a note-taker, whose notes were again projected onto a screen in the IEP meeting room as they were written. The Mother and Dr. Bube again communicated through Zoom, including use of the chat feature to share information. Exhibit P48. The team continued to review the draft IEP, starting with the PLEPs, and the remaining proposed annual goal areas. Exhibit J11.6.

74. The Parents noted the PLEPs were not yet updated, and asked when that would occur. They were advised the updated information would be included in the final IEP. Exhibits J10.9, J11.7-8.

75. The team discussed the School District's two proposed CASEL domain areas as they relate to study/organizational skills goals and the SEL goal. In response to the Parents' ongoing request to include goals in all five CASEL domains, the School District agreed to add a sentence to the PLEP that all five CASEL domains would be worked on by staff with Student, but not added as goals in that IEP. Father T368, Bube T1060; Exhibits J11.7-8, J10.9. In response to the Parents' request to add the related service of counseling to the IEP as a new social/emotional SEL goal area, the School District declined on the basis the request was premature and unnecessary. Exhibit J11.10. Parents' OT consultant Willingham stated there was no need for new counseling goals to be added, noting this was a related service already being provided. Exhibit P30.8. The School District again declined to rename the study skills/organization goal as Executive Functioning, and reiterated the factors on this same topic discussed during the October 2019 reevaluation. Bube T1175-1176; Exhibit J11.10-11.

76. The team discussed the proposed accommodations for the Student. Exhibit J11. The Parents requested a new goal regarding breaking tasks into smaller steps. The skill was already addressed in the draft IEP, at least in part, through a visual checklist and multi-part question accommodations. The School District noted this skill is taught to all eighth grade students as part of the general curriculum, and would not be added to the IEP. Exhibit J11.12-13.

77. The Parents voiced their concern about the Student being pulled out of academic classes, especially Language Arts, which they felt was his area of greatest need, for any IEP service, including counseling. Exhibit J11. The School District understood the Parents' request related to the following year when the Student would be in high school, and declined to include what it viewed as a restriction on the Student's high school schedule. Exhibit J11.14. After some discussion during which neither party persuaded the other, the School District informed the Parents the issue would be addressed in the PWN. The meeting notes concluded with the Parents' attorney's comment that "there are still other points to discuss but these can be done offline between [Parents' attorney] and [School District's attorney]. Exhibits J11.14, P48. No evidence of additional discussion between the attorneys was presented at the hearing.

78. During both January 2020 IEP meetings, the parties discussed specific language of PLEPs, objectives, goals, and accommodations; the Parents were told by School District staff that some of the disputed matters would be addressed in the PWN. Exhibit J11. For instance, School District staff or its attorney said the PWN would reference Kendra Wagner's report. J11.5. Regarding goals from the related service (counselor) provider, the School District's attorney commented "These are goals that are being proposed and rejected so we will add this to the PWN. We can continue to monitor these skills." Exhibit J11.10. The Parents again asked for the IEP to use the term "executive functioning" and the School District again explained to the Parents that the School District uses the term Study Skills/Organization, rather than Executive Functioning, because it is in an education environment. Exhibit J11.11. After significant discussion and explanation of the School District's rationale for using the term Study Skills/Organization and repeated questioning from the Mother on this point, the School District's attorney noted this would "be documented in the PWN." Exhibit J11.11. The Parents wanted to discuss the 5 CASEL domains and setting goals again, this time in the context of SEL. The Parents' attorney explained the purpose of the PWN to the Parents, and noted the Parents' concerns and District's responses would be documented there. Exhibit J11.11-12. The School District's attorney asked whether, if a clarifying sentence were added to the SEL PLEPs, the participants could move on. Exhibit J11.7. Two accommodations related to assistive technology were discussed and the team agreed to remove them. Exhibit J11.1314.

79. The Mother emailed Dr. Bube on Friday, January 24, 2020, noting it had been 25 hours since the IEP meeting ended, and she still did not have a copy of the IEP meeting notes, or the updated IEP. Exhibit P10. She noted the annual IEP was due January 29, 2020, but the School Districts draft IEP called for it to become effective January 28, 2020. Exhibit P10. The Mother stated this was not sufficient time for her to review the final version in light of her disabilities ("my memory, recall, processing, etc."), and was not sufficient time to consult with experts about the Student's education. Exhibit P10.

January 27, 2020, IEP and PWN

80. Dr. Bube emailed the Parents the complete IEP meeting notes from both days, the Zoom chat notes, the 8th grade writing rubric (again), the School District's final version of the annual

IEP, and the PWN at issue in this proceeding on January 27, 2020, at 5:19 PM. Bube T1130, T1135, T1195; Exhibits J10, P10, P11. Dr. Bube noted the missing data points for the PLEPs were added to ensure accurate baseline information. Exhibit P11.1.

81. The timing of issuance of the PWN and final IEP on January 27, 2020, was based in large part upon Ms. Klukowski. Bube T1089, T1237. Ms. Kluskowski was ill during the week of January 20-24, 2020, but did not miss school; however, her illness caused a delay in her completion of her portion of the final draft IEP and the PWN. Bube T1089, T 1194, T1237; Exhibit P11. The School District did not consider postponing the effective date for implementation. Bube T1238, Kluskowski T1422.

82. The “Description of any other options considered and rejected” portion of the PWN provided in pertinent part:

1. Parents requested adding additional Written Expression goals as per the private report from Kendra Wagner.
2. Parents requested adding addition [sic] goals based on the CASEL standards so [Student] would have goals in each of the 5 CASE [sic] domains.
- ...
6. Parents do not want him pulled from academic courses to receive his services. Exhibit J10.22-23.

83. The “reasons we rejected those options were” portion of the PWN provided in pertinent part:

1. The District rejects the request to add additional goals as it would place unreasonable stress on [Student] to be assessed on multiple written expression goals per week. The team added two objectives to the Written Expression goal to measure the subskills of writing a constructed response based on Kenra [sic] Wagner’s report.
2. The District rejected the request to add additional goals aligned with the CASEL standards. The teacher delivers instruction in all 5 CASEL domains and will track progress on 2 of them as outlined in the Social Emotional and Study/Org IEP goals.
- ...
6. The District has determined that [Student] requires specifically [sic] designed instruction and that the SDI should take place in the Special Education Setting. The District has determined that the student needs services outside of the general education environment to make progress towards IEP goals. The IEP does not determine what time of day he will receive services. Indent should be as above Exhibit J10.22-23.

84. The implementation date for the proposed changes was the following day, January 28, 2020. Exhibit J10.22. According to the Father, the Student’s school day began before 9:00 AM. Father T495. This timing provided essentially no daytime or business hours during which the

Parents could consult with their attorney, non-attorney educational advocate, private consultants, or others, about the specifics of the proposed changes.

85. The IEP was drafted in accord with the changes mentioned in the PWN. Exhibit J10. The previously missing Study Skills/Organization PLEP data were added in the final draft, and the wording of the General Education Teacher's Report was changed in line with his comments at the January IEP meetings. Bube T1097, T1131-1137, Kluskowski T 1421; Exhibit J10.9, J10.11. The new data and general education teacher's language were not provided to the Parents prior to January 27, 2020, although the School District had previously discussed this with the Parents. Exhibit J11. However, the Parents did not challenge the new baseline data during the hearing; their criticism of the general education teacher's updated language was consistent with their position at the January IEP meetings. Exhibit J11.

86. The School District staff was aware there were disagreements between the Parents and the School District about what should be in the Student's January 2020 IEP. Bube T1034-1035, T1059, T1076-1077, T1080, T1085. However, Dr. Bube believed the items in the January 27 IEP were agreed to, and the disagreement was over the items requested by the Parents but not agreed to and included by the School District in its January 27 IEP. *Id.*, see also; Kluskowski T1385. The basis of this belief was that the parties had worked on, changed, added, deleted, and moved things around in the IEP as a result of the January meetings. Bube T1086. Dr. Bube testified she believed the parties could implement those portions they agreed upon right away, but still might have to work on those pieces upon which they disagreed. Bube T1085. She identified those pieces as the "additional goals, the nuances of executive function versus study org, academic, OT." Bube T1085. The PWN and IEP do not mention continuing to work on the disputed areas. Exhibit P11.

87. The Parents filed their Complaint with OSPI on January 29, 2020. The School District agreed to provide stay-put services pursuant to the previous IEP, which was implemented at the time the Parents' Complaint was filed. School District's Response to Complaint.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

1. OAH has jurisdiction over the parties and subject matter of this action for OSPI 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. See *Schaffer v. Weast*, 546 U.S. 49 (2005).

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.

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 . . .

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

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

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

5. A "free appropriate public education" (FAPE) 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.

Rowley, 458 U.S. at 188-189.

6. A school 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. A school district must provide a student with a “meaningful benefit” in order to satisfy the FAPE requirement. *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 852 (9th Cir. 2014).

PARENTS’ MEANINGFUL PARTICIPATION IN JANUARY 2020 IEP MEETINGS

7. The IDEA requires that parents have the opportunity to “participate in meetings with respect to the identification, evaluation, and educational placement of the child.” WAC 392-172A-03100; 34 CFR §300.322. To comply with this requirement, parents must not only be invited to attend IEP meetings, but must also have the opportunity for “meaningful participation in the formulation of IEPs.” *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007).

8. A school district violates the procedural requirement of providing parents the opportunity to participate if it predetermines a student’s placement, meaning that it “independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification.” *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). Likewise, a district “may not enter an IEP meeting with a ‘take-it-or-leave-it’ approach.” *Id.* Parents have the right to meaningful participation, but they do not have veto power over individual provisions or the right to dictate any particular educational program. *Ms. S.*, 337 F.3d at 1131.

9. In the present case, the Parents’ participation at the two January 2020 IEP meetings included: receipt of notice of the IEP meetings; input about the dates resulting in changed meeting dates, receipt of draft documents in six days prior to the first day of meeting, and an updated IEP draft the same day after the first meeting; representation by their attorney; participation by their non-attorney educational advocate; Sound Options Group IEP meeting facilitator; attendance at both meetings by both Parents (Father in-person, Mother by telephone and simultaneous Zoom

chat). The Parents were accompanied by their own expert consultants who were both individuals with knowledge or special expertise regarding the Student. WAC 392-172A-03095(1)(f). The meeting notes show the Parents, their attorney, their education advocate, and their private consultants, were all active participants in the meetings. Exhibit J11. They asked questions and made requests, voiced their opinions, and caused the draft IEP to be changed. It is clear the Parents both had actual participation in the January 2020 IEP meetings.

10. The next question is whether the Parents' participation, specifically the Mother's participation, was meaningful in light of the ways in which the School District accommodated the disabilities she claimed on her own behalf. As above, the evidence shows the Mother attended in the manner of her own choosing, engaged in discussion, posed questions, and commented, at the IEP meetings. She was represented by an attorney and accompanied and advised by a non-attorney advisor of her choice, she brought other individuals, including two private subject matter experts. A neutral third-party facilitator ran both January IEP meetings. Significantly for this inquiry, the participation of the Mother and Father brought about changes to the IEP. Although their proposed changes were not adopted 100% by the School District, that is not required by the plain wording of the regulation.

11. The record does not show the Mother voiced difficulty hearing, or speaking up, or requesting explanations, or engaging in discussion. Exhibit J11. The record does not show the Father, or the Parents' attorney, or the Parents' non-attorney educational advocate, or the Parents' two subject matter experts, complained of difficulty participating on their own behalf or on behalf of the Mother, with the exception of requesting breaks. The Sound Options Group facilitator did not voice concerns about the Parents' ability to participate. The Mother (and Father) received the draft IEP on January 15 for the January 21 meeting, and received an updated draft within a few hours after the January 21 meeting for the January 23 meeting. Exhibits J10, P5, P8.

12. The crux of the Parents' claimed inability to meaningfully participate is the School District's refusal to accede to the Mother's request for recordings of the IEP meetings, followed by verbatim transcription. This decision was made in large part because School District staff wanted the Parents' participation during the IEP meetings, not days or weeks later. The Father conceded the recording method used by the SSD (and requested by the Mother) was not very helpful in the moment of the IEP meetings, and it primarily helped the Parents agree after the fact. Father T216. He further acknowledged the School District's method of meeting notes and review allowed all IEP meeting participants to review what had been said and thereby improved accuracy. Father T217, T354.

13. The specifics of "meaningful" participation are not spelled out in the IDEA or in Washington State special education law. A determination of what is meaningful will rely on a review and balancing of the totality of the circumstances specific to a meeting. In the present case, over the one-and-one-half year course of the Student's enrollment in the School District, and particularly at the time of the January 2020 IEP meetings, the evidence shows the Mother was able to attend classes related to special education laws and services in-person and online, and serve on one or

more state-wide committees. She holds herself out as an individual who has special knowledge or training with respect to the problems of students eligible for special education. WAC 392-172A-0511(1)(a). In that capacity, she accompanies and advises other special education parents at IEP meetings, and does “a lot of work” as a volunteer. Mother T512. She previously obtained and maintained employment as a medical professional; she left that field because of licensure requirements, initially, and family responsibilities, not because of the inability to perform the mentally demanding work she described.

14. The Mother’s assertion that it is easier to function as a non-attorney advisor at IEP meetings than as a parent of the student whose IEP is under consideration because the student in those cases is not her child, is reasonable and believable. However, that factor alone does not result in a determination the Mother is not able to participate with the accommodations offered at the IEP meetings relating to the Student in the present case.

15. The Mother was clear that she preferred the use of the CART transcription, but that does not mean she is not able to meaningfully participate without it. The Mother did not show she had ever received the accommodation she requested (recording with word-for-word transcript) or a court reporter using CART or a similar system) prior to this due process hearing. Despite that, she is able to function in her personal and quasi-professional life as a non-attorney advocate, special education advocacy group member, and special education advocacy group board member. She attends classes in-person (pre-COVID) and online related to the complex subject of special education, advocates on behalf of other parents, and informs and refers those parents to other resources, all without recordings or CART transcription. Her functional level within the community suggests she is highly functional without the specific accommodations she requested.

16. The Parents’ participation resulted in changes to the IEP meeting process, and in the IEP itself. The evidence does not support finding the School District did not deprive the Parents of meaningful participation in the January 2020 IEP meetings. School District employees listened to the Parents and their attorney. They read the literacy specialist’s report, as conceded by Ms. Wagner. They made changes to the IEP as a result, although not all changes requested. Ms. Wagner testified even she did not support goals in all CASEL domains in the January 2020 IEP. The School District engaged in discussion with the Parents and their team of attorney, educational advocate, and two experts. School District staff took and displayed meeting notes, and reviewed the notes with the IEP team, including the Mother. It offered to reschedule the January 23, 2020, IEP meeting when the Mother failed to appear in-person again. It set up a Zoom call and chat session at both meetings, (which seems commonplace more than six months after COVID-related public health considerations, but likely was not in January 2020), in addition to the telephone connection. It incorporated some of the Parents’ input into the IEP. Father T368; Exhibits J10, P11. All of these factors support finding the School District did not deprive the Parents of meaningful participation in the Student’s January 2020 IEP meetings. Both Parents had meaningful participation in the IEP meeting. There was no procedural or substantive violation in this area.

Appropriateness of IEP

Parents' First Request - Written Expression Goals

17. The Parents contend the School District's inclusion of only two written expression goals in the January 2020 IEP is inappropriate. In support of their claim, the Parents rely in part on the testimony of Ms. Wagner, their literacy specialist.

18. An IEP must contain a statement of annual goals, including academic and functional goals designed to meet the student's needs that result from his disability to enable him to be involved in and make progress in the general education curriculum and meet each of a student's other educational needs that result from the student's disability. WAC 392-172A-03090(1)(b)(i); 34 § CFR 300.320(a)(2). For students who take alternate assessments aligned to alternate achievement standards, the IEP must include a description of benchmarks or short-term objectives. *Id.* There must be a relationship between the present levels of performance and the goals and objectives. *Seattle Sch. Dist.*, 34 IDELR 196, 34 LRP 226 (SEA WA 2001). Goals must be stated with enough specificity that they are understandable and must be measurable in order to determine whether a student is making progress toward the goals.

19. The IDEA does not specify the number of goals that must be included in an IEP, but there should typically be at least one goal for each area of need. *See, e.g., Bellflower Unified Sch. Dist.*, 54 IDELR 66 (SEA CA 2010) (IEP deficient because it did not contain goals to address student's deficits in attending to group instruction); *Flagstaff Arts and Leadership Academy*, 113 LRP 27180 (SEA AZ 2013) (IEP deficient because it failed to provide goals to properly address basic reading, reading fluency, life skills, and other areas of need). An IEP need not contain every goal requested by a parent or recommended by the parent's experts. *See G.D. v. Torrance Unified Sch. Dist.*, 112 LRP 12078 (C.D. Cal. 2012) (IEP goals not inappropriate where the district included goals addressing the student's significant needs while excluding those it deemed unnecessary or not age appropriate).

20. The Student's IEP provides goals in each of the areas for which his evaluation recommends SDI. The goals are measurable and were developed considering the Student's present levels and progress on prior goals. The goals selected by the School District are modest, which is consistent with the limited progress he has demonstrated. They also recognize his language abilities significantly exceed his written production. The goals are aimed specifically at the basis, or foundation, of his difficulty. It would not appear appropriate to instruct him to the level of a finished essay when he struggles to write single sentences.

21. Ms. Wagner's testimony is accorded partial weight. Ms. Wagner did review documents, but she not speak with the Student's teachers; her primary information source was the Mother. She administered only a single 5-minute writing assignment, and never provided actual instruction to the Student. Wagner T165, T167, T185, T186-187. Ms. Wagner did not state the goals in the written expression portion of the January 27, 2020, IEP were inappropriate, just that she would

have preferred an unidentified something more than two, but fewer than the nine she recommended. She conceded School District staff had read her report, asked clarifying questions, and changed the contents of the IEP toward what the Parents requested, based upon her input. Ms. Wagner's testimony cannot be read to disagree completely with the School District's final IEP provisions. She agreed the Student's instruction needed to start at the sentence level, not the essay level.

22. Although Ms. Wagner has worked many years in the field of literacy, I accord greater weight to the opinion of Ms. Kluskowski, the certificated special education teacher who worked with the Student, regarding the appropriateness of the written expression portion of the IEP. Ms. Kluskowski worked with the Student daily for one-and-one-half years on written expression, spoke with the Student's general education LA teacher, and worked with SLP Kubat, as well. These sources of direct contact with the Student and other students, both typically developing and special education, bolster Ms. Kluskowski's credibility.

23. The School District's Written Expression goals portion of the January 27, 2020, IEP was drafted by School District special educational professionals who reviewed the Student's unique circumstances. They considered the Student's PLEPs, they considered his abilities, they discussed their proposal at length on multiple occasions (October 17, 2019, IEP meeting, and January 21 and 23, 2020, IEP meetings), and addressed it in writing (Dr. Bube email to the Parents, P5), with the Parents and Parents' consultants. The School District articulated specific reasons why their proposed Written Expression goals are appropriate. They are reasonably calculated to provide meaningful educational benefit. Although the Parents disagree with this portion of the School District's final IEP, they have not met their burden to show the School District's proposed Written Expression goals are inappropriate.

Parents' Second Request - CASEL Domains

24. The Parents requested goals in the IEP addressing each of the five CASEL domains. The IEP included goals for only two domains. The School District's explanation and basis for the two "foundational" domains it chose as goals for the final January 2020 IEP were supported by School District special education professionals, who provided significant evidentiary support for their choices. Delivery of these services by the special education teacher, rather than by an SLP as recommended by Ms. Willingham, was also supported by School District special education professions. Since the Student was not eligible for OT services, the opinion of a private consulting/non-treating OT regarding the SLP services he would benefit from was not accorded significant weight by the School District, and is not accorded significant weight in this proceeding.

25. There is no dispute between the parties that the Student has an excellent vocabulary in English, and speaks on a much higher level than he writes; the dispute is how to increase his written production and fluency. The Student has difficulty initiating the writing process, so focus on those domains of the CASEL method which are foundational for him is appropriate.

26. As the Parents admit in their Closing Brief at page 11, the School District stated it chose the two CASEL domains and two related SEL goals because they were foundational, meaning “foundational because of [the] impact on other educational areas.” Parents’ Closing Brief p.11; Bube T1180.

27. In light of the Student’s non-eligibility for OT services, it was not error for the School District to refuse to include the Parents’ consulting OT’s recommendation for potential-maximizing OT or SLP services into his IEP. Bluteau T1258;

28. The testimony of Ms. Willingham is accorded little weight, based in largest part upon the Student’s non-eligibility for OT or SLP services. Private OT or SLP services the Student might benefit from are essentially in pursuit of maximizing his potential, as referenced in *Rowley*, 458 at 200-201, rather than a service he is entitled to pursuant to the IDEA. As such, they are not at issue in this special education proceeding.

29. Further, the weight accorded to Ms. Willingham’s testimony is based upon the limited sources for her opinion. In comparison with School District staff, Ms. Willingham was a consultant, only, not a provider of services. She served in this role only one time previous to the Student’s case. Her testimony was that of an advocate who accepted the information provided by the Mother as her first basis, and not that of a professional providing an opinion based upon a broad view of the relevant facts.

30. It is only possible to implement so many goals at one time, and providing FAPE does not require a school district to address all possible goals at once. As mentioned above, an IEP need not include all goals requested by parents. The Parents have not shown the School District’s decision to include only two foundational CASEL goals is inappropriate.

Parents’ Sixth Request – No Removal from Academic Courses to Receive Services

31. The Parents assert the School District should not remove the Student from academic courses (general education) to deliver special education services. Although the School District interpreted this request as being related to the Student’s 9th grade/high school schedule, the January 27, 2020, IEP would have controlled his education for the last half of his 8th grade school year. (It is noted the Student’s actual high school daily class schedule is not at issue in this proceeding.) This request appeared to be based primarily on Ms. Kluskowski’s removal of the Student from LA class briefly late in the week ending Friday, January 17, 2020, to gather transition services data. This data was needed to complete the transition portion of the draft IEP pursuant to WAC 392-172A-03090(1)(k). The circumstances of that particular week provided a narrow range of options for the School District to complete its preparations for the annual IEP meeting.

32. The Parents did not present compelling evidence sufficient to restrict the School District in implementing the IEP, including additional data gathering required by the IDEA. There was no evidence the Student’s removal from general education academic courses was a common

occurrence. Instead, the evidence shows this was a rare instance of (1) the Student being absent from school (2) when data gathering is required by the IDEA and State law, (3) resulting in significantly limited opportunity to collect the data. It is appropriate to allow the School District to determine when services are provided in the school-day, so long as the IEP is implemented with fidelity.

Prior Written Notice - Timing

33. A district must provide prior written notice (PWN) to the parents of a child eligible or referred for special education a reasonable time before it proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. (Emphasis added.) WAC 392-172A-05010; 34 CFR 300.503(a); *Letter to Chandler*, 59 IDELR 110 (OSEP 2012).

34. PWNs must contain: (a) a description of the action proposed or refused; (b) an explanation of why the district proposes or refuses to take the action; (c) a description of each evaluation or other record used as a basis for the action; (d) a statement about the parents' procedural safeguards; (e) sources for parents to obtain assistance in understanding the PWN or the procedural safeguards; (f) a description of other options considered and the reasons why they were rejected; and (g) a description of other factors relevant to the proposal. See 20 USC §1414(c)(1); WAC 392-172A-05010(2); 34 CFR §300.503.

Time for Parents to respond or seek a dispute resolution option for implementation

35. The Office of Special Education Programs (OSEP) interprets "a reasonable time" to be at least ten calendar days:

[T]he district must provide parents with a written notice of the proposed changes a reasonable time prior to implementing the proposed changes and must maintain the child in the current program and placement during this reasonable period of time.

. . .

We have interpreted a "reasonable time" to be at least 10 calendar days, although some fact situations would justify a more extended period of time. Whether a shorter period of time would be acceptable in the presence of parental consent is an issue not presented by your letter and remains to be addressed by this office.

Letter to Winston, 213 IDELR 102 (OSEP 1987). "The purpose of the notice is to provide sufficient information to protect the parents' rights under the Act." *Kroot v. District of Columbia*, 800 F. Supp. 976, 982 (D.D.C. 1992).

36. The January 27, 2020, PWN and final IEP proposing changes to be implemented the following school day, were not issued a reasonable time before the proposed initiation of the changes to the IEP. They were not issued before implementation except in the most minimal sense, at 5:19 PM to be implemented the next school day. There was some content (PLEPs) the Parents had never seen, because it had not been gathered or shared by the School District prior to the PWN and final IEP. Although the content (missing PLEPs and general education teacher report) was minimal in the context of the scope of the document, it was not necessarily minimal in importance to the Parents. Further, the School District was aware there were disagreements about what the School District did not agree to include in the final IEP. Thus, there was a disagreement about the IEP.

37. The virtual impossibility of filing a request for due process hearing in time to be legally entitled to stay-put (prior to the date of proposed implementation) underscores the inappropriateness of the issuance of the PWN and final IEP after 5:00 PM on the day before the proposed implementation date.

38. The timing of issuance of the January 27, 2020, PWN with an implementation date of January 28, 2020, is less than the ten-day reasonable amount of time identified by OSEP. Even if a less-generous timeline were allowed, the timing of the January 27, 2020, issuance and implementation was a procedural violation by the School District of its duty to provide written notice a reasonable time before the proposed initiation.

39. Procedural safeguards are essential under the IDEA:

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

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

40. Procedural violations of the IDEA amount to a denial of FAPE 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.

SC §1415(f)(3)(E)(ii); see WAC 392-172A-05105(2).

41. The timing of the District's issuance of the January 27, 2020 PWN was in violation of WAC 391-271A-05105(2). However, even in the presence of a procedural violation, Parents must still establish a denial of FAPE occurred. See WAC 392-172A-05105(2).

42. Credible evidence of record shows the Parents filed this special education due process hearing request almost immediately, within a day or so, of their receipt of the School District's January 27, 2020, PWN and final IEP. It is undisputed in this matter that the School District agreed to provide stay-put services, and not to implement the January 27, 2020 IEP and PWN. WAC 392-172A-05125. The Parents did not put on any evidence regarding the School District's delivery of services under the stay-put placement. Further, the Parents did not seek to amend the Complaint, despite reserving the right to do so in the Complaint, to address alleged harm to the Student from the proposed January 27, 2020, IEP.

Adequacy of Contents of Prior Written Notice Related to Items 1, 2, and 6

43. The Parents' first issue addressed in the January 27, 2020, PWN is the addition of more Written Expression goals pursuant to Ms. Wagner's report. The appropriateness of the Written Expression goals themselves is addressed above; this inquiry relates solely to the adequacy of the PWN's explanation of the reasons the School District addressed that request.

44. The School District's stated reasons for not including more Written Expression goals in the January 28, 2020, IEP were primarily that the two goals chosen were the most basic, "foundational", and to add more goals would be too stressful to the Student. The January IEP meeting notes show significant discussion of this topic. The testimony of Ms. Wagner shows she agreed nine goals were too many, and she understood the Student needed to make progress on writing at the sentence level before he could proceed to the essay level.

45. The level of detail the Parents seek is not required by the IDEA. See *Smith v. Squillacote*, 800 F. Supp. 993 (D.D.C. 1992) (statement in PWN that parent's requested placements were rejected because "an appropriate placement was available" was sufficient). The language in the PWN is sparse, but adequate, to convey the School District's decision.

46. The Parents' second issue in the PWN is their request for additional CASEL domain goals. This issue was discussed at length during the January 2020 IEP meetings, however, in the "reasons" portion of the PWN, no actual reason is stated. This section contains only a statement of what was requested and what the School District decided to do. This constitutes a procedural violation.

47. The Parents' sixth issue addressed in the January 27, 2020, PWN is their request for the Student to not be removed from academic classes to receive special education services. This was discussed in the January 23, 2020, IEP meeting, and briefly but accurately addressed in the PWN. The language of the PWN is brief to the point of being terse, but accurately reflects the

School District's understanding of the Parents' request and the basis for the School District's refusal. It does not constitute a procedural violation.

Procedural Violations

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

- (I) impeded the child's right to a FAPE;
- (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.

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

49. Under the facts present in this case, the Parents have not shown the School District's failure to provide them several days' additional notice of the District's proposed actions impeded the Student's right to a FAPE, significantly impeded their participation rights in the decisionmaking process, or caused a deprivation of educational benefits to the Student because the District provided the Student a stay-put placement despite the Parents filing for due process after the implementation date in the PWN. Accordingly, in the absence of harm, this procedural error does not constitute a denial of FAPE. See WAC 392-172A-05105(2); 20 USC §1415(f)(3)(E)(ii).

50. The Parents have not proven the School District's procedural violation in its failure to provide a fulsome explanation of its refusal to agree to provide goals in all 5 CASEL domains impeded the Student's right to a FAPE, significantly impeded their participation rights in the decisionmaking process, or caused a deprivation of educational benefits to the Student because the matter was fully discussed at the IEP meeting so the Parents were aware of the reasons. Accordingly, in the absence of harm, this procedural error does not constitute a denial of FAPE. See WAC 392-172A-05105(2); 20 USC §1415(f)(3)(E)(ii).

ORDER

1. The School District committed a procedural violation by failing to provide the January 27, 2020, PWN a reasonable amount of time prior to the proposed date of implementation. The procedural violation did not result in the denial of FAPE to the Student.

2. The School District committed a procedural violation by not stating the reason for its rejection of Parents' second issue in the PWN, the addition of SDI in all five CASEL domains. This procedural violation did not result in the denial of FAPE to the Student.

3. All other claims of the Parents are denied.

SERVED on the date of mailing.



Janice E. Shave
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served this document on each of the parties listed below. I emailed via secure email or mailed a copy to the parties at their addresses of record using Consolidated Mail Services or U.S. Mail.

Parents



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Dated November 13, 2020 at Seattle, Washington.

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