

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

IN THE MATTER OF

OSPI CAUSE NO. 2020-SE-0128

OAH DOCKET NO. 09-2020-OSPI-01142

BETHEL SCHOOL DISTRICT

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

A due process hearing in this matter was held by videoconference before Administrative Law Judge (ALJ) Pamela Meotti on October 12 to 15, and November 2, 4 and 5, 2021. The Parent<sup>1</sup> of the Student whose education is at issue<sup>2</sup> appeared and represented herself. She was accompanied and advised by her advocate, [REDACTED]. The Bethel School District (District) was represented by Erin Sullivan-Byorick, attorney at law. Also present for the District was Connie Martin, District Director of Special Services.

**PROCEDURAL HISTORY**

The Parent filed a due process hearing request on September 8, 2020, and the matter was assigned to ALJ Matthew Wacker. The District filed a response on September 15, 2020. ALJ Wacker issued prehearing orders on October 23, 2020, December 8, 2020, January 26, 2021, February 19, 2021, March 4, 2021, March 18, 2021, and August 6, 2021. The matter was reassigned to ALJ Courtney Beebe on October 5, 2021, and reassigned to ALJ Pamela Meotti on October 7, 2021.

The deadline for a written decision in this case was extended at the District's request to thirty (30) days after the record of the hearing closes. See Prehearing Order dated October 23, 2020. The hearing ended on November 5, 2021, and the record closed on January 7, 2022, when the parties timely filed post-hearing briefs. The due date for a written decision is February 6, 2022.

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<sup>1</sup> References to the Parent are to the Student's Mother.

<sup>2</sup>To ensure confidentiality, names of parents and students are not used.

## EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Parent Exhibits: S1-S8; S10; S12-S13; S15-S29; S31, S33-34; S37-S42; S44-S47; S49-S52; S54-S59; S62; S75; S98-S100; S111; S113.

District Exhibits: D1; D11-D12; D14-D15; D21, D32; D35; D52; D128-D129; D141; D144; D145.

**The following witnesses testified under oath. They are listed in order of initial appearance:**

Ben McCracken, former District Assistant Director of Support Services

Mary Fischer, District Early Learning Specialist

Rebecca Willis, District Family Support Specialist

Danielle Hickok, District Paraeducator

Eleanor Hawksworth, former District Special Education Teacher

Amanda Wicklander, former District School Psychologist

Melody Duke, District Speech Language Pathologist

Christine Coles, former District Paraeducator

Sonja Hemmerling, former District Director of Special Services

Lori Haugen, former District Executive Director of Special Education

Diane Thompson, former District Behavior Specialist

Leah Storch, former District Occupational Therapist

Ryan Kolowinski, District Student Resource Specialist

Angela Kotas, District Paraeducator

The Parent

Mikayla Woolley, Occupational Therapist

Lynda Fitzgerald, District Occupational Therapist

Toni Cheever, District Assistant Director of Special Services

Kendre Howland, Speech and Language Pathologist

Connie Martin, District Director of Special Services

## ISSUES

The issues for the due process hearing are:<sup>3</sup>

a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) beginning September 8, 2018 for one or more of the following reasons:

1. Failing to conduct an appropriate initial evaluation in fall 2018 to determine the Student's eligibility for special education by:
  - a. Not complying with timeliness requirements;
  - b. Using a screening tool for diagnostic purposes;
  - c. Administering assessment tools in a manner that produced inaccurate results;
  - d. Failing to assess the Student in all areas of suspected disability;
  - e. Predetermining the Student's eligibility for special education;
2. Providing a Prior Written Notice (PWN) to the Parent after the date for initiation of the action, and inaccurately identifying individuals present;
3. Creating an inappropriate Individualized Education Program (IEP) for the Student on December 5, 2018 by:
  - a. Failing to complete the IEP until January 8, 2019;
  - b. Failing to appropriately address the Student's extreme behaviors, including behaviors that placed the Student's safety at risk;
  - c. Failing to appropriately address the Student's nonverbal communication needs;
4. Completing a PWN before the December 5, 2018 IEP meeting;
5. Sending the Parent a PWN on January 8, 2019 with an action initiation date of December 10, 2018, and which did not identify the Parent's requests, and disagreements with the proposed IEP, or reasons for denying the Parent's requests;

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<sup>3</sup> A prehearing order dated December 8, 2020, set out 23 issues for hearing. On August 30, 2021, the parties submitted a joint statement that the only remaining issues for hearing were issues 1 through 16. By agreement, issues 17 through 23 were STRICKEN.

6. Failing to have a full-time paraeducator present at school for the Student beginning January 9, 2019, and then later discontinuing the full-time paraeducator;
7. Failing to document the Student's aggressive behavior and harm to District staff;
8. Failing to implement the Student's weekly communication log;
9. Failing to document and notify the Parent when the District changed the Student's educational placement, thereby isolating the Student from his peers;
10. Failing to ensure all staff in the Student's classroom, including the Student's one-to-one paraeducator, had "Right Response" training;
11. Failing to have a speech-language pathologist (SLP), occupational therapist (OT), and a general education teacher at the March 6, 2019 IEP meeting;
12. Sending the Parent the final IEP developed at the March 6, 2019 IEP meeting after the date the IEP was implemented;
13. Sending the Parent a PWN after the IEP was implemented, and which did not document the Parent's concerns regarding the goals in the March 6, 2019 IEP;
14. From March 7, 2019 to April 23, 2019:
  - a. Failing to document and communicate the Student's increased "head banging" to the Parent;
  - b. Failing to document isolation and restraint of the Student by District staff;
  - c. Failing to document and notify the Parent when the District changed the Student's educational placement, thereby isolating the Student from his peers;
  - d. Failing to provide documentation of the Student's aggressive behavior and harm to District staff;
  - e. Failing to ensure all staff in the Student's classroom, including the Student's one-to-one paraeducator, had "Right Response" training;
15. Failing to properly document and have Right Response-trained staff protect the Student from self-injurious behavior (head banging) resulting in a concussion on April 23, 2019;

16. Failing to provide the Parent with an IEP Amendment and PWN dated June 5, 2019 until after June 17, 2019, as well as the PWN failing to:

- a. Include a date for the initiation of the action(s) reflected in the PWN;
- b. Identify all the Parent's concerns for the Student's education and requests for services;
- c. Provide reasons why the Parent's concerns were not addressed and the Parent's requests were denied;
- d. Specifically address the Parent's December 5, 2018 request for an Augmentative and Alternative Communication (AAC) evaluation;

b. And, whether the Parent is entitled to the requested remedies in the Parent's Complaint;

c. Or other equitable remedies, as appropriate.

See Prehearing Order dated December 8, 2020.

#### **FINDINGS OF FACT**

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

Some of the evidence presented was hearsay, which is a statement made outside of the hearing used to prove the truth of what is in the statement. In administrative hearings, hearsay evidence is admissible if, in the judgment of the presiding officer, "it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." RCW 34.05.452(1). An ALJ may not base a finding of fact exclusively on hearsay evidence unless the ALJ determines that doing so "would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence." RCW 34.05.461(4). To the extent any findings of fact are based on hearsay, it is determined that such findings did not unduly abridge the parties' opportunity to confront witnesses and rebut evidence.

## Request for Initial Evaluation

1. At the time of the hearing in November 2021, the Student was [REDACTED]. Throughout the relevant time he lived in the Bethel School District (District). D15p5.<sup>4</sup>
2. On September 6, 2018, shortly before the Student's [REDACTED] and as he was preparing to enter preschool, the Parent asked the District to conduct an initial evaluation of the Student for special education and related services. S1pp1-2, T1536.<sup>5</sup> In her request, the Parent stated that the Student was non-verbal, tuned people out and did not respond, and had meltdowns and/or tantrums. S1p2.
3. The next day, the District sent the Parent a prescreening packet. T129, S2pp1-3. The District uses screening tools or "screeners" to determine if a child has an area of delay that requires the District to evaluate. T130, T247-48.
4. On October 5, 2018, the District held a meeting to discuss a special education referral for the Student. S4p1. The Parent raised concerns the Student might have autism because he was nonverbal, at risk of eloping, not wary of strangers, and engaged in self-injurious behaviors such as head banging. S4pp2-3, S10p3. The Parent provided written input noting that the Student covered his ears if his environment was loud or busy and posed the question: "Are we looking at sensory functions or behavior or social/emotional?" S4p3.
5. On October 8, 2018, the District issued a prior written notice proposing to evaluate the Student to determine if he was eligible for special education and related services. S4p4, T419. October 8, 2018 was twenty-two school days after September 6, 2018. D1p1. During the hearing, the Parent acknowledged the District timely held the referral meeting. T1539-40.
6. The Parent provided written consent for the District to evaluate the Student in the areas of medical/physical, social/emotional development, adaptive skills, cognitive development, communication, and fine motor skills, and to use the GARS, which stands for Gilliam Autism Rating Scale. S4p5.

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<sup>4</sup> Citations to the exhibits of record are by the party ("S" for Parent; "D" for District) and exhibit and page numbers. For example, a citation to S20p1 is to the Student's Exhibit 20 at page 1.

<sup>5</sup> Citations to the hearing transcript are to T followed by the page number(s) on which the testimony appears. For example, a citation to T661 is a citation to page 661 of the transcript.

## Initial Evaluation

7. On October 26, 2018, the District evaluated the Student using a “round robin” format, meaning all individuals who assessed the Student were in the room with him at the same time and took turns completing their assessments. T422-23. The assessment results were discussed in an evaluation report. S10. The Student was assessed by a school nurse;<sup>6</sup> Amanda Wicklander, then a District school psychologist;<sup>7</sup> Melody Duke, a District speech and language pathologist (SLP);<sup>8</sup> and Lynda Fitzgerald, a District occupational therapist (OT).<sup>9</sup> Sonja Hemmerling, then District Director of Special Services, was present for the evaluation but did not conduct any assessments.<sup>10</sup> T607.

8. After approximately two hours, a child of the Student’s age becomes tired or loses focus and motivation, which invalidates assessment results. T965, T971. The District considered the round robin method helpful because each assessor had the opportunity to learn additional information about the Student during their colleagues’ time with him. T423-24, 427. The evaluation room contained a large table for adults, a small table for children, and toys to engage children. T425, T1093.

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<sup>6</sup> The school nurse did not testify at the hearing and it is not clear from the record whether she was present in the evaluation room.

<sup>7</sup> Ms. Wicklander has a master’s degree in education, specializing in school psychology, from the University of Washington. She received her school psychologist certification in 2004 and has been employed as a school psychologist for seventeen years. During the 2018-19 school year, she was the school psychologist for the District’s preschool program. T412, D144.

<sup>8</sup> Ms. Duke has a master’s degree in speech language pathology and more than thirty years of experience as a speech language pathologist in a school setting. S100p4. She is currently employed by the District. In 2018, she provided speech language services to District students on a contract basis. T515, S100p4.

<sup>9</sup> Ms. Fitzgerald has a bachelor’s degree in occupational therapy and has been employed by the District as an occupational therapist for thirty-one years. T1082, T1086. She has been assessing preschool children one day each a week for the past twenty-eight years. T1088. She attends classes for professional development and to maintain her license and her Educational Staff Associate (ESA) certificate, which is required for therapists working in a school setting. T1090-91.

<sup>10</sup> Dr. Hemmerling, sometimes known as Dr. Ryskamp, has a Ph.D. in Educational Leadership and received her school psychologist certification in 2000. Dr. Hemmerling was employed by the District as a school psychologist from 2000 to 2005, during which time she conducted special education evaluations. She worked as an education specialist from 2005 to 2007, and as an assistant director of special services starting in 2007. In 2018, Dr. Hemmerling was Director of Special Services for the District. S100p9, T598. Dr. Hemmerling is currently employed by the Puyallup School District as a school psychologist and she also conducts independent educational evaluations through her own business. T599.

## Assessment Tools

9. In conducting an evaluation, school psychologists use their discretion to determine which assessment tools to administer. T695. It can be challenging to complete a skill-based assessment with a student who is young and nonverbal, as in the case of this Student, who also was active and lacked focus. T608, T933. When information cannot be obtained through such direct skill-based assessment, a criterion-referenced assessment, based on adult knowledge of the student, provides information for the evaluation. T608, 695-96.

10. Ms. Wicklander used the Battelle Developmental Inventory, Second Edition (Battelle)<sup>11</sup> to assess the Student in the areas of social/emotional and adaptive. She is trained to administer this assessment tool and has used it many times. T449. The Battelle included some direct questions for the Student. S10p7. Ms. Wicklander also observed the Student, interviewed the Parent, and reviewed a questionnaire completed by the Parent. T426, T448, S10pp7-8, 10. The Battelle is a norm-referenced assessment tool, which means the Student's score could be compared to the scores of neurotypical children to offer an indication of the extent of delay. The Battelle is normed for a student who is three years old, nonverbal, and unable to sit through standardized testing. T696.

11. To assess the Student's social/emotional development, Ms. Wicklander used the Battelle Personal/Social Domain. T425-26, S10p8. Average scores range from 85 to 115. T444-45. The Student's domain score of 57 placed him in the .2 percentile, in the below average range. S10p8. Based on the assessment results, Ms. Wicklander recommended that the Student qualified for special education services and needed specially designed instruction in this area. S10pp7-9, T449-50.

12. To assess the Student's adaptive skills, Ms. Wicklander used the Battelle Adaptive Domain. The Student's domain score of 55 placed him in the .1 percentile, in the below average range. S10p10. Based on the assessment results, Ms. Wicklander recommended that the Student qualified for special education services and needed specially designed instruction in this area as well. S10pp10-11, T449-50.

13. To assess the Student's cognitive development, Ms. Wicklander used the Developmental Profile-3 (DP-3). T450. Like the Battelle, the DP-3 is normed for the Student's demographic. The Parent completed the DP-3 parent report form, which assesses the development and functioning of children between birth and age twelve. S10p12. The District typically used this criterion-referenced assessment with students who were unable to

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<sup>11</sup> The evaluation report sometimes refers to the Battelle as the BID-2 [sic] or the BDI-2. S10p14.



participate in direct assessment because they were nonverbal or did not have sufficient joint attention skills to follow adult-directed activities. T427, T450. Ms. Wicklander interpreted the form, which indicated a score of <50, which is in the significantly delayed range. S10p12, T450. The Student's score was 3.33 standard deviations below the norm. T451, S10p13. Ms. Wicklander recommended that the Student qualified for special education services and needed specially designed instruction in this area. S10p12-13, T452.

## **Communication**

14. In assessing communication skills, Ms. Duke typically uses the Preschool Language Scale–Fifth Edition (PLS-5), which is a standardized assessment that requires more focus from the student than the Battelle. T953, 951. Given the Student's limited attention and interaction skills, Ms. Duke used the Battelle, which she considered reliable and the best means for collecting information about the Student's communication skills. T520-21, 951. The evaluation report mistakenly indicated that the Student's expressive language and total language scores were from the PLS-5, rather than the Battelle. S10p14. During the hearing, Ms. Duke stated that these references to the PLS-5 were typographical errors. She clarified that the scores reported in the evaluation report were correct. T933-35. There is no credible evidence in the record to contradict this testimony. I find that references to the PLS-5 in the evaluation report were typographical errors, and that the scores given were correct and from the Battelle.

15. The Student's scores on the Battelle–12 in receptive language, 18 in expressive language, 30 in total language—placed him in the first percentile. S10pp14-15, T1309. Typically-developing children receive a standard score between 85 and 100. The Student's standard score of 55 also placed him in the first percentile. S10pp14. All of the Student's scores were more than two standard deviations below the mean. Ms. Duke recommended that he qualified for special education services and needed specially designed instruction in this area. T935-36, T952-53, T963, S10p5.

## **Fine Motor**

16. Ms. Fitzgerald is trained to administer the Peabody Developmental Motor Scales-2 (PDMS-2), and used it to assess the Student's fine motor skills. The PDMS-2 is normed for the Student's age group. Ms. Fitzgerald also observed the Student and considered the Parent's input. The Student's total fine motor quotient placed him below the first percentile, indicating that his fine motor skills were significantly delayed. T1083-84, T1090-91, S10pp15-16. Ms. Fitzgerald recommended occupational therapy as a related service. S10p5.

## Group Setting

17. Dr. Hemmerling opined that it was appropriate to administer the Battelle, the DP-3 and the GARS in a group setting; none of these tests required that the Student be in an individualized one-to-one setting in order to be administered properly. T608-10. Although others were present when Ms. Fitzgerald assessed the Student using the PDMS-2, it was “relatively quiet.” The testing room had a table and chair and the Student was able to attend for the 25 minutes it took to administer the test with some redirection. T1093. Ms. Fitzgerald had no concerns about the test environment. T1093, T1107.

## Screening for Autism

18. Ms. Wicklander also administered the GARS, which is a screening tool for autism and is not a formal assessment. S4p4, T416, 419, 429. The District typically uses a “screener” such as the GARS prior to an evaluation to determine if an evaluation is necessary. T447, T612. Ms. Wicklander, who had not yet met the Student, decided to administer the GARS to address the Parent’s concerns that the Student might have autism and to provide the parent with information she could use in deciding whether to discuss the issue with a medical provider. T419-20, T429-30, S4. Ms. Wicklander read through and studied the GARS, but had not administered it before.<sup>12</sup> T420.

19. The GARS is an inventory rating scale that is completed by adults. T610-11. Scoring is based on standard scores that fall between 1 and 19, with a mean of 10 and a standard deviation of 2. Average scores are between 8 and 12; standard scores above 13 indicate an above average probability of autism. S10p17. The Parent completed the GARS but the evaluation report does not identify the Student’s score. Ms. Wicklander concluded that the Student’s score, which is not part of the record, indicated he was “within the average to low average range when compared to children with autism” and did not “appear to have a high probability of autism at this time.” S10p17, T454, T1531-32. In Ms. Wicklander’s opinion, nothing in the GARS indicated that further evaluation of autism was needed. T460. I give little weight to this opinion because the evaluation report does not specify the Student’s score on the GARS.

20. In Dr. Hemmerling’s opinion, it was important to pair the GARS with direct observation to see how the Student interacted with adults and his environment. T1213. Direct observation indicated the Student was very active, inquisitive about his environment, and minimally verbal. T616. He struggled to transition into the testing room, and interacted with evaluators when

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<sup>12</sup> The record does not establish what information Ms. Wicklander read through or studied.

seeking help but not for social purposes. S10p8. He made limited eye contact. S10p14. During the hearing, when the Parent asked Ms. Wicklander if she suspected the student as having autism, Ms. Wicklander replied that she had not met the Student at the time of the referral meeting. There is no evidence in the record that Ms. Wicklander considered the direct observation of the Student when she determined it was unnecessary to conduct further assessments related to autism.

### **Educational Autism Evaluation**

21. District staff cannot provide a medical diagnosis of autism but they can conduct an educational autism evaluation. T430, T438, T611-12. This requires “a lot of data, and a lot of opportunities to observe that student and see how their behavior is impacting them in the educational setting before you can say they have educational autism.” T439. In the fall of 2018, the Student was entering preschool and had not been in an educational setting before. T431. In Ms. Wicklander’s view, “a student who has not been in an educational setting, we can’t say that they would meet criterion for educational autism.” T439.

22. In conducting an educational autism evaluation, possible assessment areas include communication, fine motor, gross motor, social/emotional, adaptive, cognitive development, and sensory needs. T698-99. The student’s individual needs determine which of these areas are assessed. T698. The Student was assessed in all of these areas except for gross motor and sensory processing. T700, S4p5. The Student’s gross motor skills were very well developed and not an area of concern. T460, T699.

23. During the hearing, the Parent asked Ms. Fitzgerald why she did not perform a sensory profile. T1085. In Ms. Fitzgerald’s opinion, it was better to assess the Student’s sensory skills after he was in the preschool program because many children who have sensory difficulties at home do not experience them in the routine of a structured classroom. T1085, T1092. The test typically used in this area—the Child Sensory Profile—is subjective because it is based on adult observations in the setting where the adult observes the student. Because the Student had not yet been in the classroom, he did not have a classroom teacher to provide input from that setting, and any responses from the Parent would only provide information about settings outside school. T1092.

### **Evaluation Meeting**

24. The evaluation team met on November 14, 2018, which was twenty-seven school days after October 8, 2018. D1p1, T1555. During the hearing, the Parent acknowledged the District timely completed its evaluation. T1556. In attendance were the Parent; Dr. Hemmerling; Mary

Fischer, District Early Learning Specialist;<sup>13</sup> Ms. Duke; Ms. Wicklander; and Ms. Fitzgerald. S10p6, T1556.

25. The District typically scheduled IEP meetings to be held immediately after evaluation meetings. The Parent considered this to be a violation of the IDEA. T1010. She asked for a separate IEP meeting and the District accommodated that request. T435, S7p2.

26. The evaluation team reviewed existing data indicating that the Student was mostly nonverbal and that his family had numerous concerns about his safety, including concerns about elopement and self-injurious behaviors, such as head banging. S10p3. The team also considered the observation and assessment data collected as part of the Student's evaluation. S10p18.

27. Based on this information, the team concluded that the Student was eligible for special education and related services under the category of developmental delay. S10pp3, 18. This category is applicable to students aged three through eight experiencing developmental delays that affect educational performance in one or more of the following areas of development: physical, cognitive, communication, social or emotional, or adaptive. S10pp3-4. The Student showed delays in communication, cognitive, adaptive, social/emotional and fine motor. The team concluded that the Student's delays would impact his educational performance and that he required specially designed instruction (SDI) to address them. S10pp4-5. The team recommended SDI in the areas of adaptive, social/emotional, cognitive and communication. It recommended related services in the area of fine motor. S10p5.

28. Characteristics of autism can look like low cognitive functioning, fetal alcohol syndrome, attention deficit hyperactivity disorder (ADHD), anxiety, and other conditions, and can vary significantly from child to child. T452-53. The purpose of the District's initial special education eligibility evaluation was to determine whether the Student met the eligibility criteria for special education services and what services he required to access his education. T442. A diagnosis of autism would not have affected this determination because the question was what services the student required was based on his needs. T442. Even when a student has been diagnosed with autism, the student's IEP is developed on the basis of the student's needs and where the child has difficulty accessing education, regardless of diagnosis. An autism diagnosis may provide "some indication of where we might look to see where the

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<sup>13</sup> Dr. Fischer has a Ph.D. in Education and holds endorsements to teach both general and special education in Washington state. T236, D128p1. She was first hired by the District in 2005. Dr. Fischer's extensive professional experience includes teaching preschool students and students with severe disabilities and serving in a variety of administrative and consultative roles for various school districts in Washington state. D128, T127-233, T235-36.

child's needs are, and what kinds of needs might be present, because there are some things that will typically be associated. But every child is different. We have to look at each one differently." T227.

29. The Parent did not disagree with the evaluation team's findings, the eligibility category or determination, or the team's recommendations for services. S10p6, T701. Neither the Parent nor any other team member requested testing in any additional areas. T458, T460, T702, T1108.

30. On November 14, 2018, the District issued a prior written notice proposing to initiate special education services for the Student. The prior written notice gave an action initiation date of November 14, 2018, and mistakenly omitted the Parent and her advocate from the list of meeting attendees. S10p18.

### **Parent Input and Classroom Visit**

31. In late November 2018, the Parent provided input for Dr. Fischer to consider in drafting the Student's IEP. S12p2, S12pp4-7. Dr. Fischer drafted goals based on the results of the evaluation, information gathered during the evaluation, and Parent input. T162, 184. Dr. Fischer felt that the evaluation contained sufficient information to enable her to draft appropriate IEP goals. T185.

32. On November 30, 2018, Dr. Fisher sent the Parent a draft IEP, noting "this is a draft so we can modify, add, delete as needed at the meeting." S12p8, T242. When the Parent received the draft IEP, she expressed concern that it contained a draft prior written notice. S15p7. In response to feedback from the Parent and others, the District changed its practice of preparing a draft prior written notice as part of a draft IEP. Draft IEPs now contain a blank prior written notice. T146-47, T220-21.

33. On November 30, 2018, the Parent visited the Student's proposed classroom. She was concerned because the classroom had multiple doors, that staff would not know what to do if the Student engaged in head banging, and that staff was underestimating the Parent's concerns about safety. S13p2.

### **December 5, 2018 IEP Meeting**

34. The Student's IEP team met on December 5, 2018, to develop an initial IEP and determine the Student's placement (December 5 meeting). S22p1, T154. Attendees included the Parent and two advocates; Dr. Hemmerling; Dr. Fischer; Ms. Fitzgerald; Ms. Wicklander;

Eleanor (Ellie) Hawksworth, the Student's special education teacher; and Ms. Duke. S19p3, S22p20, T344.<sup>14</sup>

35. In preparation for the December 5 meeting, the Parent provided additional written input. She requested a one-to-one paraeducator, a weekly communication log to cover topics such as elopement, meltdowns, and words and visuals used in the classroom, an Augmentative and Alternative Communication (AAC) evaluation, and an electronic AAC device. S15pp1-7. An AAC device can be either an electronic device or a paper device, both of which display symbols that a student can use to communicate. T944. The term "AAC" can also refer to a picture communication system and sign language. T1286, T1208. The Parent's written input questioned the starting baseline for the Student's communication goals; it stated that the Parent did not have other concerns about the Student's goals. S15p6.

36. The team discussed the Parent's request for an AAC evaluation and for the Student to use an electronic AAC device. T1245-46, S22p5. There is no standardized AAC evaluation. T964, T1296, T1208. Rather, determining what AAC method is appropriate is a process of introducing visual supports and assessing how a student responds and what meets that student's needs. T946, 970, 1209. Before providing a Student with an electronic AAC device, it is important to determine what AAC method and device will assist a student in advancing verbal skills. In Ms. Duke's opinion, introducing an electronic device could interfere with developing social communication skills if introduced improperly or at the wrong time. T947. This opinion is afforded significant weight given Ms. Duke's extensive experience as an SLP working with children in an educational setting. The team forwarded the Parent's AAC request to the Assistive Technology Team and decided to use a picture choice system, choice board, visuals, and signing. S22p5.<sup>15</sup>

37. During the December 5 meeting, the team also discussed the Parent's concerns about the Student's behavior, which included elopement and head banging. T345, T369-70. The Student had not yet been in a classroom setting. It was therefore unknown whether the behaviors that troubled the Parent, such as lack of joint attention, struggling with transitions, and high activity level, would occur in the classroom. S22p5. The Parent told the team that

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<sup>14</sup> Ms. Hawksworth has a bachelor's degree in social services. She was hired by the District as a special education teacher in 2019 as part of a program that enabled her to simultaneously work on obtaining a master's degree and certification as a special education teacher. Her continued employment was contingent on her completion of those requirements. T365-366. Before she was hired by the District, Ms. Hawksworth served as a lead teacher in a Head Start classroom for approximately five years, which included working with some students who had special needs. S100p7, T365. Ms. Hawksworth worked for the District until December 2019. T343.

<sup>15</sup> The IEP refers to PECS, which refers to the picture exchange communication system, a specific communication methodology. Picture card communication is the same concept as PECS. T973, 1287-88. In working with the Student, Ms. Duke used picture card communication but did not use PECS. T973.

she had brought the Student to Sunday school at her church to obtain data and shared her experience with the team. T1238. During the hearing, the Parent opined that because the Student had autism, his behaviors at home would be the same as in the classroom. T1384. I give limited weight to this opinion because the Parent has no education, training, or experience in the field of education, and has never worked in an educational setting. T1572-74, T1646-47.

38. The Parent also requested a functional behavior assessment (FBA). T703. The purpose of conducting an FBA would have been to address the Student's behaviors at school, and at that point, the Student had never been in a school setting before. The team decided that it first needed data to see how the Student behaved at school in order to know what behaviors an FBA would address. T703-704.

39. The team also discussed the Student's IEP goals and developed:

- OT goals focused on holding and using writing tools, and stringing beads;
- adaptive goals focused on safe transitions, putting away toys, and following an arrival routine;
- social/emotional goals focused on sharing toys and identifying feelings;
- counting and sight reading goals;
- communication goals focused on receptive language, expressive language, and social communication/pragmatics.

S22pp9-12, T370.

40. The transitions goal addressed elopement behaviors by teaching the Student to move safely between different areas of the school. T190, S22p9. Goals focused on routines for arrival and putting away toys, and sharing toys with peers, were built on the idea that when children are aware of expectations and able to follow a routine, they build a sense of security that makes it less likely they will exhibit behavioral challenges, including elopement. T189-90. The goal focused on identifying feelings served as a precursor to the Student being able to identify his own feelings and communicate them. T191-92. Goals that increased the Student's cognition, fine motor skills, independence, and ability to relate to his environment and peers, also served to address the Student's inappropriate behaviors and to lead to a decrease in them. T1448-49, T1582.

41. The team also considered the Parent's request for a one-to-one paraeducator. T370, 375, T616. When a student is receiving one-to-one support, a paraeducator is assigned to work with the student and to serve the student's needs in the classroom. That function can

be met by more than one paraeducator or by a substitute or temporary paraeducator. T689-90.

42. The Parent strongly advocated that the Student needed support from a one-to-one paraeducator to address his behaviors. The team discussed that it did not have any school-based information to know whether the behaviors the Parent had seen at home would continue in a school setting. T199, T617. It is unusual for the District to assign a one-to-one paraeducator to a student who has never been in a school environment before, based solely on parent concerns. T192-94. Children often exhibit different behaviors in the classroom than they do at home. T1125. The District typically observes and obtains baseline data on how a student responds to specific interventions, classroom rules and expectations, and the curriculum. T195-96, T683. These steps are important so that the District can ascertain what level of support a student needs prior to assigning one-to-one support, which is one of the most restrictive environments for a student. T684-86, T1122, T1333.

43. After considering all of this information, the team decided it was appropriate to provide a temporary one-to-one paraeducator to support the Student's transition into school, and then review his needs at the end of January. T617-18, T1249.

44. The team also agreed to provide accommodations related to behavior, including short breaks in routines, space for movement or breaks, visual supports and social stories to help the Student understand and express what he was thinking or feeling. S22p13, T209-211.

45. The team further agreed to include a weekly communication log as an accommodation. S22p13. The Parent asked for the communication log so she could see behavioral patterns and trends in the classroom. T662. Because the Student is nonverbal, the Parent felt that she required feedback and communication from school in order to fully participate in his education. T1256-57.

46. The accommodations section of the IEP also noted that the District "provides training on Right Response to de-escalate students and maintain safety for students and staff." S19p14. Right Response training includes instruction on de-escalation techniques to avoid the use of restraint and the appropriate use of restraint. District policy does not require all classroom staff to receive Right Response training. It prohibits staff from using restraint unless have completed this training. T102-103; T564.

47. The IEP team discussed the Student's needs and provided the following special education and related services:



Services 12/10/2018 - 12/09/2019

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
<b>Special Education</b>							
No	Communication	SLP	SLP	30 Minutes / 1 Times Weekly	Special Education	12/10/2018	12/09/2019
No	Communication	Special Education Staff	SLP	40 Minutes / 3 Times Weekly	Special Education	12/10/2018	12/09/2019
No	Cognitive	Special Education Staff	Special Education Teacher	45 Minutes / 4 Times Weekly	Special Education	12/10/2018	12/09/2019
No	Social/Emotional	Special Education Staff	Special Education Teacher	45 Minutes / 4 Times Weekly	Special Education	12/10/2018	12/09/2019
No	Adaptive	Special Education Staff	Special Education Teacher	45 Minutes / 4 Times Weekly	Special Education	12/10/2018	12/09/2019
<b>Related</b>							
No	Fine Motor	OT/COTA	OT	30 Minutes / 1 Times Weekly	Special Education	12/10/2018	12/09/2019

Total minutes per week student spends in school:	720 minutes per week
Total minutes per week student is served in a special education setting:	720 minutes per week
Percent of time in general education setting:	0% in General Education Setting

S22p16, T214-15.

48. The team also considered the Student’s placement and whether he should be in a separate classroom,<sup>16</sup> and determined that his least restrictive environment was placement in a self-contained special education classroom. T1593, S22pp17, 20.

**Versions of the December 5, 2018 IEP**

49. The record contains three versions of the IEP associated with the December 5 meeting. See Exhibits S18, S19, and S22.<sup>17</sup> Each version contains an IEP and a prior written notice. The parties appear to agree that Exhibit S22 was the final version of the IEP and prior written notice following the December 5 meeting, and this is supported by evidence in the record. Dr. Fischer, who drafted all three versions, considered Exhibit S22 to be the final version because the prior written notice associated with that version included a sentence reflecting the team’s decision to provide a temporary one-to-one paraeducator. T242-243. That sentence in the prior written notice, which is the only significant difference between the three versions, provides:

<sup>16</sup> The meaning of “separate classroom” is not clear from the record.

<sup>17</sup> Exhibit S19 contains a date stamp indicating it was received by the District’s special services office on December 21, 2018. T1207. This version also contains the signatures of meeting attendees and the Parent’s signature consenting to receipt of special education services, and reflects additions made during the IEP team meeting. T182-83, S19pp3, 19.

A temporary one-to-one will be put into place to assist [the Student] with the transition to school. This will be reviewed at the end of January to see whether there is continued need and either add it to the IEP or develop a plan to fade the para.

*Compare S22p20 with S18p20 and S19p20, T1201-02.* I find that Exhibit S22 is the final version of December 5, 2018 IEP and prior written notice.

50. The record does not establish precisely when the sentence regarding a one-to-one paraeducator was added to the prior written notice in Exhibit S22. The Parent alleges she received the prior written notice on January 8, 2019, and the District did not credibly rebut this assertion. Service from a one-to-one paraeducator was added to the prior written notice rather than to the Student's IEP because it was temporary. T253-54.

51. The prior written notice also stated that the Student qualified for special education as a student with developmental delays in the areas of communication, fine motor, cognitive, social-emotional, and adaptive, that the Parent actively participated in developing the IEP, and that the team had decided the Student's least restrictive environment at the time was a self-contained classroom. The prior written notice reflected that the IEP team had reviewed Parent input, records and evaluation data in making decisions, and that the information reviewed had been adequate to determine eligibility and to develop an IEP. S22p20. The prior written notice also stated the Student's teacher and the Parent would work on "developing a communication system for reporting of skills and strategies that each are working on." S22p20.

## **Preschool**

52. The District did not have a temporary one-to-one paraeducator to work with the Student when he arrived for his first day of preschool on January 8, 2019. T347, T618, S23p2. The Parent was frustrated and asked Dr. Hemmerling to send her a copy of the IEP and to explain what was going on. S21p1. Dr. Hemmerling sent a copy of the IEP an hour later. S21p2.

53. Typically, ten to twelve children, and three or four adults were present in the Student's classroom—a special education teacher and two or three classroom paraeducators. T306. A classroom paraeducator is assigned to work with all students in a classroom whereas a one-to-one paraeducator is assigned to one student. T83-84. Ms. Hawksworth was the Student's

special education teacher; Angela Kotas was a paraeducator;<sup>18</sup> Danielle Hickok<sup>19</sup> and Christine Coles<sup>20</sup> were substitute paraeducators.<sup>21</sup> T306-307, T357, T528, T977. Ms. Hawksworth assigned a classroom paraeducator to act as a one-to-one for the Student on the day he started school, but the record does not establish who was assigned. T407. The classroom paraeducator effectively acted as the Student's one-to-one, which left Ms. Hawksworth with less classroom support. T407.

54. Within three or four days of the Student starting school, Ms. Coles had become the Student's one-to-one paraeducator, although her employment status was still as a substitute paraeducator at that point. T307, T333, T350-51, T357, T383, T406-407, T534, T589.

55. Ms. Hawksworth found the Student to be different than the Parent had described during the December IEP meeting. T345, T376. Ms. Hawksworth was expecting the Student to attempt to run and escape school but he did not do so. T376. There is no evidence in the record that the Student ever eloped from the classroom.<sup>22</sup> T319, T381-82.

56. The Student sometimes engaged in head banging, and would bang his head on the table or the floor, including the tile floor. T311-312, T318, T353. Ms. Coles typically responded to the Student's head banging by redirecting him and trying to get him to stop. Ms. Hawksworth usually put her hands between his head and the tile floor. T353.

57. The Student engaged in other aggressive behaviors in the classroom as well. He bit Ms. Hawksworth on the first day of school. T348. He also bit Ms. Hickok and head butted her in the legs, but it is unclear when these behaviors occurred. T308. The Student "hit" Ms. Hawksworth more than once each day, but these hits were not very hard because the Student used them as a physical mode of communication. T359, 361. The Student sometimes pushed peers aside as he walked around the classroom because he did not like when people got in

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<sup>18</sup> The District hired Ms. Kotas as a paraeducator in 2010. T987. She worked a paraeducator in the Student's classroom during the 2018-2019 school year and is still employed by the District. T977.

<sup>19</sup> Ms. Hickok is employed by the District as a paraeducator. She was a paraeducator in the Student's classroom between January and June 2019. T305.

<sup>20</sup> During the 2018-2019 school year, Ms. Coles initially worked for the District as a substitute paraeducator and became a permanent paraeducator in May 2019. She no longer works for the District. T528.

<sup>21</sup> The District sometimes employed substitute or temporary paraeducators, which are the same, to work as one-to-one paraeducators and as classroom paraeducators. T83-84, 105-106.

<sup>22</sup> After school one day, the Student escaped from the Parent's car. At that point, however, the Student was in the Parent's care. T1387.

his way. T359. Ms. Coles, who was usually near the Student, tried to block him if he tried to harm another student. This happened three or four times per day and she was able to prevent him from harming other students “a lot of the times.” T538, T590. There is no specific evidence in the record about any occasions on which the Student harmed any of his peers in the classroom. T590, T309.

58. Both Ms. Hickok and Ms. Coles felt that when the Student first started school, they were short-staffed and needed extra help in the classroom. T313, T338, T538-542. Ms. Hickok shared these concerns with Ms. Hawksworth and Rebecca Willis, who served as a family support specialist for the Student’s classroom.<sup>23</sup> T313. During the hearing, Ms. Hawksworth testified that she believed she had sufficient adults in the classroom and that Ms. Coles provided sufficient behavioral support for the Student. She felt, however, that she needed additional support from the District with respect to the Student’s educational programming in the form of training.<sup>24</sup> T350-51.

59. The Student’s classroom was large and contained a tiled area and a carpeted area with all of the classroom’s play equipment. T532. When the Student became “really hard to calm down,” or posed a danger to classmates or to himself, staff directed him to the carpeted area, which was less stimulating and enabled him to take a break until he had calmed down. T309, T319-20, T354-57, T388. The Student could see and hear his peers from the carpeted area, which was blocked off by a low bookshelf and served as a cooling down area for other students in the classroom as well. T320, T355, T532. The Student climbed over the bookshelf several times. T356.

60. The Student worked in the carpeted area with Ms. Coles and a classmate nearly every day. T589. During the hearing, Ms. Coles suggested that the classmate probably should have had her own one-to-one paraeducator, but there is no specific evidence in the record regarding that student. T589. Ms. Coles believed she was able to support the Student throughout his school day. T951.

61. Other students frequently used the carpeted area as well. T387. The Student liked that area because it had toys he enjoyed and he could walk without anyone getting in his way; he sometimes went there on his own. T387-88. Ms. Coles played with the Student, tried to communicate with him, and worked on building trust with him. T532-33.

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<sup>23</sup> Ms. Willis has a bachelor’s degree in human services. She has been employed by the District for approximately twenty years, and served as a paraeducator before she became a family support specialist. T259, 470.

<sup>24</sup> The record does not provide further detail about Ms. Hawksworth’s concerns.

62. When the Student was in the carpeted area, he was always with Ms. Coles or another paraeducator. T355. There is no evidence in the record that the Student was ever left alone or removed from the classroom at any point. T309, 355, 387, T853.

63. The Student had a close relationship with Ms. Coles and sometimes chose to sit on her lap. T322, 831, 1447. In general, however, touching escalated the Student's behaviors. T386-87. Ms. Hawksworth personally disliked use of restraint with students and "stayed away from it as much as possible." T387. Ms. Hawksworth defined "restraint" as holding someone against their will and defined "isolation" as "taking a child to another room all by themselves where there's no communication." T360.

64. The Student sometimes became upset and tried to hit Ms. Coles when she told him he could not do something. Ms. Coles would grab his hands and ask "Are you all done?" which enabled him to focus on something else. T591-592. When Ms. Coles held his hands, it was to prevent him from hitting someone and not to otherwise restrict his movement. T593. The Student could remove his hands from Ms. Coles's hands and move away if he wanted to. T593-594.

#### **OT and SLP Services**

65. When the Student started going to school, Ms. Duke provided speech services to the Student and worked on his communication goals. Ms. Duke's work with the Student was shaped by his needs and not by his diagnosis. T959-60. She followed a process of providing visual supports, such as using pictures to choose activities and seeing how the Student responded to a paper display of an electronic AAC device, to assess which AAC methods worked for the Student. These supports were leading up to the Student's ability to function with an electronic AAC device. T937, T945.

66. In Ms. Duke's opinion, the Student did not have sufficient attention, ability, and focus to use an electronic AAC device during the 2018-2019 school year. T946. He would have been distracted by the device because he had not yet developed "social back-and-forth communication," as a foundation for conversation with other people. T949. In Ms. Duke's opinion, it took the Student approximately one year to develop the necessary foundational skills to be able to benefit from an electronic AAC device. T950.

67. Ms. Duke worked on the Student's goals with him. The receptive language goal, which sought to improve the Student's ability to follow basic one-step directions within the classroom, was aimed at increasing understanding language. T954-55. The expressive language goal focused on improving the Student's ability to "communicate responses and

requests for needs and preferences through gesture, manual sign, picture indication and/or verbalization” S11p12. This goal aimed to determine what mode of communication would be most effective for the Student and to build foundational skills. T955. The social communication/pragmatics goal, which focused on improving the Student’s ability to “remain in simple social play schemes for 3 to 5 turns,” was intended to work on the foundational conversation skills. T956, S11p12.

68. Leah Storch, then employed by the District as an OT, provided OT services to the Student.<sup>25</sup> She was present in the classroom two days per week for approximately one hour to work with the Student and others, and never saw the Student being restrained or left alone. T861. During that time, she observed head banging, but did not see the Student’s actions result in injury to himself or others and never saw him elope from the classroom. T861-62. Ms. Storch provided the Student’s OT mainly through five-minute sessions, with some ten-minute sessions, depending on the Student’s tolerance level. T840, T858.

69. The Student’s sensory processing needs, which differed from those of typically developing peers, varied day to day, minute to minute. T841. Both neuro-typical children and children with special needs often require sensory breaks as part of their development. In Ms. Storch’s opinion, the Student’s preschool classroom was set up to meet sensory needs. T850, 870. Ms. Storch believed the Student’s sensory needs were met through sensory breaks, movement breaks, song and dance videos, and being out on the playground. T851. The Student would sometimes squeeze an adult’s hand or sit on Ms. Coles’s lap to meet his need for deep pressure, or proprioception. T850-51.

70. A student’s needs, rather than a particular diagnosis, shapes how Ms. Storch works on skills with a student. T862-63. Ms. Storch typically worked with the Student in the carpeted area of the classroom. T852. The Student was free to move around in the space and free to leave. T852.

71. Before she could work on some goals, such as handwriting, Ms. Storch first needed to work on building the Student’s tolerance for sitting at a table, working on activities, and following adult directives. T857-58. These foundational skills were “built-in” to the Student’s IEP goals. T1102-03.

### **Continued Need for One-to-One Support**

72. In late January 2019, the District determined that the Student continued to need assistance from a one-to-one paraeducator. S24p3, T627. On or about February 21, 2019,

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<sup>25</sup> Ms. Storch received a master’s degree in occupational therapy in 2017. D141.

however, the Parent came to believe that the District was discontinuing the Student's one-to-one paraeducator based on a conversation with Ms. Kotas. T1369, T1600, S25p1. The Parent emailed Dr. Hemmerling, who informed the Parent that the one-to-one paraeducator had been extended for two weeks and suggested a meeting to review data and determine whether to add the one-to-one paraeducator to the Student's IEP. S25p2, T1183.

73. The Parent's communication with Ms. Kotas and Dr. Hemmerling led her to believe that there had been a gap in the Student's one-to-one paraeducator service. T1600. However, the weight of the evidence shows that there was not such a gap. Dr. Hemmerling testified that the District provided the Student continuous support from a one-to-one paraeducator. T1183. This testimony is consistent with the testimony of Ms. Coles, who served as the Student's one-to-one paraeducator and was in the best position to know what services he actually received. T529-31, 537, T580, 589. I therefore give more weight to their testimony than the Parent's testimony, which was based at least partially on her understanding of a statement by Ms. Kotas. During the hearing, Ms. Kotas herself could not recall the Student's one-to-one paraeducator being discontinued. T979. Additionally, as a paraeducator, Ms. Kotas was not involved in hiring or terminating other paraeducators. T1182. I find that the District did not discontinue the Student's one-to-one paraeducator between January and June 18, 2019, when the school year ended. D1p1.

### **March 6, 2019 Meeting**

74. On March 6, 2019, the District held a meeting (March 6 meeting) to discuss amending the Student's IEP.<sup>26</sup> The Parent provided written input asking to add a one-to-one paraeducator to the IEP and to develop a communication sheet to track specific data. The input also questioned: "Are the goals appropriate for [the Student]?" At the bottom of the page, it included the heading Communication Device, with no further information. S26p1, T1618. The Parent did not ask the District to invite an OT or SLP to the meeting; she believed her written input conveyed such a request. T1615.

75. The District did not invite an OT or SLP to attend the March 6 meeting. When an IEP is being amended, the District only invites team members who have expertise or involvement with the service area or issue being discussed. T181, T707. Additionally, the record does not establish when the Parent provided her written input to the District. T381, T1168. If Dr. Hemmerling had known that the Parent wanted to discuss issues related to OT and SLP

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<sup>26</sup> The formal meeting notice mistakenly states that the purpose of the meeting was to develop an IEP and determine placement. S26p2. An email notice was sent on February 26, 2018, but it is not part of the record. S26p3.

services, she would have invited all of the individuals necessary to address her concerns. T1170.

76. The March 6 meeting was attended by Dr. Hemmerling, Ms. Hawksworth, Toni Cheever, the Parent, and the Parent's advocate.<sup>27</sup> The Student did not have a general education teacher, so Ms. Cheever, who was qualified as a general education teacher and had previous experience as a preschool teacher, attended in that capacity. T756, T1134, S26pp2, 4. The Parent did not ask to reschedule the meeting so that Ms. Storch or Ms. Duke, the Student's OT and SLP, could attend and did not seek to communicate with them at any point. T1616-17, T1659.

77. During the March 6 meeting, the team decided to amend the Student's IEP to add a one-to-one paraeducator.<sup>28</sup> T349, 382, S26p16. On March 6, 2019, the District issued a prior written notice proposing to add a one-to-one paraeducator to the Student's IEP with an action initiation date of March 6, 2019. S26p20.

### **March 7 to April 23, 2019**

78. On March 29, 2019, the Student's medical provider diagnosed him with Autism Spectrum Disorder, and ordered applied behavioral analysis (ABA) services as a means of improving the Student's behaviors, which were adversely impacting him at home and at school. S27p1.

### **April 23, 2019 Incident and Investigation**

79. On April 23, 2019, the Student engaged in head banging at school. After school, the Parent took him to an urgent care facility. The Student had "frontal abrasion and petechiae and bruising left forehead." S33p3. The Parent emailed Dr. Hemmerling to request an investigation. S31pp1-2, T638, T1486.

80. Dr. Hemmerling conducted the investigation on April 25, 26 and 27, 2019. She interviewed the individuals who were present at the time of the injury—Ms. Willis, Ms.

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<sup>27</sup>Ms. Cheever has a master's degree in teaching and is licensed to teach general education. She also has a state administrator's certification. Ms. Cheever is currently employed by the District as Assistant Director of Special Services and in 2018 she served as the District's Special Education Coordinator. T1113, T1131, S100pp1-3.

<sup>28</sup> The March 6 IEP amendment refers to Ellie Fischer-- a clerical mistake resulting from the combination of Mary Fischer and Ellie Hawksworth. T1171.



Hawksworth, and Ms. Hickok. T. 643-44, S38p1. She also reviewed the Student's records and files, including his health file, special education records, information in the database related to isolation and restraint, and Right Response training records. T640, 645.<sup>29</sup>

81. Following her investigation, Dr. Hemmerling issued a report. During the hearing, she testified that she considered the report to be an accurate representation of what she found at the time. T1214. I give significant weight to Dr. Hemmerling's report as to what occurred on April 23, 2019, because none of the District witnesses who testified at the hearing could recall what occurred. The Parent was not present and does not have direct knowledge of what occurred. I also give more weight to Dr. Hemmerling's report as to the frequency of the Student's head banging between January and April 23, 2019, than to hearing testimony, because the report was prepared at the time the behavior was occurring. At the hearing, District staff had sufficient recall to testify generally about the Student's head banging behavior but could not recall when or how often it occurred.

82. The report documented that the Student arrived at school on April 23 with his helmet on and started head banging shortly after his arrival. S38p1. The head banging was more frequent and intense than previous incidents, and the Student was unable to de-escalate as he usually did. Staff noticed a mark on the Student and called the Parent to notify her. S38pp1-2. Ms. Willis stated she did not complete an injury form. S38p2.

83. The report also discussed the Student's behaviors in the period leading up to the incident and whether behaviors and any injuries had been documented. Based on the report, I find:

- 1) between January 8, 2019 and April 10 or 11, 2019, the Student engaged in minimal head banging. S38p2, D1p1.
- 2) for approximately 1.5 weeks preceding April 23, 2019, the Student was engaging in head banging several times daily but quickly de-escalated, prompting staff to ask the Parent to make the Student's helmet available at school. S38p2, S31p1, D1p1.
- 3) between January 8, 2019 and April 23, 2019, the Student bit staff approximately once daily, which sometimes led to bruising, scrapes or broken skin, but the record does not establish how often these injuries occurred. S38p3.

84. There is no evidence in the record that the Student ever sustained a head injury aside from the injury on April 23, 2019. Additionally, there is no evidence in the record that staff were collecting data on head banging or biting behaviors. T644, T737.

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<sup>29</sup> Dr. Hemmerling did not review the District's electronic database, Skyward, because anything entered into Skyward should also be available in the paper files she reviewed. T641, 648.

85. During the hearing, Dr. Hemmerling opined that if the Parent had been aware of the Student's head banging and biting prior to the April 23, 2019 report, she would have requested a meeting to discuss these behaviors. T663.

86. At hearing, the District claimed that Ms. Willis had documented when the Student bit Ms. Hawksworth on January 8, 2019, and when the Student bumped his head on April 23, 2019. The District sought to prove this by introducing injury reports contained in Exhibits D11, D12, and D14. Ms. Willis, however, had no reliable recollection of creating those reports and the record does not indicate when they were created. T474-77. I therefore give more weight to Dr. Hemmerling's report which indicated that no injury reports had been filed. I find that staff had not completed or filed any forms concerning head banging or injuries to staff at the time of the investigation. S38p3, 652, 655.

87. The report also indicated 1) staff had chosen not to use physical escorts or holds with the Student because he escalated when touched by staff, and 2) no isolation or restraint forms had been completed. S38p3. This is consistent with the hearing testimony of Ms. Hickok, Ms. Hawksworth, and Ms. Storch, that they had never used restraint with the Student, seen it used on him, or seen the Student's freedom restricted. T308-309, T321-22, T355, T593-594, T851-52. I find that staff did not hold the Student so as to restrict his movement in any way except Ms. Cole's holding his hands to prevent him from hitting someone. I also find that staff had not completed any isolation or restraint forms at the time of the investigation. S38p3.

88. The report further documented that staff stated they had never placed the Student in an isolation room. S38p3. There is no evidence in the record that the Student was ever left alone in the classroom or outside of the classroom.

89. The report also reviewed whether staff had completed Right Response training and is largely consistent with testimony on that issue. S38p3. Based on the report, documents introduced by the District, and hearing testimony, I find:

-Ms. Hawksworth completed Right Response training on January 26, 2019. S38p4, D145p14-15, T367.

-Ms. Hickok completed Right Response training on May 13, 2019. S38p4, D145p5.

-Ms. Coles was recertified in Right Response in May 2020, and was initially certified in Right Response no earlier than May 2019. T564, T567-570, D145pp12-13.

-Ms. Kotas was first certified in Right Response in 2010, when she started working for the District, and was recertified every year afterwards. T986-87.

90. Dr. Hemmerling's report included ten recommendations, including observations and behavioral support in the classroom; a communication form to document behaviors and interventions; a de-escalation plan; a plan for staff training on de-escalation; an FBA and behavior intervention plan (BIP); an emergency response protocol for use of the Student's helmet, and; staff training on when to complete reports regarding head injury, isolation, and restraint. S38p4.

### **Private OT Evaluation**

91. On May 14, 2019, the Parent contracted with Mikayla Woolley, an occupational therapist, to evaluate the Student.<sup>30</sup> The Student was crying and trying to escape for most of the hour while Ms. Woolley attempted to interview the Parent about his current levels of functioning. T1022. The Student's behaviors were significant enough that Kendre Howland, an SLP in the office, asked Ms. Woolley if she needed help. T1266.

92. Ms. Woolley attempted to administer the Peabody Developmental Motor Scales (PDMS-2) but discontinued testing due to the Student's limited attention, inability to follow one-step directions, and repeated running from the testing area. S39pp2-5, T1031, T1068. According to Ms. Woolley, the PDMS-2 should be administered in an environment with minimal distractions. T1032.

93. Ms. Woolley also assessed the Student using the Child Sensory Profile 2 (CSP-2). T1028-29. The Student's scores were based on a questionnaire completed by the Parent. S39pp1-2, T1028. The Parent's answers to the CSP-2 indicated that the Student showed patterns of sensory-seeking behaviors and sensitivity more than other peers his age. T1028. When Ms. Storch received the sensory profile conducted by Ms. Woolley, it did not indicate that the Student's needs differed from what she already knew. T869.

94. Ms. Woolley set goals for the Student based on treating his deficits rather than his diagnosis of autism. T1059. Ms. Woolley needed to work on building the Student's tolerance for being in therapy, which took about a month or more. T1035-36. T1061-62.

95. To the extent that Ms. Woolley believed the Student's sensory needs could not be met in the Student's special education classroom, I give limited weight to her opinion because she has never viewed the Student's classroom or observed him in a school setting. She has never

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<sup>30</sup> Ms. Woolley completed a master's degree in occupational therapy in 2018 and provides OT services to children in a clinical setting. S98.

reviewed the Student's evaluation or IEP, or talked to any District staff. T1056, 1071. When she administered the CSP-2, she relied entirely on Parent response. Additionally, Ms. Woolley has never worked in a school setting and her experience in an educational setting is limited to 25-30 hours of observation as part of her graduate program. T1057-58, T1073, T1075.

### **Communication Log**

96. On May 17, 2019, Lori Haugen, Executive Director of Special Services, asked Ms. Hawksworth to provide the Parent with a communication log including discussion of the Student's behaviors. S41p1. Ms. Hawksworth sent such communication by email between May 20 and June 4, 2019. S41pp3-9. There is no evidence in the record that the District provided a communication log prior to May 20, 2019.

### **Behavioral Assistance**

97. On or about May 28, 2019, Diane (Dy) Thompson, a District behavior specialist, started to work with the Student in the classroom.<sup>31</sup> T790, S42p2. The District does not provide intensive behavioral support from someone like Ms. Thompson until after it has data demonstrating a student's needs for such services. The District determined that these services were appropriate for the Student, although it is unclear precisely when that determination was made. T768-69. Ms. Thompson worked with the Student every day for the full day through the end of the school year, or a period of about three weeks. T806-807, 825.

98. The first time Ms. Thompson visited the Student's classroom, he was in the carpeted area sitting on Ms. Coles's lap. T790, T794. Ms. Thompson believed the Student was being restrained because she recalled Ms. Coles stating that she needed to hold the Student and not let him be around his peers. T792, T1454.

99. Ms. Thompson is the only witness who testified that the Student was being held so that he was unable to move from Ms. Coles's lap. Although I give significant weight to Ms. Thompson's testimony and opinion concerning the Student's behaviors, I do not give as much weight to her opinion that Ms. Coles was restraining the Student. I give more weight to classroom staff who worked with the Student regularly since January 2019, and had not seen the Student's movement restricted. T387, T322. Further, Ms. Thompson was not aware that the Student like to sit on Ms. Coles's lap. T1449. Additionally, Ms. Thompson had never been

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<sup>31</sup>Ms. Thompson obtained a master's degree in education with a focus on Applied Behavior Analysis (ABA) in 2019. S111p1, T783. She worked for several school districts in Washington and California in the special education setting before she was hired by the District in the Spring of 2019. Ms. Thompson worked for the District until March 2020. T784-88.

in the classroom before and had no familiarity with the Student or staff. T1450. Finally, there is no testimony from Ms. Coles that she ever held the Student so as to restrict his movement, aside from holding his hands to prevent him from hitting someone. T593-594.

100. On May 28, 2019, the Student tried to attack a peer but Ms. Thompson blocked it. T797. The Student also tried to eat yogurt with his hands but Ms. Thompson taught him how to use a spoon. T801. Ms. Thompson trained Ms. Coles and other classroom staff to work with the Student. T805, T816, T825, T828. In Ms. Thompson's experience, a student with autism may learn differently than other students, but she relies on direct observation, rather than a diagnosis, in determining how to best serve the student. T797, T1478.

101. Approximately two weeks after Ms. Thompson started working with the Student, he stopped engaging in head banging in the school setting and no longer spent time in the carpeted area. T1433, T550-51.

### **A Permanent Paraeducator**

102. On May 29, 2019, Ms. Coles was hired to a permanent position as the Student's one-to-one paraeducator. Up until this point, she had been working with him as a substitute one-to-one paraeducator. Regardless of her employment status, Ms. Coles worked with the Student one-to-one consistently between about January 14, 2019 and June 18, 2019, when the school year ended, missing two days at most for personal appointments. T529-31, T537, T580, T589, D1p1.

### **June 5, 2019 Meeting**

103. On June 5, 2019, the District held a meeting (June 5 meeting) to amend the Student's IEP. S45p1. Dr. Hemmerling, Ms. Hawksworth, the Parent and her advocate attended. S45p8. The Parent provided the District with written input that included a request for compensatory services. It stated: "While I do not believe [extended school year] ESY services would be appropriate for [the Student], I am requesting Compensatory Services during the summer due to the findings in the Investigation, dated April 23, 2019. These services to be completed by a person with a background in ABA." Based on the Parent's contemporaneous written input, I give no weight to her testimony during the hearing that she was requesting ESY services to prevent regression. T1504. The reason she asked for services during the summer was her intent to have the District compensate the Student for the April 23, 2019 incident. S45p6.

104. The team discussed the Parent's input, reviewed a visual request board Ms. Duke had created, and discussed Ms. Thompson's work with the Student and a plan for her to continue

working with him. T390, T1502, S45p8. The team also discussed the Parent's request for a rubric format for communication updates. S45p8, T392.

105. The District issued a prior written notice on June 17, 2019, which was eight school days after the June 5 meeting. D1p1. The prior written notice did not contain an action initiation date and did not reflect the purpose of the prior written notice. S45pp8-9. The prior written notice reflected that the Parent wanted an update regarding her request for an AAC evaluation, and the team decided to follow up with Ms. Duke and schedule a time to review where the Student was in the AAC evaluation process. The team also considered developing an FBA and BIP, but decided to continue collecting data and to complete the FBA and BIP in September. The team also agreed that the Parent's request for compensatory services would be presented to Ms. Haugen, Executive Director of Special Services. S45pp8-9.

### **Private SLP Evaluation**

106. On June 6, 2019, the Parent contracted with Kendre Howland for a speech and language evaluation of the Student.<sup>32</sup> S46p1. Ms. Howland was able to use the Preschool Language Scale–Fifth Edition (PLS-5) to assess the Student's communication skills because he was having a good day. T1280. Ms. Howland is not as familiar with the Battelle as she is with the PLS-5. During the hearing, she could not recall how many times she has administered the Battelle. T1305.

107. Ms. Howland did not believe she would have been able to use the PLS-5 if the Student had engaged in the behaviors she had observed when the Student started working with Ms. Woolley in May 2019. T1305. Even on a good day, it was necessary for Ms. Howland to obtain some information through Parent questioning, rather than directly from the Student. T1282-83, T1314, S46.

108. The Student's scores on the PLS-5 in expressive language, receptive language, and total communication were in the first percentile, which indicated a profound delay. T1279. The Student's scores were consistent with the Student's scores on the Battelle in November 2018. T1307. In Ms. Howland's opinion, the District's evaluation report did not indicate the profound nature of the Student's delay, even though it indicated he was in the first percentile. T1276.

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<sup>32</sup> Ms. Howland is a speech language pathologist in clinical practice. She completed a master's degree in speech and language pathology in 2015. T1265, S46p1, S57p4. Ms. Howland previously worked for a school district for approximately five years. T1265.

## Progress

109. In early June 2019, the Student was demonstrating emerging skills with respect to both of his OT goals. S47p1. He made sufficient progress toward his communication goals. T957-58, S47p5, S62p5.

110. By the end of the 2018-2019 school year, the Student wanted to be at school, which was a significant difference from when he started. T364. When Ms. Coles first met the Student in January 2019, he was “kind of out of control, running the classroom, being aggressive, not sitting at circle time, not wanting to participate in any class activities.” T559. Ms. Coles worked with the Student to increase his tolerance to engage in classwork. Between January 2019 and June 2019, the Student learned to sit at the table with other students and join in activities. The Student “wanted nothing to do with” his peers in January 2019, but was trying to interact with them by June 2019. T593.

## Citizen Complaint

111. In early July, 2019, the Parent filed a special education citizen complaint with the Office of Superintendent of Public Instruction. S49p1, T760, T1197. The citizen complaint raised issues related to the time period from January through June 2019, including concerns about the Student’s one-to-one paraeducator and the April 23 incident. T761.

112. On July 11, 2019, the parties reached an agreement intended to resolve all issues that occurred between January 8, 2019 and July 19, 2019. In keeping with the agreement, the Parent ultimately dismissed the citizen complaint. T1199-1200, T1506, S49p14. The District kept its agreement to:

- a) provide summer services to the Student four hours per day, four days per week, for a period of three weeks, totaling 48 hours of compensatory services.<sup>33</sup> The services included SDI in communication, cognitive, social/emotional, and adaptive, and OT as a related service;
- b) hold a meeting to amend the Student’s IEP at the start of the 2019-2020 school year in accordance with an agenda set by the Parent;
- c) set times for Ms. Thompson to observe the Student in August and establish baseline behavior data;

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<sup>33</sup> The Student did not qualify for extended school year services (ESY), which required a showing of regression and need for recoupment. The summer services were offered as compensatory education and not as ESY. T765.

- d) develop a data binder with goals and a communication rubric to share between home and school;
- e) arrange for the Student to visit the classroom prior to the start of school to ensure a smooth transition;
- f) complete an FBA and BIP prior to the end of September 2019;
- g) move the Student's annual IEP date to October 2019;
- h) complete a calendar of events with steps to be taken and deadlines;
- i) provide training to preschool teams on IEP compliance and best practices.

S49pp14-15, T761-63, T1631, T1197-99.

### **Fall of 2019**

113. On September 9, 2019, the Student's IEP team met to amend the Student's IEP and considered the Student's autism diagnosis and the assessments conducted by Ms. Woolley and Ms. Howland. The Parent also provided consent for a reevaluation of the Student. S52p33.

114. On October 2, 2019, the Student's IEP team met to consider an FBA and BIP developed by Ms. Thompson. S55p2, T1419. Broadly speaking, the BIP sought to stop target behaviors—head banging, aggression and social skills deficits—and replace them with alternative behaviors. For example, if the Student moved to bang his head on any surface, staff would block it by putting a hand on the surface as a buffer to prevent injury and to stop the behavior. T1420, S55p7, T1442. Staff would then teach the Student a different way to communicate without engaging in self-harm. The BIP also focused on reinforcing positive behaviors, praising appropriate behaviors, and teaching the Student to be aware of others. T1420-22, S55p7.

115. In October 2019, the Parent asked Ms. Howland to conduct an AAC evaluation for the purpose of seeking funding through a company that provides speech-generating devices. In order to qualify for such funding, it is necessary to demonstrate that lower-tech options will not meet the Student's long-term needs. T1287, T1299, T1310. Ms. Howland agreed to conduct the AAC evaluation. Based on the evaluation, which was not standardized, Ms. Howland believed that an AAC device would best meet the Student's long-term needs. S57, T1296. Before making this determination, Ms. Howland worked on using other communication strategies, including a picture communication system and sign language communication. T1296-97. Ms. Howland did not review the Student's educational records or speak with anyone at the District before conducting the AAC evaluation, and she did not provide the evaluation to the District. T1310-11, T1313.



116. The District held a meeting on October 30, 2019, to consider the Student's reevaluation in the areas of behavior, fine motor, medical-physical and communication. The reevaluation included observation and a review of existing data, specifically the autism diagnosis and the reports by Ms. Howland and Ms. Woolley. The evaluation team recommended changing the Student's eligibility category to autism. S58pp5-6. The team also recommended SDI in communication, cognitive, adaptive and social/emotional, and related services in OT. S58p7.

117. On October 30, 2019, the Student's IEP team developed an annual IEP. The IEP provided the Student with a one-to-one paraeducator and the same SDI and related services, in the same amounts provided by the December 2018 IEP. S59p14.

### **Due Process Hearing Request**

118. The Parent filed a due process hearing request in this matter on September 8, 2020.

119. After the complaint was filed, the District provided the Parent with the following remedies she had requested:

- a) reimbursement of \$1,035 for SLP and OT evaluations and therapy and the Student's emergency medical visit. T1347, T1636.
- b) an Independent Educational Evaluation, FBA, and BIP, by the Brooks Powers Group. T1347-48, T1636, S113.
- c) consultation and training by Ms. Thompson for all staff who worked with the Student. T1349, T1637.
- d) support for the Student in his home and community by Behavior Cusp, a private company owned by Ms. Thompson, for a period of four weeks, two hours per week. T1349, T1640.
- e) a duplicate of the Student's home AAC device for use at school. T1206, T1640
- f) AAC training for school staff by an SLP. T1346-1352, 1362.

120. In response to the Parent's request for "other equitable remedies, as appropriate," the District contracted with Dr. Hemmerling and Ms. Coles to attend a two-hour meeting for staff who worked with the Student, which included a District Board Certified Behavior Analyst (BCBA), to discuss what had and had not worked the previous year.<sup>34</sup> T1642. To ensure a smooth transition to school in August 2021, the District arranged for the Student to attend

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<sup>34</sup> The District BCBA, Josie Longhurst, started working with the Student in December 2020. She trains staff on ABA strategies to use with the Student. T1352-53, T1516.

two days, four hours per day, with just his teacher and paraeducator present before school started. T1351-52, 1364-65.

121. In the final hours on the seventh day of the hearing, the Parent withdrew all but one of the remedies she had requested in her complaint because the District had already provided her with the other requested remedies. T1636-1642, 1663. The only remaining requested remedy is ABA therapy provided by Ms. Thompson both at home and at school. T1663. During her testimony, the Parent acknowledged that the Student is working with Ms. Longhurst, a BCBA, at school, but denied that the Student is receiving ABA services. T1516, T1637. The Parent did not provide additional evidence regarding the extent to which the Student is receiving ABA services. The Parent's insurance covers in-home ABA therapy, but the Parent has been unable to find a provider due to the location of her home and the limited availability of services. T1639. Ms. Thompson is willing to provide ABA services at the Student's home; she has not done so because she does not accept insurance. T1514.

## CONCLUSIONS OF LAW

### Jurisdiction and Burden of Proof

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated pursuant to these federal and state statutes, 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. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The Parent is seeking relief and bears the burden of proof in this case. The U.S. Supreme Court and Washington courts have generally held that the burden of proof in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 98-102 (1981); *Thompson v. Department of Licensing*, 138 Wn.2d 783, 797 (1999); *Hardee v. Department of Social & Health Services*, 172 Wn.2d 1, 4 (2011). Therefore, the Parent's burden of proof in this matter is preponderance of the evidence.

## The IDEA and FAPE

3. Under the IDEA, a school district must provide “a free and appropriate public education” (FAPE) to all eligible children. In doing so, a school district is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity.” *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 200-201 (1982).

4. In *Rowley*, the United States Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the individualized educational program developed under these procedures is 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 206-07.

5. Procedural safeguards are essential under the IDEA, particularly those that protect the parent's right to be involved in the development of their child's educational plan. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001). Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

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

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

6. The next question is whether the District has violated the substantive requirements of the IDEA. “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.” *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). Additionally, the Student's “educational program must be appropriately ambitious in light of his circumstances . . . .” *Id.* at 1000.

7. The Ninth Circuit has explained that the *Andrew F.* standard requires a school to “implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can make progress in the general education curriculum...taking into account the progress of his non-disabled peers, and the

child's potential." *M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1201 (9th Cir.), *cert. denied*, 138 S. Ct. 556 (2017) (internal quotation marks and citations omitted).

8. The determination of reasonableness is made as of the time the IEP was developed. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is "a snapshot, not a retrospective." *Id.*

### **Evidentiary Ruling**

9. Because the Parent did not introduce Ms. Howland's curriculum vitae into the record, the District objected to the Parent calling her as an expert witness. T1270-71. Paragraph 25 of the first prehearing order provided "any party who will offer opinion testimony from a witness qualified as an expert shall include in that party's documents a copy of a curriculum vitae . . . for that witness." The Parent submitted resumes for multiple other witnesses, indicating she knew to submit one for Ms. Howland but did not. S100pp1-20. Nevertheless, the District knew that Ms. Howland would be testifying at hearing and had an opportunity to cross-examine her. Additionally, the District did not identify any prejudice resulting from the Parent's failure to submit Ms. Howland's curriculum vitae. Accordingly, the Parent's failure to introduce Ms. Howland's curriculum vitae did not prevent the Parent from calling her as an expert witness.

### **The November 2018 Evaluation**

10. The Parent raises several claims related to the District's November 2018 evaluation. Each issue is discussed in turn.

### **Applicable Law**

11. A school district has twenty-five school days after it receives a request for an initial evaluation to determine whether it will evaluate the student. WAC 392-172A-03005(2)(c). After a school district receives written consent to evaluate a student, it has thirty-five school days to complete the evaluation and make an eligibility determination unless the parents and school district agree to extend the timeline. WAC 392-172A-03005(3)(a) and (c).

12. If a district decides to do an evaluation, it must comply with the requirements set out in WAC 392-172A-03005 to 03040. When a school district conducts a special education evaluation, a "group of qualified professionals selected by the school district" must use a "variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent . . . ."

WAC 392-172A-03020(2). The group must not use any single measure or assessment as the sole criterion for determining eligibility or educational programming, and must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical and developmental factors. *Id.*; see also 34 CFR §300.304.

13. Assessments must be administered by “trained and knowledgeable personnel” and “in accordance with any instructions provided by the producer of the assessments.” Students must be assessed “in all areas related to the suspected disability” and the evaluation must be “sufficiently comprehensive to identify all of the student’s special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.” WAC 392-172A-03020; see also 34 CFR §300.304(c).

14. After the “administration of assessments and other evaluation measures,” the parent of the student and qualified professionals determine whether the student is eligible for special education and the educational needs of the student. WAC 392-172A-03040(1)(a); see also 34 CFR §300.306. When interpreting evaluation data, a school district must:

(a) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student’s physical condition, social or cultural background and adaptive behavior; and

(b) Ensure that information obtained from all of these sources is documented and carefully considered.

WAC 392-172A-03040(3); see also 34 CFR §300.306(c).

**The Parent has not shown that the District’s evaluation was untimely (Issue 1.a)**

15. The Parent requested an evaluation of the Student on September 6, 2018. The District agreed to evaluate the Student on October 8, 2018, which was twenty-two school days after the request was made, making it timely under WAC 392-172A-03005(2)(c). The Parent conceded that the District had timely agreed to evaluate the Student.

16. The District received the Parent’s written consent to evaluate the Student on October 8, 2018. On November 14, 2018, which was twenty-seven school days after the Parent provided consent, the evaluation team reviewed the evaluation and determined that the Student was eligible for special education. The District timely completed its evaluation within the required timeframe of thirty-five school days. WAC 392-172A-03005(3)(a). Again, the

Parent conceded the evaluation was timely. There is no merit to the Parent's timeliness claims.

**The Parent has not shown that the District's use of the GARS violated the IDEA or denied the Student FAPE (Issue 1.b)**

17. The Parent next contends that the District's evaluation improperly used the GARS, a screening tool, for diagnostic purposes. The District was aware of the Parent's concerns that the Student might have autism. At hearing, Ms. Wicklander and Dr. Hemmerling testified that the GARS is a screening tool used to determine whether further testing is necessary. The District did not consider the GARS to be an assessment tool to determine whether the Student had autism, and did not use the GARS for that purpose. Nothing in the IDEA prohibits a District from using a screening tool to gather additional information to determine whether further evaluation is necessary. Given that the Student had never attended school before, it was reasonable for the District to use the GARS to obtain additional information about him.

18. The Parent also contends that the GARS is an unreliable tool. Her opinion is based on her own research, which is not part of the record. I give no weight to the Parent's opinion because she has no education, training, or experience in the field of education or in assessing or evaluating children. There is no expert opinion in the record to support this assertion.

19. In conclusion, the Parent has not established that the District used the GARS to assess the Student for autism, and has not shown that the District violated the IDEA and denied the Student a FAPE by using the GARS as a screening tool.

**The Parent has shown that the District failed to assess the Student in all areas of suspected disability (Issue 1.d).**

20. The Parent contends that the District's evaluation was inappropriate because the District failed to assess the Student "in all areas related to the suspected disability" as required by WAC 392-172A-03020. The Parent argues that the District should have conducted a comprehensive autism evaluation.

21. The IDEA defines autism as:

a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped

movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

34 C.F.R. §300.8(c)(1)(i); see also WAC 392-172A-01035(2)(a)(i).

22. The duty to evaluate a student arises when a disability is suspected. *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9<sup>th</sup> Cir. 2016). A disability is suspected, and therefore must be assessed by a district, when the district has notice that the child has displayed symptoms of that disability. *Id.* at 1121. The threshold for suspecting a disability is “relatively low;” the inquiry is not whether the student has a disability and will, in fact, qualify for special education, but whether there is reason to make a referral. *Dept. of Educ. v. Cari Rae S.*, 158 F. Supp. 2d 1190, 1195 (D. Haw.2001). The Ninth Circuit has held that “the ‘informed suspicions of parents, who may have consulted outside experts,’ trigger the requirement to assess, even if the school district disagrees with the parent’s suspicions because ‘[t]he identification [and assessment] of children who have disabilities should be a cooperative and consultative process.’” *Id.* at 1120. In *Timothy O.*, the court emphasized that early diagnosis and intervention is critical for the education of children with autism. *Id.* at 1108; see also *N.B. v. Hellgate Elementary School District*, 541 F.3d 1202 (9<sup>th</sup> Cir. 2008); *Amanda J. v. Clark Cty. Sch. Dist.*, 267 F.3d 877 (9<sup>th</sup> Cir. 2001). Accordingly, when a district has notice that a student might be autistic, it is essential that the student be assessed in all areas related to that suspected disability. *Timothy O.* at 1119-20. The court’s message is clear:

So that there may be no similar misunderstanding in the future, we will say it once again: the failure to obtain critical and statutorily mandated medical information about an autistic child and about his particular educational needs “`render[s] the accomplishment of the IDEA's goals—and the achievement of a FAPE—impossible.” *Hellgate*, 541 F.3d at 1210 (emphasis added) (quoting *Amanda J.*, 267 F.3d at 894).

*Id.* at 1126.

23. The Parent requested an evaluation in the fall of 2018, and raised concerns that the Student might have autism. She noted that he was nonverbal, covered his ears when his environment was loud or busy, struggled with behavioral issues such as elopement, and engaged in self-injurious behaviors such as head banging. Because the Student had not attended school yet, the District did not have independent information about him. The District administered the GARS to obtain additional information. Based on the results, Ms. Wicklander determined the Student “did not appear to have a high probability of autism at this time.” I

give no weight to this determination, however, because the evaluation report does not identify the Student's scores. Moreover, as set forth above, the threshold for suspecting a disability does not focus on whether the Student did, in fact, have autism, but whether there was reason to suspect he might have autism. Notably, Ms. Wicklander's summary of the results of the GARS merely indicated he did not have a *high probability* of autism. Moreover, Dr. Hemmerling's testimony established that it was important to pair the GARS with direct observation. During the direct observation, the Student lacked focus, had poor attention, struggled to transition to the testing room, and made limited eye contact. However, Ms. Wicklander did not consider these observations in determining that there was no need to go further in assessing the Student for possible autism. A preponderance of the evidence indicates that the direct observations of the Student, had they been considered, coupled with the Parent's express concerns that the Student might have autism, met the "relatively low" threshold for suspecting that the Student may have autism. *Orange Unified Sch. Dist. v. C.K.*, 2012 U.S. Dist. LEXIS 92423 (C.D. Cal. June 4, 2012).

24. During the hearing, District witnesses testified that District staff cannot diagnose autism, which requires a medical diagnosis. Ms. Wicklander explained that the District can conduct an educational autism evaluation, but it requires extensive data collected in a school setting in order to make a determination of educational autism. She maintained, nonetheless, that the Student had actually been assessed in all of the areas that comprise an educational autism evaluation, with the exception of gross motor and sensory processing. In conducting these assessments, however, the District did not appear to make any effort to determine whether the Student had autism. Thus, although they evaluated in areas that would have been part of an educational autism evaluation, the evidence in the record does not establish that they were conducting one. Moreover, there is no evidence in the record that the District ever used any assessment tools specifically focused on determining whether the Student had autism. See *Aaron P. v. Dep't of Educ.*, 2011 U.S. Dist. LEXIS 126450 (D. Haw. Oct. 31, 2011). Although the Parent did not develop the record to identify such tools, Ms. Wicklander's testimony pertaining to the GARS indicates that the District could have gone further to assess autism if had chosen to do so.

25. The Student's gross motor skills are well-developed. With respect to sensory processing, however, the Parent had noted that the Student covered his ears when the environment was loud or busy and questioned whether he had issues related to sensory functions. Given that sensory processing is one of the areas that comprises an autism evaluation, and the concerns that the Student might have autism, the District's evaluation cannot be considered a comprehensive because it did not include sensory processing.



26. The Parent has established by a preponderance of the evidence that the District's evaluation failed to assess the Student related to his suspected disability of autism. The remaining question is whether this resulted in a denial of FAPE. In its brief, the District argues that "the label of [a]utism would not have had any impact on [the Student's] test scores, eligibility, service areas, or the development of services and goals." DB19.

27. Here, the District has established that even if the Student had been diagnosed with autism before the December IEP was developed, a diagnosis of autism would not have changed the IEP in any way. This is evident from the fact that when the Student's IEP team amended his IEP following his diagnosis with autism, it did not make any changes to the amount or type of SDI or related services. Additionally, the Student's service providers, including Ms. Thompson, consistently testified that they served the Student based on his individual needs, and not on the basis of a diagnosis. In sum, a diagnosis of autism would not have changed how services and behavioral supports were provided because those services were already being provided in accordance with his needs.

28. There is no doubt, however, that a diagnosis of autism would have provided the Parent and the IEP team with more information about the Student and his abilities. In *Timothy O.*, the court emphasized the importance of such information and reaffirmed prior Ninth Circuit holdings that the provision of FAPE is "impossible" when a district's evaluation fails to obtain information that might show the child is autistic because it is not possible to create an IEP that addresses an autistic child's needs without knowing the child is autistic. *Id.* at 1224. It follows that such information was critical to the Parent's ability to participate in decisions concerning the Student's education. Accordingly, the Parent has established that the District's failure to assess the Student in all areas of suspected disability denied the Student FAPE. A remedy is discussed below.

**The Parent has not shown that the District administered assessment tools in a manner that produced inaccurate results. (Issue 1.c)**

29. The Parent asserts that the District's round robin style of evaluation was inappropriate and produced inaccurate results, relying largely on Ms. Woolley's testimony that the PDMS-2 requires a testing environment with minimal distractions. In this case, however, Ms. Woolley was not present during the evaluation and did not see the testing environment for herself. I give no weight to the Parent's opinions concerning the appropriateness of the testing environment because she has no education, training or experience in administering assessments. I give significant weight to Ms. Fitzgerald's opinion that the testing environment was appropriate for the PDMS-2, given her decades of experience as an OT, which included assessing children one day each week for the past twenty-eight years. I also give significant

weight to Dr. Hemmerling's testimony, given her education, training, and extensive experience as a school psychologist and District administrator. In her opinion, it was appropriate to administer the Battelle, the DP-3, and the GARS, in a group setting.

30. Lastly, the Parent challenges the accuracy of the communication assessment largely because Ms. Duke made typographical errors in the evaluation report, and mistakenly referred to the PLS-5 rather than the Battelle. The Parent considers Ms. Duke's testimony that the results were nonetheless accurate "suspicious." PB17. I found that there was no credible evidence in the record to contradict Ms. Duke's testimony that she had made typographical, rather than substantive, errors. The Parent relies on the testimony of Ms. Howland to support her claim that the results of the Battelle were inaccurate. Yet Ms. Howland acknowledged she has limited experience with the Battelle. Moreover, the results of the District's assessment were consistent with the results of Ms. Howland's assessment, both of which indicated that the Student's total communication scores were in the first percentile. Although Ms. Howland thought the District's evaluation should have specifically stated that the Student's scores indicated a profound delay, the failure to include that language does not render the District's assessment inaccurate.

31. In conclusion, the preponderance of the evidence does not show that the District administered assessment tools in a manner that produced inaccurate results.

**The Parent has not shown that the District predetermined the Student's eligibility for special education. (Issue 1.e)**

32. The Parent's issue statement alleges that the District predetermined the Student's eligibility for special education. In her brief, however, she contends that the District predetermined that the Student would not be in a general education classroom. PB39-40. This is a distinct issue that was not raised in the issue statement. A party requesting a due process hearing may not raise issues during a due process hearing that were not raised in the complaint unless the other party agrees. WAC 392-172A-05100(3); 20 U.S.C. § 1415(f)(3)(B). The Parent has not provided any argument as to why this claim should be considered despite it not having been raised. *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 \*15-16 (E.D. Cal. Mar. 7, 2019), *aff'd* 810 Fed. Appx. 588 (9th Cir. 2020); *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 \*34-35, 37 (W.D. Wash. May 8, 2019). Accordingly, this claim is not addressed.

**The Parent has not shown that the District's procedural violations of the IDEA related to prior written notices denied the Student FAPE. (Issues 2, 4, 5, 13, 16)**

33. The Parent raises several issues alleging that procedural defects related to the District's prior written notices denied the Student FAPE. Each issue is addressed below.

### **Applicable Law**

34. A district must provide a prior written notice to the parents of a child eligible or referred for special education a reasonable time before it:

- a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or
- (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

WAC 392-172A-05010; 34 CFR 300.503(a).

35. The IDEA requires districts to provide written notice to parents *prior* to the effective date of an action, not after the fact. See 20 USC §1415(b)(3) and (c)(1); WAC 392-172A-05010; 34 CFR §300.503. Moreover, written notice must be provided "a reasonable time" prior to the effective date. WAC 392-172A-05010(1); 34 CFR §300.503(a); *Letter to Chandler*, 59 IDELR 110 (OSEP 2012). The Office of Special Education Programs (OSEP) has interpreted "a reasonable time" to be at least ten calendar days. *Letter to Winston*, 213 IDELR 102 (OSEP 1987). "The purpose of the notice is to provide sufficient information to protect the Parent's rights under the Act." *Kroot v. District of Columbia*, 800 F. Supp. 976, 982 (D.D.C. 1992).

36. A prior written notice must include:

- (a) A description of the action proposed or refused by the agency;
- (b) An explanation of why the agency proposes or refuses to take the action;
- (c) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- (d) A statement that the parents of a student eligible or referred for special education services have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (e) Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice;

- (f) A description of other options that the IEP team considered and the reasons why those options were rejected; and
- (g) A description of other factors that are relevant to the agency's proposal or refusal.

WAC 392-172A-05010; 34 CFR 300.503(a).

**The Parent has not shown that the District denied the Student FAPE by providing a prior written notice to the Parent after the action initiation date and by inaccurately identifying the individuals who were present at the December 5, 2018 IEP meeting (Issue 2)**

37. The prior written notice in Exhibit S22 contains an action initiation date of December 10, 2018, but the Parent did not get the prior written notice until on or about January 8, 2019.

38. By definition, sending a prior written notice after the action initiation date constitutes a procedural violation. There is no evidence in the record, however, that the timing of the prior written notice prevented the Parent from complaining about actions she disagreed with or impeded her ability to protect her rights under the IDEA. Accordingly, the Parent has not shown that the violation significantly impeded her opportunity to participate in the decision-making process regarding the provision of FAPE, caused a deprivation of educational benefits, or impeded the Student's right to a FAPE. Accordingly, she has not demonstrated a denial of FAPE.

39. The Parent also asserts that the prior written notice did not reflect that she and her advocate were present at the December 5, 2018 IEP meeting. This claim is without merit. The Parent attended the meeting and knows who attended. The fact that she and her advocate were omitted from the list of attendees had no impact on the provision of FAPE, the Parent's ability to participate, or educational benefit. The Parent has not met her burden to establish this claim.

**The Parent has not shown that the District denied the Student a FAPE by completing a draft prior written notice before the December 5, 2018 IEP meeting (Issue 4).**

40. The Parent further claims the District denied the Student a FAPE by completing a prior written notice before the December 5, 2018 IEP meeting. The District acknowledged its practice in December 2018 was to complete draft prior written notices as part of draft IEPs. The IEP team would then update the draft as necessary during the IEP meeting. The Parent raised concerns about this practice, prompting the District to change its practice.

41. Although the District prepared a draft prior written notice before the December 5 IEP meeting, it did not finalize the prior written notice until after the meeting when it added the sentence to provide a temporary one-to-one paraeducator. Moreover, to the extent that this constitutes a procedural violation of the IDEA, the Parent has not introduced any evidence to show that the District's action impeded the Student's right to FAPE, significantly impeded the Parent's opportunity to participate in the decision-making process, or caused a deprivation of educational benefits. USC §1415(f)(3)(E)(ii); see WAC 392-172A-05105(2); 34 CFR §300.513(a)(2). The Parent has not met her burden to prove this claim.

**The Parent has not shown that the District denied the Student a FAPE by sending the Parent a prior written notice on January 8, 2019, with an action initiation date of December 10, 2018, that did not identify the Parent's requests, and disagreements with the proposed IEP, or reasons for denying the Parent's requests. (Issue 5)**

42. The Parent's claim that the District sent a prior written notice after the action initiation date of December 10, 2018 was addressed in issue 2 above.

43. The Parent also asserts that the prior written notice was deficient because it did not document her disagreement with the Student's IEP goals or include her dissenting opinion. A prior written notice must document options that were considered and reasons why those options were rejected. WAC 392-172A-05010. However, the IDEA does not require a prior written notice to identify all of a Parent's requests or disagreements with a proposed IEP.

44. The Parent's written input regarding goals questioned the starting baseline for the Student's communication goals and specifically stated the Parent did not have other concerns about the Student's goals. There is no evidence in the record that the Parent raised any options concerning the Student's goals that were considered and rejected during the December 5 meeting, and the Parent's brief does not point to such evidence. The Parent has not proven this claim.

45. In her brief, the Parent also challenges the prior written notice issued January 8, 2019, on the ground that it "does not include mention of discussion regarding the Student being suspected of having autism." PB41. The Parent's claim is confusing because the District issued a prior written notice following the evaluation meeting on November 14, 2019, which detailed all areas that had been evaluated and stated that the Student had been found eligible for special education services as a developmentally delayed student. There is no evidence in the record that the Parent raised concerns about that determination or the evaluation at the time. To the extent that the Parent is challenging the November 14 prior written notice, she did not raise that issue in her complaint and it is not considered. WAC 392-172A-05100(3);

20 U.S.C. § 1415(f)(3)(B). To the extent that the Parent is claiming that the prior written notice issued January 8, 2019 was deficient, the Parent has not identified what options were considered and rejected at the December 5 meeting but not discussed in the prior written notice. The Parent has not met her burden to prove this claim.

**The Parent has not shown that the District denied the Student a FAPE by sending the Parent a PWN after the IEP was implemented, and which did not document the Parent's concerns regarding the goals in the March 6, 2019 IEP. (Issue 13).**

46. As discussed above, the IDEA does not require a district to document a parent's concerns in a prior written notice. The Parent was aware of her own concerns regarding the Student's goals and nothing in the IDEA required the District to document them. The Parent has not alleged that the District considered and rejected options yet failed to discuss the reasons for rejection as required by WAC 392-172A-05010.

47. The evidence demonstrates that the prior written notice sent after the March 6 meeting contained an action initiation date of March 6, 2019. As discussed above, sending a prior written notice after the date for the proposed action constitutes a procedural violation of the IDEA. The Parent has not shown, however, that the procedural violation denied the Student FAPE, significantly impeded her ability to participate, or resulted in a loss of educational benefit to the Student. Therefore, she has not established a denial of FAPE.

**The Parent has not shown that the District denied the Student a FAPE by failing to provide the Parent with an IEP Amendment and PWN dated June 5, 2019 until after June 17, 2019, as well as the PWN failing to a. Include a date for the initiation of the action(s) reflected in the PWN; b. Identify all the Parent's concerns for the Student's education and requests for services; c. Provide reasons why the Parent's concerns were not addressed and requests were denied; and d. Specifically address the Parent's December 5, 2018 request for an Augmentative and Alternative Communication (AAC) evaluation. (Issue 16).**

48. As discussed above, the IDEA does not require the District to identify all of the Parent's concerns and requests and why those concerns and requests were not addressed. The record is unclear as to what the Parent believed the prior written notice failed to address. Additionally, the Parent has not established that the District violated the IDEA by sending a prior written notice on June 17, 2019, which was eight school days after the June 5 meeting. The Parent also claims that the prior written notice did not address her request for an AAC evaluation. There is no merit to this claim, however, because the prior written notice reflected that the Parent had asked for an update regarding her request for an AAC evaluation, and the team

decided to follow up with Ms. Duke and schedule a time to review where the Student was in the evaluation process.

49. The Parent also contends she did not receive a copy of the IEP amendment until after June 17, 2019. WAC 392-172A-03110 requires that a parent, upon request, must be provided with a revised copy of the IEP with amendments incorporated. There is no evidence in the record that the Parent requested such a copy and there is no evidence to establish when the Parent received this document. The Parent has not met her burden to establish by a preponderance of the evidence that the District violated the IDEA or denied the Student a FAPE.

50. The Parent has shown that the prior written notice did not include an action initiation date. To the extent that this violated the procedural requirements of the IDEA, the Parent has not proven that it prevented her from complaining about actions she disagreed with or protecting her rights. In sum, the Parent has not shown that the procedural violation significantly impeded her opportunity to participate in the decision-making process regarding the provision of FAPE, caused a deprivation of educational benefits, or impeded the Student's right to a FAPE.

**The Parent has shown that the District's failure to document restraint of the Student violated the IDEA and denied the Student a FAPE. (Issue 14.b)**

51. The Parent contends that the District's failure to document restraint of the Student violated the IDEA and denied the Student FAPE.

52. Restraint is defined as:

physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to safely participate in activities.

WAC 392-172A-01162; RCW 28A.600.485.

53. When restraint is used, school districts must follow documentation and reporting requirements set out in RCW 28A.600.485. WAC 392-172A-02110(4). A school employee who uses restraint on a student must submit a written report to the district office within two business days. RCW 28A.600.485(5). At a minimum, the written report must include the date

and time of the incident and the name and job title of the individual who administered the restraint, describe the activity that led to the restraint and the type of restraint used, state whether the student or staff were injured during the restraint, and offer recommendations for changing the nature or amount of resources available to the student and staff in order to avoid similar incidents. *Id.*

54. The evidence in the record establishes that the Student sometimes became upset and tried to hit Ms. Coles. In response, she would “grab” his hands and ask him “Are you all done?” which helped him to refocus. When Ms. Coles grabbed the Student’s hands, it was to prevent him from hitting someone. Additionally, the Student could remove his hands from hers and move away if he wanted to. The question is whether these facts meet the definition of restraint. Clearly, the act of grabbing the Student’s hands constituted a physical intervention. Notably, Ms. Coles used the word “grab,” which is more intensive than blocking or touching the Student’s hands to redirect or calm him. Additionally, Ms. Coles grabbed the Student’s hands to stop him from hitting someone, which was a method of controlling his movements. The fact that Ms. Coles’s actions were intended to protect someone is not relevant to determining whether her actions constituted restraint. Similarly, even if the Student was able to remove his hands and move away, that does not change the fact that Ms. Coles grabbed his hands in the first place. Finally, while it is important that District staff testified that they never saw the Student’s freedom restricted, there is no testimony in the record as to whether staff ever saw Ms. Coles grab the Student’s hands, or whether they considered it to be restraint. On balance, this evidence establishes that Ms. Coles used physical intervention to control the Student, which constitutes restraint. WAC 392-172A-01162; RCW 28A.600.485.

55. Ms. Coles testified that she grabbed the Student’s hands in this manner “quite a bit” in January 2019, with incidents decreasing over time. However, the record is clear that the District did not document *any* incidents of restraint, as determined by Dr. Hemmerling’s investigation in April 2019. Because the District did not document even one report of restraint, the Parent has established that the District violated the procedural requirements of WAC 392-172A-01162 by failing to comply with reporting requirements.

56. The Parent has established that the District’s failure to document any incidents of restraint deprived her of information she needed to have meaningful participation. There is no question that the Parent, who was a very vocal advocate for the Student, would have requested an IEP meeting to discuss the need for training and guidance in addressing the Student’s behaviors. The District’s failure to document the use of restraint and share that documentation with the Parent meant that she was completely unaware of this issue, which obviously deprived her of any opportunity to address it. Accordingly, the Parent has



established that the District's procedural violation in failing to document the use of restraint amounted to a denial of FAPE. A remedy for this violation is discussed below.

**The Parent has not shown that the District isolated the Student or changed his educational placement without appropriate documentation or notice to the Parent. (Issue 9, Issue 14.c)**

57. The Parent contends that the District changed the Student's educational placement when he was restricted to the carpeted area of the classroom on a daily basis, isolating him from his peers.

58. Isolation is defined as:

Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavior intervention plan.

WAC 392-172A-01107; RCW 28A.600.485.

59. Under this definition, a student who has not been left alone is not in isolation. In this case, there is no evidence in the record that the Student was ever alone when he was at school. Therefore, the evidence does not support a determination that the Student was isolated. Ms. Thompson believed the Student was isolated when he was in a separate part of the classroom with Ms. Coles and another student. She acknowledged that her opinion was based on her own definition of "isolation" informed by her ABA training, and that she is unfamiliar with the definition at issue here. As a result, I give no weight to her opinion on this point. Similarly, Dr. Hemmerling opined that a student might be isolated under these circumstances if they did not have access to the classroom, but she acknowledged she needed to review the definition of isolation. As discussed above, the definition requires a finding that the Student has been left alone, which is not the case here.

60. Because the Parent has not shown that the District ever isolated the Student, she also has not shown that the District changed the Student's educational placement by isolating him. The Parent has not met her burden of proof on this claim.

**The Parent has not shown that December 5, 2018 IEP was inappropriate and denied the Student a FAPE because it failed to address the Student's extreme behaviors and non-verbal communication. (Issue 3.b, Issue 3.c)**

61. The Parent first contends that December 5 IEP was inappropriate because it failed to address the Student's extreme behaviors, including behaviors that placed his safety at risk. (Issue 3.b) The Parent points to Ms. Thompson's success with the Student, and appears to argue that the December 5 IEP should have provided ABA therapy. She also appears to argue that District should have conducted an FBA and developed a BIP in December 2018. PB20-22.

62. In the case of a child whose behavior impedes the child's learning or that of others, the IEP team shall consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i). A functional behavior assessment is one type of behavioral intervention or strategy that helps identify causative factors and objectionable behaviors. *J.L. v. Manteca Unified Sch. Dist.*, 2016 U.S. Dist. LEXIS 77441 (E.D. Cal. June 14, 2016); see also *S.J. v. Issaquah Sch. Dist.*, 2007 U.S. Dist. LEXIS 67735 (W.D. Wash. Sept. 12, 2007) (a functional behavior assessment is required only when a student has been removed from her current placement). As the Ninth Circuit recently held in *Butte Sch. Dist. No. 1 v. C.S.*, 817 F. App'x 321, 326 (9th Cir. 2020) (unpublished), the IDEA only requires an FBA when a child is removed from his current placement due to problem behaviors. 20 U.S.C. § 1415(k)(1)(D)(ii).

63. Here, the Student had never been in school before and had not been removed from his placement due to problem behaviors. Accordingly, the District was not required to conduct an FBA under the IDEA in order to draft an appropriate IEP. Moreover, the record demonstrates that the purpose of conducting an FBA is to address the Student's behaviors at school. Because the Student had never been in a school setting before, the team decided that it first needed to see how the Student behaved at school, given that students often behave differently in a school setting. It was appropriate for the District to observe how the Student behaved in school before it agreed to an FBA to address school behaviors.

64. Although the District did not conduct an FBA, it did take other steps to address the Student's behaviors in his IEP. The team developed goals focused on building the Student's ability to follow directions and routines, and his independence, social skills, and communication skills. Both Ms. Thompson and the Parent agreed that goals focused on building these skills would also address his behaviors, regardless of a diagnosis of autism. Additionally, the team provided accommodations to help prevent behaviors. The team also decided that it was appropriate to provide a temporary one-to-one when the Student started

school and to reassess this service in January. Although the Parent feels that the District minimized her concerns, the record establishes that the District listened to her and took her concerns into account.

65. To the extent that the Parent is claiming that the Student was deprived of ABA services upon entering school because he lacked an autism diagnosis, the evidence in the record does not demonstrate that ABA services would have been appropriate at that time. When the IEP team developed the December IEP, the Student had never been in the school setting and the District had never observed how the Student would behave in school. Regardless of whether the Student had a diagnosis of autism, it was reasonable and appropriate for the District to take some time to observe the Student at school to determine what level of behavioral support he required before adding additional support. This was not only reasonable, it was essential in order to satisfy the fundamental requirement of the IDEA that an IEP must be tailored to a Student's individual needs. *Andrew F.*, 137 S. Ct. at 999 (“[a] focus on the particular child is at the core of the IDEA”). I give no weight to the Parent's assertion that she obtained data that proved the need for additional support in school by way of one brief visit to a Sunday school setting with the Student.

66. The Parent also contends that the December IEP failed to appropriately address the Student's non-verbal communication needs. (Issue 3.c) She contends that the District failed to provide an AAC evaluation, which she first requested in December 2018. The evidence does not support this claim. First, there is no formal standardized assessment to determine whether the use of an AAC device is appropriate. As Ms. Duke explained, determining what form of AAC is appropriate is a process of introducing visual supports and assessing how a student responds, what meets that student's needs, and what AAC method will assist a student in advancing skills. The team discussed this during the December IEP meeting and decided to use a picture choice system, choice board, visuals and signing. The record demonstrates that Ms. Duke followed this process with the Student. This is consistent with Ms. Howland's approach of trying a picture communication system and other communication strategies before she recommended an AAC device to meet the Student's longer-term needs.

67. To the extent that the Parent relies on Ms. Howland's testimony to support her argument that the December IEP should have provided the Student with an electronic AAC device, I give no weight to that opinion. Ms. Howland did not know the Student at that time, and by the time she started working with him he had already been in school receiving speech services for approximately six months. Moreover, when she conducted her AAC evaluation in October 2019, which was not standardized, it was focused on helping the Parent to secure funding for an electronic AAC device and was aimed at assessing which AAC method would best serve him in the long term. I give more weight to Ms. Duke's testimony because she was

focused on meeting the Student's needs in a school setting. She worked closely with the Student at school and has decades of experience working with children in an educational setting. In her opinion, the Student was not ready for an AAC device in December 2018 because he would have been distracted by the device and lacked foundational skills for having a conversation. It took him approximately one year to develop the foundational skills to be able to benefit from an electronic AAC device. Ms. Howland has never worked with the Student in a school setting. Moreover, she acknowledged that in order to secure funding for an AAC device, it is necessary to first demonstrate that lower-tech options are not appropriate. This is consistent with Ms. Duke's approach of trying low-tech options before moving to a high-tech device. The Parent has not proven this claim.

68. The Parent also contends that classroom staff were not trained in the use of PECS or sign language. PB38-39. The Parent's brief discusses the importance of training in these methods. However, the Parent did not elicit any testimony at hearing related to classroom staff using these methods with the Student yet not having sufficient training. The Parent has not met her burden to prove this claim.

69. In conclusion, under the particular facts of this case, the Parent has not shown that the December IEP denied the Student FAPE by failing to address the Student's extreme behaviors or his non-verbal communication needs.

### **Implementation of the Student's IEP**

70. The Parent raises several claims that relate to implementation of the Student's December IEP (Issue 6, Issue 7, Issue 8, Issue 10, Issue 14.a, Issue 14.d, Issue 14.e, Issue 15). These implementation issues are discussed together.

71. Only material failures to implement an IEP violate the IDEA. *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 822 (9th Cir. 2007). Minor discrepancies in the services required by the IEP do not violate the IDEA. *Id.*

“[S]pecial education and related services” need only be provided “*in conformity with*” the IEP. [20 USC §1401(9).] There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education.

\* \* \*

We hold that a *material* failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between

the services a school provides to a disabled child and the services required by the child's IEP.

*Id.* at 821-22 (italics in original).

**The Parent has not shown that the District denied the Student a FAPE by failing to have a full-time one-to-one paraeducator present at school for the Student beginning January 8, 2019, and then later discontinuing the full-time paraeducator. (Issue 6; Issue 3.a).**

72. The Parent contends that the District failed to have a one-to-one paraeducator present at school on January 8, 2019 (Issue 6). Because this is related to the allegation that the District failed to complete the IEP by January 8, 2019, the claims are considered together (Issue 3.a).

73. The Parent first contends that the District failed to complete the IEP until January 8, 2019. The IDEA does not set a specific timeframe for completing an IEP. Accordingly, the issue is not whether the District completed the IEP in a timely fashion, but whether the District was prepared to implement the Student's IEP when he started school on January 8, 2019.

74. The District agreed to have a temporary one-to-one paraeducator work with the Student but did not have someone in place and ready to go on January 8, 2019. As a result, Ms. Hawksworth assigned a classroom paraeducator to work with the Student one-on-one to ensure his needs were met. Within three or four days—by approximately January 14, 2019—Ms. Coles was assigned to work with the Student. I found that the Student received support from a one-to-one paraeducator between January 14, 2019, and June 18, 2019, the last day of the school year. The Parent also claims that the Student's one-to-one paraeducator was discontinued but the evidence does not support this assertion. The Parent's belief was based on information she heard from Ms. Kotas and an email from Dr. Hemmerling. During the hearing, however, Ms. Kotas testified that she was not aware of the District discontinuing the Student's paraeducator and that she has no involvement in making such decisions. Dr. Hemmerling testified that the Student had continuous support from a paraeducator, which is consistent with the testimony of Ms. Coles, who worked with the Student in the classroom.

75. The Parent has established that the District did not have a temporary one-to-one in place for the Student for approximately three or four days after he started school on January 8, 2018. During those three or four days, however, the District did provide one-to-one support from a classroom paraeducator. The question is whether this constitutes a material failure to implement the IEP. *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9<sup>th</sup> Cir. 2007). Minor discrepancies in the services required by the IEP do not violate the IDEA. *Id.* The evidence in

this case does not establish a material failure to implement the IEP. Ms. Hawksworth assigned a classroom paraeducator to work with the Student to ensure that he had the support he needed at the start of the school year, and Ms. Coles was in place as the Student's one-to-one paraeducator within three to four days. The Parent has not met her burden to establish a material failure to implement the IEP, and therefore has not established that the District's actions denied the Student a FAPE.

76. During the hearing, the Parent suggested that the District "diluted" the Student's one-to-one support through its inconsistent process for hiring a permanent one-to-one, by failing to have sufficient support for the classroom as a whole, and because Ms. Coles was working with other students in the classroom. The Parent did not raise this issue in her complaint and it is not addressed. WAC 392-172A-05100(3); 20 U.S.C. § 1415(f)(3)(B). Even if this claim had been raised, however, a preponderance of the evidence in the record does not establish that the Student lacked support from a one-to-one paraeducator at any point. Although the Parent provided evidence of administrative delay and confusion in the hiring process, I give more weight to the testimony of Ms. Coles because she was present in the classroom and knew what service the Student actually received. Moreover, to the extent that the classroom as a whole lacked support, the testimony of Ms. Hawksworth and Ms. Coles establishes that Ms. Coles was providing the Student with the one-to-one support he required. A preponderance of the evidence demonstrates that Ms. Coles provided one-to-one paraeducator support for the Student between January 14, 2019, and June 18, 2019, regardless of her employment status as a substitute or permanent paraeducator.

**The Parent has shown that the District denied the Student FAPE by failing to implement the IEP's requirement to provide a weekly communication log that documented the Student's behaviors (Issue 7, Issue 8, Issue 14.a, Issue 14.d)**

77. The Parent contends that the District violated the IDEA and denied the Student a FAPE when it failed to provide her with a weekly communication log (Issue 8) and failed to document and communicate the Student's behaviors, including head banging and aggressive behaviors, and when those behaviors harmed staff (Issues 7, 14.a, 14.d). These related claims are discussed together.

78. The Student's IEP provided a weekly communication log as an accommodation. The Parent had requested this accommodation because the Student is nonverbal and she had no way of knowing about the Student's behaviors in school unless the District told her. Because the District agreed to provide a communication log, it is reasonable to conclude that the District would keep the Parent informed if the Student engaged in aggressive behavior or head

banging and if the Student was harming staff. Keeping track of that information is a necessary predicate to communicating it.<sup>35</sup>

79. Although the District agreed to provide a weekly communication log, it did not do so until May 20, 2019. The failure to provide weekly communications, and to keep track of the behaviors that were intended to be the focus of those communications, was a material failure to implement the IEP. First, the District did not implement this accommodation at all between January 8, 2019, and May 20, 2019. Second, when the Parent requested behavioral support for the Student, the District repeatedly emphasized that the Student's behaviors might look different in a school setting than at home, and that it was important to first collect data to ascertain the Student's needs. It was appropriate for the District to seek to collect data to inform its actions. In this case, however, the District failed to follow through and collect any data or provide communications about the Student's behaviors, which effectively kept the Parent in the dark and deprived the IEP team of the information it required. Third, the evidence in the record establishes that the Student was engaging in biting on a daily basis between January and April 23, 2019, but the District was not keeping track of incidents or when bites led to injury, and was not communicating this information to the Parent. Fourth, when the Student's head banging increased from minimal occurrences to daily occurrences in mid-April 2019, the District was not tracking this information or communicating it to the Parent. The overwhelming evidence in the record establishes that the Student's behaviors were his most significant challenge and that the Parent was very concerned about addressing them. It is clear from the record that the Parent would have requested an IEP meeting to address the Student's behaviors if the District had told her about them.

80. Accordingly, the Parent has established that the District's failure to provide a weekly communication log that documented and communicated the Student's head banging, aggressive behaviors and harm to staff, was a material failure to implement the IEP that denied the Student FAPE. A remedy for this violation is discussed below.

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<sup>35</sup> The IDEA does not require a district to document this type of information. Moreover, to the extent that District policy required staff to document this information, policy violations are not within the purview of the IDEA, which gives parents and school districts the right to file due process hearing requests on "matters related to the identification, evaluation, or educational placement, or the provision of FAPE to a student." WAC 392-172A-05080. Policy violations do not fall within these parameters and may not be decided through a due process hearing. Accordingly, the only issues are whether the Student's IEP required the District to document aggressive behavior, harm to staff, or head banging, and whether the District implemented that requirement.

**The Parent has shown that the District denied the Student FAPE by failing to properly document and to ensure all staff in the Student's classroom had "Right Response" training. (Issue 10, Issue 14e, Issue 15)**

81. The Parent raises several issues related to Right Response training for classroom staff. These claims are addressed together.

82. First, the Parent asserts that the District failed to ensure that all classroom staff had Right Response training as required by his IEP.<sup>36</sup> The Student's IEP provided, as an accommodation, that the District "provides training on Right Response to de-escalate students and maintain safety for students and staff." The Parent contends that this provision required the District to ensure that all staff in the Student's classroom had Right Response training, and that the District denied the Student FAPE by failing to do so.

83. Based on the evidence in the record, I found that Ms. Kotas was already certified in Right Response when the Student started school in January 2019. Ms. Hawksworth completed the training on January 26, 2019. Ms. Hickok completed Right Response training on May 13, 2019. The record establishes that at the earliest, Ms. Coles was first certified after she was hired to a permanent position in May 2019. The Parent has therefore established that Ms. Coles lacked Right Response training when she worked with the Student between January and May 2019.

84. At issue is whether this constitutes a material failure to implement the IEP. Ms. Coles, who worked most closely with the Student, was not certified in Right Response training for most of the time she worked with the Student during the 2018-2019 school year. The evidence demonstrates that she sometimes grabbed the Student's hands after he became upset and tried to hit her. As discussed previously, this constitutes restraint. Additionally, when Ms. Thompson taught Ms. Coles various strategies for addressing the Student's behaviors, she responded well to that instruction. It is therefore reasonable to infer that if Ms. Coles had received Right Response training earlier in 2019, she would have used de-escalation techniques to address the Student's behaviors, rather than resorting to restraint. Accordingly, the Parent has established that the failure to provide Right Response training, which includes training on de-escalation techniques intended to avoid the use of restraint as well as safe

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<sup>36</sup> As discussed above, the IDEA affords parents and school districts the right to file a due process hearing on "matters related to the identification, evaluation, or educational placement, or the provision of FAPE to a student." WAC 392-172A-05080. Accordingly, to the extent that the Parent is claiming that the District failed to follow District rules or policies concerning Right Response training, those issues do not fall within the scope of WAC 392-172A-05080 and are not addressed.



methods of restraint when those techniques are not successful, constitutes a material failure to implement the IEP. A remedy for this violation is discussed below.

85. In issue 15, the Parent appears to contend that the District's failure to train staff in Right Response resulted in the Student's concussion on April 23, 2019. The IDEA affords parents and school districts the right to file a due process hearing on "matters related to the identification, evaluation, or educational placement, or the provision of FAPE to a student." WAC 392-172A-05080. The Parent's claim, which sounds in negligence, does not fall within the scope of the IDEA and is not addressed.

**The Parent has not shown that the District denied the Student a FAPE by failing to have a speech-language pathologist, occupational therapist, and a general education teacher at the March 6, 2019 IEP meeting. (Issue 11).**

86. Under WAC 392-172A-03095, when a student is or may be participating in the general education environment, at least one of the student's general education teachers must be part of the student's IEP team. WAC 392-172A-03095 does not expressly require that a student's IEP team must include the Student's related services providers. Instead, it gives parents and school districts discretion to determine when it is appropriate to include individuals who have knowledge or special expertise regarding the student, including related services personnel. WAC 392-172A-03095 (f); see also *Letter to Rangel-Diaz*, 58 IDELR 78, 111 LRP 74150 (OSEP 2011)(IDEA does not expressly require that related services personnel attend IEP meetings).

87. In this case, the Student was not participating in the general education environment and did not have a general education teacher. In March 2019, there were no plans for him to be participating in the general education environment. Under the plain language of WAC 392-172A-03095, it was not necessary for the Student's IEP team to include a general education teacher. Even so, Ms. Cheever attended the IEP meeting as a general education teacher. Ms. Cheever has experience teaching preschool and is qualified as a general education teacher. The Parent has not met her burden to prove this claim.

88. The Parent believed it was important for Ms. Storch and Ms. Duke, the Student's OT and SLP, to attend the March 6 meeting to amend the Student's IEP. However, she did not ask for them to attend. The Parent provided written input for the meeting, asking to add a one-to-one paraeducator to the IEP and to develop a communication sheet to track specific data. Her input posed the question: "Are the goals appropriate for [the Student]?" It also included the heading Communication Device, with no further information. The Parent's written input cannot reasonably be interpreted to put the District on notice that the Parent wanted to

discuss issues that required input from Ms. Duke and Ms. Storch. Moreover, the Parent has not shown that she provided her input in time to give the District an opportunity to invite these individuals. Lastly, the Parent did not seek to reschedule the meeting to secure their attendance, or seek to contact them at any time. The Parent has not met her burden to prove this claim.

**The Parent has not shown that the District denied the Student a FAPE by failing to send the Parent the final IEP developed at the March 6, 2019 IEP meeting until after the IEP was implemented. (Issue 12)**

89. WAC 392-172A-03110 requires that a parent, upon request, must be provided with a revised copy of the IEP with the amendments incorporated. The Parent did not introduce any evidence indicating she made such a request. Moreover, nothing in this provision requires that a copy of an amended IEP must be sent prior to implementation. In this case, the Parent had advocated strongly for the amendment; she knew that the team had agreed to add a one-to-one paraeducator to the IEP. Moreover, the Student was already receiving this service and the Parent was aware that the team had agreed to provide it in accordance with her request. The Parent has not proven that the District denied the Student FAPE or educational benefit, or significantly impeded parental participation, by failing to send the March 6 IEP amendment to the Parent before it was implemented.

### **Summary of Violations**

90. The District violated the IDEA and denied the Student FAPE by failing to:

- a) Assess the Student in all areas of suspected disability (COL 28);
- b) Appropriately document the use of restraint (COL 56);
- c) Provide the Parent with a weekly communication log as provided by the IEP (COL 80); and
- d) Ensure classroom staff had Right Response training as provided by the IEP (COL 84).

The Parent has not otherwise proven a denial of FAPE.

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

## Remedies

92. When a parent proves a violation of the IDEA, a tribunal may “grant such relief as the court determines is appropriate.” 20 U.S.C. § 1415(i)(2)(C)(iii).

93. “Compensatory education is an equitable remedy that seeks to make up for ‘educational services the child should have received in the first place,’ and ‘aim[s] to place disabled children in the same position they would have occupied but for the school district’s violations of the IDEA.” *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir 2011)(quoting *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005)). “Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994). Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Reid*, at 524.

94. In this case, the District has already provided the Parent with all of the relief she requested in her due process complaint, with the exception of ABA services from Ms. Thompson at home and at school. The District also provided the Parent with the relief she requested to settle the citizen complaint she brought in 2019. Among other things, this included summer services for the Student, with SDI in communication, cognitive, social/emotional, and adaptive, and OT as a related service, for a total of 48 hours of compensatory services.

95. The Parent has established that the District’s November 2018 evaluation failed to assess the Student in all areas of suspected disability. The evidence demonstrates, however, that the District provided the Parent with an independent educational evaluation by the Brooks Powers Group before this matter proceeded to hearing. Because the Parent has already been awarded an IEE at public expense, which serves to remedy any denial of FAPE stemming from this violation, no further remedy is appropriate.

96. The Parent has established that the District’s failure to provide the Parent with a weekly communication log that documented the Student’s head banging, aggressive behaviors and harm to staff amounted to a denial of FAPE. To improve communication, the District provided the Parent with a data binder with goals and a communication rubric to share between home and school. Accordingly, the District has already taken action to ensure smooth communication with the Parent in the format she requested. The District’s failure to timely provide the Parent with the communication log concerning the Student’s behaviors impeded her ability to participate in conversations to address those behaviors. The District has already provided extensive relief focused on addressing the Student’s behaviors, including having Ms.

Thompson complete an FBA and BIP, having Ms. Coles and Dr. Hemmerling meet with staff to discuss strategies that worked or did not work with the Student, providing consultation and training by Ms. Thompson for all staff who worked with the Student, providing support for the Student in his home and community by Ms. Thompson through her private company, and providing an FBA and BIP by the Brooks Powers Group. On balance, the evidence establishes that no further remedy is required to address this violation.

97. The Parent also established that the District's failure to appropriately document the use of restraint and to provide Right Response training amounted to a denial of FAPE. Following the April 2019 investigation, the District provided staff training on de-escalation and when to complete reports regarding head injury, isolation, and restraint. It is appropriate for the District to provide this training to classroom staff who currently work with the Student. To the extent that the District has not already provided such training, it is ordered to do so. Additionally, it is appropriate for the District to review its records to ensure that all classroom staff who work with the Student have, in fact, completed Right Response training. If the District determines that anyone who works with the Student is not yet certified, it shall provide Right Response training to that individual or individuals.

98. The Parent requests ABA services delivered by Ms. Thompson both at school and at home. As discussed above, the District has already provided services by Ms. Thompson. To the extent that the Parent is seeking additional services from Ms. Thompson as an equitable remedy, the record demonstrates that Ms. Longhurst, a District BCBA, started working with the Student in December 2020, and trains staff on ABA strategies to use with him. In her brief, the Parent disputes that the Student receives ABA therapy at school, but she did not establish this by a preponderance of the evidence at hearing. Moreover, the Parent has not shown the Student requires additional ABA services delivered by Ms. Thompson at school or at home in order to obtain an educational benefit. Finally, the record establishes that the District worked extensively with the Parent to address her concerns, to the point of providing her with almost all of the relief she requested before this matter even went to hearing. Additionally, the evidence establishes that the Student made progress during the 2018-2019 school year. By June 2019, he was showing an increased tolerance for engaging in work, greater interest in interacting with peers, and improved ability to interact with peers. He also responded successfully to the behavioral interventions the District provided, regardless of a diagnosis of autism, which led to a decrease in inappropriate behaviors. On balance, the Parent has not shown that an additional award is appropriate.

**ORDER**

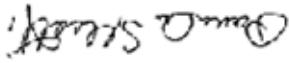
1. The District violated the Individuals with Disabilities Education Act and denied the Student a free appropriate public education as set forth in Conclusions of Law 28, 56, 80, and 84.

2. The Parent has not otherwise established that the District denied the Student a free appropriate education.

3. As a remedy, the District shall provide training to classroom staff who currently work with the Student on de-escalation and when to complete reports regarding head injury, isolation, and restraint, to the extent that such training has not already been provided. The District shall also review records to ensure that all classroom staff who work with the Student have completed Right Response training. If the District determines that anyone who works with the Student is not yet certified, it shall provide Right Response training to that individual or individuals.

4. The Parent's remaining requested remedies are denied.

Served on the date of mailing.



Pamela Meotti  
Administrative Law Judge  
Office of Administrative Hearings

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

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

DECLARATION OF SERVICE

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

Parent

[REDACTED]

Todd Mitchell  
David Hammond  
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[REDACTED]

William A. Coats  
Erica A. Doctor  
Erin Sullivan-Byorick  
Vandeberg Johnson & Gandara  
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Dated January 5, 2022, at Seattle, Washington.

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Representative

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

cc: Administrative Resource Services, OSPI