

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

IN THE MATTER OF:

OSPI CAUSE NO. 2022-SE-0013

OAH DOCKET NO. 02-2022-OSPI-01513

CLOVER PARK SCHOOL DISTRICT

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

A hearing in the above-entitled matter was held before Administrative Law Judge (“ALJ”) Courtney E. Beebe via video conference, on April 18, 19, 20, 27, 28, and June 8, 2022. The Parents of the Student whose education is at issue<sup>1</sup> appeared and were represented by Gregory McBroom, attorney at law. The Clover Park School District (“District”) was represented by Erin Sullivan-Byorick, attorney at law. Sarah Larson, Director of Special Services, also attended. The following is hereby entered:

**STATEMENT OF THE CASE & COURSE OF PROCEEDINGS**

1. The Parents filed a Special Education Due Process Hearing Request with the Office of Administrative Hearings (“OAH”) on February 9, 2022. The parties participated in a resolution session on February 10, 2022, and the District filed its Response on February 17, 2022. The parties appeared for the first prehearing conference in this matter on March 9, 2022. The ALJ issued the First Prehearing Order on March 9, 2022.

2. On March 15, 2022, the Parents filed Petitioner’s Motion for Clarification of Remedies and to Resolve Stay-Put Issue. On March 17, 2022, the District filed its District’s Objection to Issue Statements and the District’s Response to Parents’ Motion for Stay-Put. The parties appeared for a prehearing conference on March 22, 2022, and on the same day the ALJ issued the Second Prehearing Order setting forth the issues for resolution at the due process hearing. The Parents’ filed a Parents Reply in Response to Districts response re: Stay-Put on March 25, 2022. The parties presented oral argument regarding the issue of stay-put on April 1, 2022. The ALJ issued the Order on Parents’ Motion re: Stay-Put Dispute on April 6, 2022. On April 11, 2022, the Parents filed a Parents’ Objection and Request for Reconsideration of Stay-Put. The ALJ issued an Order Regarding 1) Hearing Duration and 2) Parents’ Objection and Request for Reconsideration of Stay-Put Order on April 12, 2022, allowing the District

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<sup>1</sup>In the interests of preserving the family's privacy, this decision does not name the parents or student. Instead, they are each identified as "Parents," "Mother," "Father," and/or "Student."

until April 22, 2022, to file a response. On April 22, 2022, the District filed its Response to Parents' Objection to Order for Stay Put. On April 25, 2022, the ALJ issued an Order Re: Petitioners' Objections and Request for Reconsideration of Stay-Put Order, denying the Parents' objection and request for reconsideration.

3. The Parents filed a Motion in Limine on April 14, 2022, and the District filed a Motion to Disqualify Greg McBroom as Parents' Counsel on April 15, 2022. The Parents filed a Motion for Sanctions and Subjoined Declaration of Counsel on April 18, 2022. The parties presented arguments on these motions on April 18, 2022, at the beginning of the due process hearing. The ALJ addressed the motions on the record, and on April 21, 2022, issued an Order Regarding 1) Parents' Motion in Limine; 2) District's Motion to Disqualify Parents' Counsel; and 3) Parents' Motion for Sanctions.

4. The due process hearing occurred on April 18, 19, 20, 27, 28, and June 8, 2022. The record closed on July 29, 2022, when the parties filed written closing briefs. The decision in this matter is due thirty (30) days after the close of the record, which is August 28, 2022. (See First Prehearing Order and Second Prehearing Order).

#### **EVIDENCE RELIED UPON**

1. The following exhibits were admitted into evidence:

Parents' Exhibits: P1, P2, P3, P4, P5, P6, P7, P8, P9, P10, P11, P12, P13, P14, P15, P16, P17, P18, P19, P20, P21, P22, P23, P24, P25, P26, P27, P28, P29, P30, P31, P32, P33, P34, P35, P36, P37, P38, P39, P40, P41, P42, P43, P44, P45, P46, P47, P48, P49, P50, P51, P52, P53, P54, P55, P56, P57, P58, P59, P60, P61, P62, P63, P64, P65, P66, P67, P68, P69, P70, P71, P72, P73, P74, P75, P76, P79, P80, and P81.

District's Exhibits: D1, D2, D3, D4, D5, D6, D7, D8, D9, D10, D11, D12, D13, D14, D15, D16, D17, D18, D19, D20, D21, D22, D23, D24, D25, D26, D27, D28, D29, D30, D31, D32, D33, D34, D35, D36, D37, D38, D39, D40, D41, D42, D43, D44, D45, D46, D47, D48, D49, D50, D51, D52, D53, D54, D55, D56, D57, D58, D59, D60, D61, and D62.

2. The following exhibits were excluded: P77, P78, P82, P83, P84, and P85.

3. The following witnesses testified under oath. They are listed in order of appearance: Sarah Larson, Molly McBroom, Chris Mancillas, Mother, Karyn Best, Kim Zook, Leila Laurila,

Jackie Ottman, Michaela Clancy, Sherry Mashburn, Father, Analisa Macias, Jennifer Ding, and Dawn Murell.

### ISSUES AND REMEDIES

1. The issues presented for due process hearings are as follows:

a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) beginning March 5, 2021, by:

- i. Failing to implement the vision, physical therapy, and speech services as set forth in the Student's May 3, 2021, Individualized Education Program ("IEP") during the extended school year ("ESY") period of June 21, 2021 and July 27, 2021, as required by WAC 392-172A-02020 and WAC 392-172A-03090 through 03115;
- ii. Failing to measure the Student's progress as required by the Student's March 5, 2021, IEP, and May 3, 2021, IEP, as well as IEPs subsequently developed through December 31, 2021, as required by WAC 392-172A-02020 and WAC 392-172A-03090;
- iii. Failing to provide the Parents with periodic reports on the progress the Student is making toward meeting the annual goals set forth in the Student's March 5, 2021, IEP, and May 3, 2021, IEP, as well as IEPs subsequently developed through December 31, 2021, as required by WAC 392-172A-05190;
- iv. Failing to provide and / or implement the speech, vision, occupational therapy, physical therapy, and specially designed instruction minutes required by the Student's March 5, 2021, IEP, through the 2021-2022 academic year and thereafter, as required by WAC 392-172A-03090 through 03115;
- v. Failing to provide the Parents with Prior Written Notices ("PWN") within a reasonable time beginning May 3, 2021, and thereafter, as required by WAC .92-172A-05010;
- vi. Failing to meet the requirements for parental participation in IEP meetings beginning May 3, 2021, and thereafter, as per WAC 392-172A-03100;

vii. Failing to develop a reasonable and appropriate IEP on March 5, 2021, and May 3, 2021, that includes annual measurable goals designed to enable the Student to make progress given the Student's individual circumstances, as required by WAC 392-172A-03090.

2. And, whether the Parents are entitled to their requested remedies:

- i. Compensatory education of all speech, vision, and physical therapy services, to be provided in the home, that were not provide during the ESY period of June 21, 2021, to July 27, 2021;
- ii. Compensatory education of 570 minutes in the area of vision, to be provided in the home, for services not provided from the beginning of the 2021-2022 academic year;
- iii. Compensatory education of 270 minutes in the area of speech, to be provided in the home, for services not provided from the beginning of the 2021-2022 academic year;
- iv. Compensatory education of 135 minutes in the area of occupational therapy, to be provided in the home, for services not provided from the beginning of the 2021-2022 academic year;
- v. Compensatory education of 180 minutes of specially designed instruction, to be provided in the home, for services not provided from the beginning of the 2021-2022 academic year;
- vi. Provide the Parents with progress reporting data in all areas of concern beginning June 21, 2021, and thereafter;
- vii. A declaratory order finding that the District violated the Parents' right to participate in the development of the Student's IEPs;
- viii. A declaratory order finding that the District violated the Student's right to FAPE by failing to issue timely and appropriate PWNs;
- ix. Develop a reasonable and appropriate IEP that includes annual measurable goals designed to enable the Student to make progress given the Student's individual circumstances;

(See Second Prehearing Order dated March 22, 2022.)

### 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.*

#### **The Student's IEPs and Enrollment Prior to March 5, 2021**

1. The Student was enrolled at the District in 2017, 2018, and the Spring of 2019. (P6, pp.1-3; Transcript, pp.194-196 (Larson); 441-445 (Mother).) The Student has a [REDACTED] [REDACTED] (D1, pp.1-27; D24, pp.3-22; P16, pp.3-21; Tr., pp.441-445 (Mother).) The Student is also [REDACTED] (Id.)

2. The Student [REDACTED] [REDACTED] (Tr., pp.441-445, 541, 546-547 (Mother).) Since March 5, 2021, through the date of the hearing the Student was [REDACTED] [REDACTED] (Tr., pp.544-546 (Mother).) The Student easily becomes fatigued during special education sessions, and she is only able to use her [REDACTED] for approximately 1-2 hours at a time. (Tr., pp. 406, 544 (Mother); 1085-1086, 1089 (Macias).)

3. The District evaluated the Student in February and March 2017, and the evaluation team, including the Parents, determined that the Student was eligible for specially designed instruction ("SDI") and related services due to "multiple disabilities." (D1, pp.7-8; Tr., pp.441-445 (Mother).) At that time, the Student was deemed eligible for SDI in the areas of communication, fine motor, gross motor, vision, cognitive development, and adaptive skills (D1, pp.9-10). The evaluation team recommended providing the Student the following related services: speech language therapy ("SLP"), physical therapy ("PT"), occupational therapy ("OT"), and vision. (Id.)

4. The Student's February 6, 2017, March 15, 2017, October 24, 2017, and February 26, 2018, Individualized Education Programs ("IEPs") reflect the Student's least restrictive environment ("LRE") as "0-39% in regular class" with 0% of the time spent in the general education environment, and placement in the "Life Skills self-contained class" at Evergreen Elementary School. (D2, pp.20-.23; D3, pp.20-23; D4, pp.20-23; P1, pp.12-14; P2, pp.19-22, P3, pp.19-22, P4, pp.19-22.) The Student attended school in person at the District. (*Id.*) The Student received a one-to-one nurse to support her health needs and was transported to and from Evergreen Elementary School at District expense. (*Id.*)

5. The Student began to [REDACTED] in January and February 2019. (P7, pp.1-21; Tr., pp.441-446 (Mother).) In response to the Student's changed condition, a new IEP was created and the Student's LRE was changed to "Homebound/Hospital" 100% of the time. (*Id.*) The February 11, 2019, IEP provided that the Student's placement was the Life Skills classroom at Evergreen Elementary and she would receive SDI from District personnel in her home part of the time and at the District part of the time. (D5, pp.1-2; D6, pp.1-2; P7, pp.1-21; Tr., pp.207-208 (Larson); Tr., pp.441-445 (Mother).)

6. The Student transferred out of the District during September and October 2019, and Carter Lake Elementary conducted an evaluation on September 27, 2019. (P6, pp.1-86.) The Student's September 27, 2019, IEP identified the Student's LRE as "homebound" 100% of the time, and the Student was placed in a "separate classroom." (P6, pp.84-86.) The Student transferred back to the District on October 25, 2019, as a third grader and enrolled again in the Life Skills classroom at Evergreen Elementary. (P6, pp.1-4; Tr. pp.208-211 (Larson).) During the 2019-2020 school year, the Student attended school in person at the District and occasionally received SDI and related services in person in the home when her medical conditions prevented school attendance. (P6, pp.1-4; Tr., pp.951-953 (Clancy).)

7. On March 15, 2020, State of Washington closed public schools to in person instruction in response to the Covid-19 public health emergency and on March 23, 2020, OSPI directed school districts to develop "Continuous Learning Plans" ("CLP") to provide SDI and related services to students that qualified for special education services.<sup>2</sup>

8. On May 5, 2020, the Student's IEP team met to develop the Student's CLP. (D11, pp.1-3; P10, pp.1-3; Tr., pp.211-213, 217-218 (Larson).) The Student's CLP specifically provided

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<sup>2</sup> On March 13, 2020, the District ceased in-person and virtual instruction of all students as per Office of Superintendent of Public Instruction ("OSPI") Bulletin No.019-20. (Order on Parents' Motion Re: Stay Put Dispute, pp.2-3 (April 6, 2022).) On March 16, 2020, the District closed to in-person and virtual instruction for all students as per Proclamation by the Governor of the State of Washington 20-09 (Statewide K-12 School Closures). (*Id.*)

that the Student's LRE was "homebound," that the Student as placed in the Life Skills classroom at Evergreen Elementary, and that the Student would receive on-line remote SDI and related services for the remainder of the 2019-2020 academic year. (*Id.*) The CLP also stated that "[the Student] will be transitioning back to school for the school year [2020-2021]" and that "there will be a needs assessment done to facilitate the need for a 1:1 nurse when she goes back to school. A doctor's note stating that it is OK for her to go back to school has also been noted."<sup>3</sup> (*Id.*) Further, the CLP documented that "the IEP team would like to create a new IEP before the end of the current school year to reflect [the Student] returning to school for the fall of [2020-2021]." (*Id.*)

9. During the development of the CLP in April 2020, the Parents notified the District that they wanted the Student to attend school in person at the Life Skills classroom at Evergreen Elementary for the 2020-2021 school year. (D9, p.1; D14, pp.1-2; Tr., pp.211-212, 218-220 (Larson).)

10. The IEP team, including the Parents, met on June 11, 2020, and agreed that for the 2020-2021 academic year the Student's LRE would remain "homebound/hospital." (D19, pp.20-21; P12, pp.20-21; Tr., pp.441-445 (Mother).) The Parents repeated their desire for the Student to return to in person school attendance, stating that the Student "will be able to [go to school] when the Covid-19 threat is over per doctor note." (D19, p.22; P12, p.1.) The IEP team, including the Parents, agreed upon a June 11, 2020, IEP. (D19, pp.1-22.) This IEP required that the District provide the Parents with "written progress reports" on a "trimester" basis. (*Id.*)

11. The Student's placement was the Life Skills classroom at Evergreen Elementary, and the IEP team, including the Parents, considered the four instructional models and/or service delivery locations: 1) on-line remote attendance through the Life Skills classroom platform, 2) "drive-in" instruction provided in a self-contained, sanitized District classroom, 3) in person, in the home instruction by District employees, and 4) individual on-line remote sessions with the District's employee providers. (D19, p.22; P12, pp.22-23; Tr., pp.118-120 ,194-196 (Larson).) The Parents chose the on-line remote sessions with the District's individual providers. (Tr., pp.331-332 (Larson).) During the 2020-2021 academic year, the District's

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<sup>3</sup> While the District's CLP refers to a "doctor's note," the record shows that the Parent provided the District with a "Medical Statement" from Dr. Daniel S. Roy, the Student's pediatrician, that listed the following diagnoses for the Student:

[REDACTED] (D15, p.1; P11, p.1; Tr., pp.445-447 (Mother).) The Medical Statement also provided: [REDACTED] "*Id.*)

employee providers individually delivered the Student's SDI via scheduled on-line remote sessions with the Mother and the Student's nurse, Analise Macias,<sup>4</sup> in attendance. (D19, p.22; P12, p.22; Tr., pp.331-332 (Larson); 467-468, 519-520, 538-539 (Mother); 1078-1083 (Macias).)

### March 5, 2021, IEP and Progress Reporting for the 2020-2021 Academic Year

12. On March 5, 2021, the Student's IEP team met via a video conference to review a proposed annual IEP and to discuss the Student's programs, SDI, and related services. (D24, p.22; P16, p.3; Tr., pp.125-26, 232-235, 248 (Larson); 519-520 (Mother).) The following District personnel attended: Sarah Larson,<sup>5</sup> District Representative and Supervisor of Special Education; Jackie Ottman,<sup>6</sup> IEP Case Manager and Special Education Teacher; Karyn Best,<sup>7</sup> District OT; Kim Zook,<sup>8</sup> District PT; Elizabeth Pettit, District SLP; and Chris Mancillas,<sup>9</sup> District Vision Specialist / Teacher for the Visually Impaired ("TVI"). (*Id.*) The Mother also attended.<sup>10</sup> (Tr., pp.247-248 (Larson); 668-669 (Mother).) The District shared on the video screen the proposed IEP dated March 5, 2021. (Tr., pp.655-658 (Best); 668-669 (Mother).)

13. Prior to the IEP meeting, Ms. Mancillas met with the Mother and discussed the proposed IEP goals in the area of vision, talked about the Student's progress, and obtained the Mother's input. (Tr., pp.399-404 (Mancillas); 669-670 (Mother).) Ms. Best and the Mother discussed

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<sup>4</sup> Ms. Macias has worked with [REDACTED] since 2010 and received her nursing license in 2015. (Tr., pp.1077-1078 (Macias).) Ms. Macias worked for school districts and home care agencies, and has been assigned to the Student since 2019. (*Id.*)

<sup>5</sup> Ms. Larson has a bachelor's degree and is a certificated special education teacher with over ten years of in classroom and administrative experience. (D58, p.1; Tr., pp.191-192 (Larson).)

<sup>6</sup> Ms. Ottman is a certificated special education teacher and has a bachelor's degree in Early Childhood and Special Education Preschool through Grade 3. (D61, p.1; Tr., p. 898.) Ms. Ottman acted as the Student's case manager at all times after March 5, 2021. (*Id.*)

<sup>7</sup> Ms. Best earned a bachelor's degree from the University of Idaho and Master of Science degree in occupational therapy from the University of Puget Sound. (D54, pp.1-3.) Ms. Best has worked as an OT for the Clover Park School District for two years and has ten years of OT experience. (*Id.*)

<sup>8</sup> Ms. Zook has a Doctor of Physical Therapy degree from the University of Puget Sound and has over 20 years of experience as a physical therapist. (D60, p.1; Tr., pp.725-726 (Zook).)

<sup>9</sup> Ms. Mancillas has worked as a special education teacher for twenty-five years, and as a teacher for the visually impaired for seven years. (Tr., pp.380-381 (Mancillas).) Ms. Mancillas had worked for the District since 2018 before leaving on July 8, 2021. (*Id.*)

<sup>10</sup> The Father of the Student had not attended an IEP meeting with the District's IEP team since June 2020. (Tr., pp.1042, 1060-1623 (Father).)



the Student's progress prior to developing the fine motor goals and reviewed the proposed fine motor goals. (Tr., pp.646-647, 655-656 (Best); 669-670 (Mother).) Ms. Zook talked with the Mother about the Student's progress and the proposed gross motor goals prior to the IEP meeting on March 5, 2021, and the Parent agreed with the gross motor goals. (Tr., pp.736-738 (Zook).)

14. The proposed annual March 5, 2021, IEP contained the following service matrix:

Concurrent	Services	Service Provider	Monitor	Frequency	Location (Setting)	Start Date	End Date
<b>Related Services</b>							
Yes	Speech Language Therapy	SLP	SLP	60 minutes / weekly	Special Ed.	03/05/21	03/04/22
Yes	Physical Therapy	PT	PT	45 minutes / weekly	Special Ed.	03/05/21	03/04/22
Yes	Occupational Therapy	OT	OT	45 minutes / weekly	Special Ed.	03/05/21	03/04/22
Yes	Vision	Vision Spec.	Vision Spec.	45 minutes / weekly	Special Ed.	03/05/21	03/04/22
<b>Special Education</b>							
Yes	Adaptive Skills	Special Education Teacher	Special Education Teacher	30 minutes / weekly	Special Ed.	03/05/21	03/04/22
No	Cognitive Development	Special Education Teacher	Special Education Teacher	30 minutes / weekly	Special Ed.	03/05/21	03/04/22
No	Communication	SLP	SLP	60 minutes / weekly	Special Ed.	03/05/21	03/04/22
No	Fine Motor	OT	OT	45 minutes / weekly	Special Ed.	03/05/21	03/04/22
No	Gross Motor	PT	PT	45 minutes / weekly	Special Ed.	03/05/21	03/04/22
No	Vision	Vision Spec.	Vision Spec.	30 minutes / weekly	Special Ed.	03/05/21	03/04/22

(D24, p.16; P16, p.16; Tr., pp.236-241 (Larson).)<sup>11</sup> In total, the Student would receive 210<sup>12</sup> minutes of SDI per week, and the adaptive skill SDI could be served concurrently. (*Id.*) The Student would receive 195 minutes per week of related services, served concurrently. (*Id.*)

15. The proposed March 5, 2021, IEP also included new goals in the areas of adaptive skills, cognitive development, communication, fine motor, gross motor, and vision based on the Student's progress and present levels of performance. (D24, pp.6-13; P16, pp.6-13; Tr., pp.231-236, 394 (Larson). The related services were designated as being support services (creating materials, collaboration with team members or parent, etc.), not direct services with the Student. (D24, pp.6-13; Tr., pp.239-240 (Larson).)

16. The IEP team reviewed the IEP on March 5, 2021, and discussed the goals, related services, and SDI minutes, as well as the Student's present levels of performance, parent and teacher input, and progress reports. (Tr., pp.239-242 (Larson).) The Mother provided input and expressed agreement with the Student's goals, SDI and related services. (Tr., pp.248-249, 400-401 (Larson); (Mother).) In the opinion of each of the District's providers, the proposed goals for the Student were achievable, meaningful, and measurable. (Tr., pp.239-249, 262 (Larson); 400-402 (Mancillas); 645 (Best) 642-648 (Zook); 898-900 (Ottman); 811-813 (Laurila); 1137-1139 (Ding).)

17. The March 5, 2021, IEP proposed continuing the Student's LRE as "homebound" for 100% of the time because the Student is a [REDACTED] and she does not participate with general education peers during her education time at home." (D24, p.17; P16, p.17; Tr., pp.244-246 (Larson); 466-468 (Mother).) In the District, the "homebound" category means the District will evaluate the continuum of instructional models to deliver SDI to a student given her needs and the approved methods available to the District. (Tr., pp.990-996, 1239-1244, 1299-1300 (Clancy).) The "Hospital" category anticipates serving a student in person at the student's home or at a hospital on a temporary basis because of a temporary medical condition. (*Id.*)

18. The District again placed the Student in the Life Skills classroom at Evergreen Elementary, and the IEP team discussed the same four instructional models and/or service

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<sup>11</sup> The March 5, 2021, IEP Service Matrix Table did not reflect any column titles due to a computer system error, but for ease of reference the titles have been added to the table in this Final Order. (Tr., pp.236-238 (Larson).)

<sup>12</sup> The total minutes of SDI when added together amounts to 240 minutes per week and the total minutes of related services amounts to 195 minutes per week. However because the 30 minutes of Adaptive Skill SDI and all the related services could be served concurrently with SDI minutes in the other areas, the time the Student spent in school and in the special education setting is reflected as 210 minutes in the March 5, 2021, IEP. (Tr., pp.239-240 (Larson).)

delivery locations: 1) on-line remote attendance through the Life Skills classroom platform, 2) “drive-in” instruction provided in a self-contained, sanitized District classroom, 3) in person, in the home instruction by District employees, and 4) individual on-line remote sessions with the District’s employee providers with placement in the Life Skills classroom. (D19, p.22; P12, pp.22-23; Tr., pp.118-120 ,194-196 (Larson).) The Parents again chose the on-line remote sessions with the District’s individual providers. (Tr., pp.331-332 (Larson); 558-560 (Mother).)

19. The District issued a PWN on March 5, 2021, proposing to change the Student’s annual IEP goals, and this PWN reflected that:

*Due to Covid-19 public access restrictions the teacher and services team have not been able to conduct face-to-face instruction. [The Student] has attended virtual learning sessions, secondary to social distancing restrictions, alongside her mother and nurse. Any and all information was obtained by file review, progress reports, parent input, and observations by special education teacher, physical therapist, occupational therapist, vision therapist, and speech language therapist.*

*[The Student] is currently participating virtually in a Life Skills classroom at Evergreen Elementary.*

(D24, p.5 and 19; P16, p.19; Tr., pp.125-126, 244-246 (Larson); 897 (Ottman).)

20. For the remainder of the 2020-2021 academic year the District’s individual providers delivered the Student’s SDI via on-line remote instruction and the Mother and nurse, Ms. Macias, attended most of the on-line sessions. (Tr., pp.125-126, 250-252 (Larson); 467-468, 519-520, 538-539 (Mother); 1078-1083 (Macias); 1133-1150 (Ding).) The Mother and the District’s providers remained in regular communication about the Student’s progress, service delivery, and schedule. (Tr., pp.537-542, 670-672 (Mother); 644-646 (Best); 728-733 (Zook); 1133-1150 (Ding).)

### **May 2021 Extended School Year IEP**

21. The Student’s March 5, 2021, IEP required the District to provide extended school year (“ESY”) services, and the District initially scheduled an ESY IEP team meeting for April 30, 2021, but the Parent was not able to attend. (P20, pp.1-2; P21, pp.1-2.) The District issued a meeting invitation for an IEP team meeting on May 3, 2021, but the Parent was not able to attend. (P23, pp.1-2.) The IEP team, including the Parent, met on either May 4 or May 5, 2021,

via video conference to develop the ESY IEP for the period of June 21, 2021, through July 29, 2021. (D25, pp.1-6; P22, pp.1-6; Tr., pp.268-270 (Larson); 446-447; 449 (Mother).) The following individuals attended the meeting: Ms. Larson, Ms. Zook, and the Mother. (*Id.*; Tr., pp.448-449, 676 (Mother); 748 (Zook).) The Mother viewed the ESY IEP on the video screen along with Ms. Larson and Ms. Zook. (Tr., pp.676-677 (Mother).)

22. The May 2021, ESY IEP<sup>13</sup> contained the same goals and SDI as the March 5, 2021, IEP because the purpose was to continue to deliver the Student's SDI to prevent a loss of skill. (D25, pp.2-3; P22, pp.2-3; Tr., pp.268-270 (Larson); 677-678 (Mother); 748-749 (Zook); 901-903 (Ottman); 1152 (Ding).) The ESY IEP provided that the Student would receive the following SDI during the period of June 21, 2021, through July 29, 2021:

Concurrent	Services	Service Provider	Monitor	Frequency	Location (Setting)	Start Date	End Date
<b>Special Education</b>							
Yes	Adaptive Skills	Special Ed Teacher	Special Ed Teacher	30 minutes / weekly	Special Ed.	06/21/2021	07/29/2021
No	Cognitive Development	Special Ed Teacher	Special Ed Teacher	30 minutes / weekly	Special Ed.	06/21/2021	07/29/2021
No	Communication	SLP	SLP	30 minutes / weekly	Special Ed.	06/21/2021	07/29/2021
No	Fine Motor	OT	OT	45 minutes / weekly	Special Ed.	06/21/2021	07/29/2021
No	Gross Motor	PT	PT	45 minutes / weekly	Special Ed.	06/21/2021	07/29/2021
No	Vision	Vision Spec.	Vision Spec.	30 minutes / weekly	Special Ed.	06/21/2021	07/29/2021

<sup>13</sup> The ESY IEP is dated May 3, 2021, in anticipation of the meeting scheduled on May 3, 2021, but Ms. Larson and Ms. Zook testified that the ESY IEP team meeting occurred on May 4, 2021. (Tr., pp.268-270 (Larson); (Zook).) However, the Mother testified that she met only with Ms. Ottman to review the ESY IEP on May 5, 2021, but Ms. Ottman testified she never attended an ESY IEP meeting with the Mother or other District personnel. (Tr., pp. 448-449 (Mother); 901 (Ottman).)

(D25, p.4; P22, p.4; Tr., pp.268-270, 315-316 (Larson); 449-450 (Mother); 901-903 (Ottman).) The Student, then, was to receive a total of 160 minutes of SDI per week.<sup>14</sup> (D25, pp.1-6; P22, pp.1-6; Tr., pp.268-270, 315-316 (Larson).) The SDI frequency in the area of communication was reduced by 30 minutes per week. (*Id.*)

23. A PWN was created and dated “04/30/21” and reflects Ms. Ottman’s name as the creator of the PWN. (D25, pp.5-6; P22, pp.5-6; Tr., p.337 (Larson); 525 (Mother).) However, Ms. Ottman did not attend any meeting regarding the ESY IEP. (Tr., p.901 (Ottman).) The PWN reflected the IEP team meeting as follows:

*Due to Covid-19 public access restrictions the teacher and services team have not been able to conduct face-to-face instruction. [The Student] has attended virtual learning sessions, secondary to social distancing restrictions, alongside her mother and nurse. Any and all information was obtained by file review, progress reports, parent input, and observations by special education teacher, physical therapist, occupational therapist, vision therapist, and speech language therapist.*

. . . .

*Due to Covid-19 public access restrictions the ESY learning will take place via Microsoft Teams.*

(*Id.*; Tr., p.337 (Larson).) The Parents did not receive the PWN regarding the ESY IEP meeting in May 2021, and the Parents did not receive a copy of the ESY IEP. (Tr., pp.449-450, 525 (Mother).) However the Mother did view the ESY IEP on the video screen during the May 2021 ESY IEP meeting and participated in the development of the ESY IEP. (Tr., pp.449-450, 525 (Mother).)

24. The following District employees were assigned to deliver the Student’s SDI during the ESY period: Ms. Zook (PT-gross motor skills); Ms. Ottman (adaptive skills and cognitive development); Ms. Mancillas (TVI – vision); Karyn Best (OT – fine motor skills); and “Katherine” (SLP – communication). (D26, p.1; P24, p.1; P25, p.1.) Ms. Mancillas provided the Student with vision SDI the weeks of June 21, 2021, June 28, 2021, and July 5, 2021, before

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<sup>14</sup> The total minutes of SDI when added together equals 210 minutes. However, the frequency of the communication SDI was reduced to 30 minutes from 60 minutes in the March 5, 2021, IEP, and the Adaptive Skills minutes could be delivered concurrently with SDI in the other areas. As a result, the ESY IEP provided the Student would spend 165 minutes in ESY services and served in the special education setting for 165 minutes. There is no testimony in the record regarding why the Student’s communication minutes were reduced from 60 minutes to 30 minutes for the ESY period. The Parents have not specifically challenged the contents of the ESY IEP.

transferring the responsibility to Jennifer Ding,<sup>15</sup> TVI. (Tr., pp.388-389 (Mancillas); 1163-1164 (Ding).)

25. The via email to Ms. Ottman, Parent advocated for the District's providers to come to the Student's home during the ESY period, and on July 2, 2021, Ms. Ottman confirmed that "in-home sessions are still not allowed due to the inability for the District to control the environment" but in-person services at the District were available in a self-contained room. (P27, p.1; Tr., pp.689-691 (Mother).) However, on July 6, 2021, via email, Ms. Ottman stated that she and Ms. Mancillas would deliver adaptive skill, cognitive development, and vision services in person on the porch of the Student's home. (P28, p.1; Tr., pp.417-419 (Mancillas); 913-915 (Ottman).) On July 8, 2021, Ms. Ottman and Ms. Mancillas met the Student at her home on the porch and provided her with SDI in those three areas. (*Id.*)

26. On July 8, 2021, Ms. Zook, via email, also confirmed with the Parent that she and Ms. Best could provide the Student with gross motor and fine motor SDI in person at the Student's home on the porch. (P29, p.1; Tr., pp.334-336 (Larson); 470, 519-520 (Mother); 603-604 (Best); 866-867 (Zook).) On July 14, 2021, Ms. Zook and Ms. Best provided the Student with SDI in the areas of gross motor and fine motor at the Student's home on the porch. (*Id.*)

### **October 28, 2021, IEP Team Meeting**

27. On August 18, 2021, the Parent emailed the District seeking information about whether the Student could receive SDI and related services in person in the home for the 2021-2022 school year. (D27, pp.1-2; P.34, pp.1-6; Tr., pp.471-476, 486, 690-691 (Mother).) The District's personnel confirmed that the District would not offer in person in the home instruction to the Student for the 2021-2022 school year. (*Id.*) The District delivered SDI to the Student via on-line remote learning for the entirety of the 2021-2022 school year. (P35, pp.1-2.)

28. On October 20, 2021, the Parents emailed Diana Dix (principal of Evergreen Elementary School), Dr. Michela Clancy,<sup>16</sup> Director of Special Education, and the Superintendent of the

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<sup>15</sup> Ms. Ding earned a Master Degree in Special Education and a Bachelor of Science degree in Education and is a certified Teacher for the Visually Impaired with experience in using assistive technology. (D55, pp.1-4; Tr., pp.1109-1110 (Ding).) Ms. Ding has provided TVI services in digital format since 2016, and is licensed by the State of Washington. (Tr., pp.1109-1110, 1135 (Ding).) Ms. Ding owns her own business called Special Education Innovations, LLC., and works as a contracted service provider for the District. (Tr., pp.1134-1135 (Ding).)

<sup>16</sup> Dr. Clancy has a Bachelor of Science degree in Sociology and Psychology and a master's degree in curriculum and instruction and a master's degree in counseling. (Tr., pp.986-988 (Clancy).) Dr. Clancy has a doctorate in

Clover Park School District, requesting a reevaluation of the Student and all progress reports since March 5, 2021. (P41, p.1; Tr., pp.692-695 (Mother).) Additionally, the Parents stated:

*My daughter, [the Student] is currently a homebound (home/hospital instruction) student enrolled in Evergreen Elementary*

...

*I'm afraid that [the Student] is not receiving a fair or appropriate education. If the IEP team is still not able to come into our home than (sic) I would like accommodations to be made for [the Student] to go to the school, once or twice a week to receive her therapy services in person . . . For [the Student] to go to school to receive her services, several accommodations would need to be made. A bus to transport [the Student] and her nurse, as well as a [REDACTED] [REDACTED] for physical therapy.*

(P41, p.1; Tr., pp.692-695 (Mother).) Ms. Larson and Dr. Clancy communicated via email with the Parent to schedule an IEP meeting. (D28, pp.1-2; P44, pp.1-17; Tr., pp.475-476 (Mother).)

29. The IEP team met on October 28, 2021, to discuss 1) instructional model and / or service delivery location options, 2) a reevaluation of the Student, and 3) the Student's accommodations. (D36, pp.1-4; P50, p.8; Tr., pp.128-129, 187-188, 271-272 (Larson); 476-477 (Mother).) The following individuals attended the video conference meeting: the Mother, Ms. Best (OT), Ms. Zook (PT), Ms. Ottman (Special Education Teacher), Lelia Laurila<sup>17</sup> (SLP), Ms. Ding (TVI), and Ms. Larson (District Representative). (*Id.*; Tr., pp.605 (Best); 749 (Zook); 777 (Laurila); 1153 (Ding).) The District and the Parents agreed that the Student's current LRE of "homebound" was appropriate, and that the Student's most recent evaluation of September 27, 2019, showed that she was eligible for SDI and related services in the areas of adaptive skills, cognitive development, communication, fine motor, gross motor, and vision. (Tr., pp.495-496 (Mother).)

30. Prior to the meeting Ms. Larson instructed the District's employees to refrain from offering comments and opinions on the District's ability to send District employees into the Student's home to provide in person instruction. (Tr., pp.474-475, 482-481, 489 (Mother);

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psychology and leadership, and she has obtained superintendent's credentials. (*Id.*) She has worked as a school psychologist, program specialist, and a special education director. (*Id.*)

<sup>17</sup> Ms. Laurila received a Bachelor of Arts degree in Communication Disorders and Sciences, and a master's of science in Speech and Language Pathology from the University of Oregon. (D53, pp.1-2; Tr., pp.773-775 (Laurila).) Ms. Laurila possesses a certificate of clinical competence and worked for Soliant Health as a contracted SLP with the District between August 2021 and June 2022. (Tr., pp.782 (Laurila).)

605-607, 620 (Best); 778-780 (Laurila); 851-853 (Zook); 915-917 (Ottman).) All of the meeting participants found the October 28, 2021, meeting to be tension filled and less than collaborative, and they observed that Ms. Larson and the Mother struggled to effectively communicate. (*Id.*)

31. The Parents requested that the District employees currently assigned to the Student be sent into the Student's home to deliver SDI in person. (D36, pp.1-4; P50, p.8; Tr., pp.129-130, 272-273 (Larson); 477-479 (Mother); 778-779 (Laurila).) Ms. Larson informed the Parents that the District had entered into a "Memorandum of Understanding Between Clover Park School District & Clover Park Education Association – Terms of Employment and Delivery of Educational Services Affected by Covid-19 for the 2021-22 School Year" ("MOU"), and that this agreement prevented the District from sending unionized District employees to a student's home. (*Id.*: Tr., pp.200-205, 270-271 (Larson); 977-980, 1257-1265 (Clancy).) Specifically, the MOU provided:

*The COVID pandemic continues to impact the operation of schools in Pierce County and Washington State. The parties recognize ongoing changes in state and county requirements for social distancing, masking, and other COVID safety measures.*

*In determining modes of instruction and implementing health and safety protocols for the 2021-22 school year the District and Association agree to the following:*

*1. Capacity and Social Distancing Requirements: The District will follow all [Tacoma Pierce County Health District] TPCHD and Department of Labor and Industries guidelines regarding maximum capacity maintenance levels and social distancing requirements . . .*

*2. Health Screenings and Face Coverings (PPE): The District will follow all [Tacoma Pierce County Health District] and Department of Labor and Industries guidelines regarding appropriate health screening for staff and students . . .*

*3. COVID Exposure: . . . the district shall implement appropriate safety protocols, including COVID testing, in alignment with the then current TPCHD and Department of Labor and Industries guidelines regarding appropriate cleaning and disinfecting practices and maintenance of HVAC equipment throughout the district.*



(D29, pp.1-5; P15, p.1; Tr., pp.129-134, 200-204 (Larson); 489-490 (Mother); 857-859 (Zook); 977-980, 1257-1265 (Clancy).) Ms. Larson explained that current TPCHD requirements could not be met at the Student's home, and therefore the District would not send District employees to work at the Student's home. (*Id.*)

32. The District offered to provide "drive-in" services, meaning the District would transport the Student and her nurse to a self-contained classroom at the District for delivery of SDI. (D36, pp.1-4; D29, pp.1-5; P50, pp.8-9; Tr., pp.270-277; 311-313, 371 (Larson); 474-477 (Mother).) Drive-in services would require development of an individualized health care plan to determine whether the Student needed a one-to-one nurse, and the District informed the Parents that a nurse employed by the District, not the Student's current home care nurse, would be responsible to attend the drive-in sessions. (*Id.*) However, the District later informed the Parents that Ms. Macias, the Student's home care nurse, could apply to work as a District employee and accompany the Student. (Tr., pp.556-558, 702-703 (Mother); 1255-1256 (Clancy).) The Parents did not accept or reject the offer of drive-in services. (D32, p.1; D36, pp.3-4; P50, pp.8-9; Tr., pp.273-277 (Larson); 475-479 (Mother).)

33. In an October 28, 2021, email to a number of District staff sent after the IEP team meeting of the same date, Ms. Larson stated that "the team has met with the family and we have determined that [the Student] will now be accessing OT/PT/SLP/Vision through our drive-in services model. The team will collaborate to determine a set schedule for her to access these services." (D31, p.1; Tr., pp.129-130 (Larson).) Ms. Larsen also sent a second email to two District personnel stating: "we have a homebound student that will soon be attending drive in services at Evergreen Elementary. Due to her complex medical needs we will need to be sure that you have completed (sic) risk assessment of her health needs to determine the level of support she needs while she is on campus." (D32, p.2; Tr., pp.129-130 (Larson).)

34. On October 28, 2021, the District created a PWN "proposing" to "continue" the Student's IEP. (D36, pp.1-4; P50, pp.8-9; Tr., pp.272-276, 337-339 (Larson).) The Parent received the PWN on November 5, 2021. (Tr., pp.526-527 (Mother).)

35. That same day the Mother emailed Dr. Clancy requesting a copy of the "district policy regarding in-home (home hospital) instruction, as well as the policy stating [the Student's] home nurse would not be allowed to attend with her." (D33, pp.2-3; P44, pp.22; 59; Tr., pp.401-403, 699-702 (Mother).) The Mother also requested "any progress reports or notes," stating that she had not received progress reports since March 5, 2021. (*Id.*)

36. The Mother also emailed Kristin Hennessey, Equity and Civil Rights Office, at OSPI and sought clarification on whether the District was required to deliver the Student's SDI in person in the home. (D29, pp.5; D30, pp.1-6; P44, pp.1-25; Tr., pp.479-481, 487, 554-555 (Mother); 996-998 (Clancy).) Ms. Hennessey emailed the Mother and Dr. Clancy copies of applicable statutes and rules, specifically WAC 392-172A-02055, stating to the Mother: "I think what you meant was home instruction (see below), not home hospital. Home Hospital Services (H/H) should only be considered for students who are temporarily unable to attend school for an estimated period of 4-18 weeks because of a physical and/or mental disability or illness." (D29, pp.5-6; P44, pp.28-29; Tr., pp. (Mother).)

37. Ms. Hennessey also stated in the email response to the Mother and Dr. Clancy:

*Other points for your consideration moving forward – making no call about what is appropriate for your child, as I don't know her, and am not a member of the IEP(sic):*

*-Home instruction is referred to as a homebound placement.*

*-Services and placement are based on current need, not based upon services a student may have received in the past.*

***-Districts are not required to have outside personnel (individuals not hired by the district) provide services to a student . . .***

*. . . .*

*-You asked that Ms. Larson provide you with the district's policy regarding in-home (home hospital) instruction. Again, I believe you [mean] (sic) home instruction (see above information on H/H). There will be no policy specific to home instruction. It is the IEP team's responsibility to determine a student's LRE (least restrictive environment). You will find this information at WAC 392-172A-02050 (least restrictive environment).*

(P44, pp.29-30 (*emphasis added*); Tr., pp.479-481, 487, 554-555 (Mother); 996-998 (Clancy).)

38. The District's school psychologist Rebecca Coda emailed the Parents on October 29, 2021, and informed them that she had opened a reevaluation for the Student and that she needed the Parents to sign the consent to evaluate form attached to the email. (P48, p.1; Tr., pp.276-278 (Larson).) The Parent responded that she signed the consent form and communicated her concerns about the Student's vision, physical therapy, and lack of in

person in the home services. (*Id.*) Ultimately, the District confirmed that Joanie Bailey, another District school psychologist, would conduct the reevaluation. (D31, p.1; Tr. pp.276-278 (Larson).)

39. On November 1, 2021, the Student's physician Daniel Bourbon provided the Parents with a "school letter" regarding the Student's medical diagnosis, and this letter stated in part:

*1) I am writing this letter in support of [the Student] continuing to receive in home, in person home education/instruction for homebound children.*

....

*3) Because of her Intellectual and Physical disabilities, [the Student] is exempt from wearing a protective face mask as this poses a suffocation risk in a child unable to remove the mask if need be, plus the added fact that she has a*

[REDACTED]

*4) In addition to this, because of [the Student's]*

[REDACTED]

*5) [The Student's] physical conditions also require one-to one nursing, and specialized care for monitoring for*

[REDACTED] *to her not receiving her schooling at home.*

*6) For these reasons, and because [the Student] cannot receive her COVID-19 immunizations yet, I recommend that she continue in home, in person education for homebound children.*

(P49, pp.1-2; Tr., pp.446-447, 493, 503, 550-552 (Mother); 926-927 (Clancy).) The Parents did not provide this letter to the District. (Tr., pp.552-553, 704 (Mother).)

#### **November 5, 2021, IEP Team Meeting**

40. The Student's IEP team, including the Parents, met via video conference on November 5, 2021, to review instructional models and/or service delivery locations available to the

Student. (D39, pp.3-4; P45, pp.21-22; P50, pp.1-8; Tr., pp.135-136 (Larson).) The following individuals attended: the Mother; Sherry Mashburn, PAVE (Parent advocate); Molly McBroom (Private OT); Ms. Zook, PT; Ms. Best, OT; Ms. Laurila, SLP; Dawn Murrell, special education teacher; Ms. Ottman, special education teacher, and Ms. Larson, District Representative. (D39, pp.3-4; Tr., pp.135-136 (Larson); 489-490, 533 (Mother) 855-856 (Zook); 780 (Laurila); 1021-1025 (Mashburn).)

41. Regarding “drive-in” services at the District, Ms. Larson described the transportation options, utilization of a sanitized and self-contained classroom, and use of personal protective equipment (“PPE”) to prevent the transmission of Covid-19 and other diseases. (D39, pp.3-4; P50, pp.4-5; Tr., pp.135-137; 371-372 (Larson); 502-503 (Mother); 609-612 (Best).) The Parents expressed concerns that the Student would not be able to physically sustain the transportation and service delivery period, and about the District meeting her medical needs using a District employed nurse. (*Id.*) The Parents rejected the option of drive-in services. (*Id.*)

42. Speaking to the ability of the District to deliver SDI in person in the home, Ms. Larson repeated that the MOU prevented the District from sending District employees to the Student’s home. (*Id.*) Therefore, the District rejected the option of District employees providing SDI in person in the Student’s home. (*Id.*)

43. However, the District offered to send contracted providers to deliver the Student’s SDI in person in the home. (*Id.*; Tr., pp.136-137 (Larson); 498-504 (Mother).) The Parents expressed concern about the interruption of the continuity of service providers and “rejected the offer at this time.” (D39, p.3; P50, pp.34; P51, p.1; Tr., pp.502-503 (Mother).)

44. The Parents requested an accounting of missed SDI for the ESY period of June 21, 2021, to July 29, 2021, and the period of September 1, 2021, through November 1, 2021. (*Id.*; Tr., pp.139-142, 143-144 (Larson); 503-504 (Mother).) Ms. Larson requested that the providers “start assembling a timeline of services provided and that [the Mother] share missed dates and services she believed [the Student] is owed,” so that the IEP team could reconvene and discuss whether the Student was owed compensatory education services for the ESY period. (D39, pp.3-4; P50, pp.4-5; Tr., pp.139-442, 143-144, 313-315 (Larson); 504 (Mother); 613-614 (Best); 1160 (Ding).)

45. The District issued a PWN on November 5, 2021, “proposing” to “continue” the Student’s SDI “service location” as on-line remote instruction. (D39, pp.3-4; P50, pp.4-5.) The District issued the November 5, 2021, PWN and the October 28, 2021, PWN by emailing both

documents to the Parent on November 5, 2021. (P50, p.1; Tr., pp.338-340 (Larson); 525-526 (Mother).) The Parents received both PWNs. (*Id.*)

### **December 2, 2021 IEP Meeting**

46. The IEP team, including the Mother and Ms. Mashburn (parent advocate from PAVE), met via an on-line meeting on December 2, 2021, to discuss providing compensatory special education services for services missed during the ESY period of June 21, 2021, through July 29, 2021. (D43, pp.3-4; P50, pp.4-5; Tr., pp.145-147 (Larson); 504-505 (Mother); 614-616 (Best).)

47. At the beginning of the meeting, the Parent requested to make an audio recording of their discussion, and Ms. Larson informed the Parent that it was the District's "policy" that any request to record a meeting must be made at least 24 hours prior to the meeting so that the District could "process the request confidentially with each team member. This is done to ensure anonymity of each member and their right to privacy in making this choice." (D43, pp.3-4; P50, pp.4-5; Tr., pp.162-163 (Larson); 505-506, 530-531 (Mother).) The Parent asked for a copy of the District's policy regarding recording IEP team meetings via emails dated December 6 and December 9, 2021. (P60, pp.3, 7; Tr., pp.530-531 (Mother).) After the IEP team meeting on December 2, 2021, Ms. Larson searched for the written policy regarding recording meetings but was not able to locate a written policy, confirming with the Parent via email on December 13, 2021, that denying a request to record a meeting that was not made 24 hours in advance was a District practice, not a policy. (P62, p.1; Tr., pp.162-163 (Larson); 530-531 (Mother).)

48. At the December 2, 2021, IEP meeting the participants reviewed the Parents' request for compensatory education SDI minutes for the ESY period of June 21, 2021, to July 29, 2021. (D43, pp.3-4; P62, pp.7-8; Tr. pp.145-147 (Larson); 505-, 527-528 (Mother); 860 (Zook); 919 (Ottman).) The IEP team reviewed all available progress notes and reports, as well as the records of services maintained by the District's providers, and determined that while District personnel did miss some sessions, the District personnel made up appointments by adding minutes to regular sessions or scheduling additional sessions.<sup>18</sup> (Tr., pp.145-147, 161-162, 170, 254, 317-322, 329-330 (Larson); 876-877 (Zook); 799-801 (Laurila); 1162 (Ding).)

49. However, in order to meet the Student's current needs and to reduce conflict with the Parents, the District offered the following compensatory education minutes:

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<sup>18</sup> See Findings of Fact paragraphs 93-111, *infra*.

*The team agreed that [the Student] is owed compensatory minutes for services that were not provided during the ESY. The team discussed the following minutes for each services: OT: 45 minutes, PT 2.5 HRS, TVI 2.5 HRS, SLP 2.5 HRS. The Special Education office will **create a compensatory services agreement and services will begin to be provided if [the Parents] enter into that agreement.***

(D43, pp.3-4 (emphasis added); P62, p.7; Tr., pp.145-147, 253-255, 320-322 (Larson).)

50. On December 9, 2021, the Parent emailed Dr. Clancy, stating that she had not yet received an agreement for compensatory services or any further communication since the December 2, 2021, IEP meeting. (P62, pp.1-2; Tr., pp.504-505 (Mother).) On December 13, 2021, Dr. Clancy responded via email, stating:

*. . . Compensatory services are not a 1:1 correspondence of service times missed, but a review of impact of those missed services . . . We will work with you to provide a summary of those services this week.*

. . . .

(P63, pp.3-4; 216-218 (Larson).)

51. On December 10, 2021, the District issued a PWN that stated the IEP team was “proposing to initiate . . . Compensatory Education Minutes.” (*Id.*; Tr, pp.164-165, 338-339 (Larson).) The Mother received the PWN on December 13, 2021. (Tr., pp.505, 527-528 (Mother).)

52. The Parent emailed Dr. Clancy on December 13, 2021, and January 3, 2022, and disputed the contents of the December 10, 2021, PWN as she believed it did not accurately reflect the discussions and decisions made at the December 2, 2021, IEP meeting. (P63, pp.1-9; Tr., pp.516-517 (Mother).) Dr. Clancy and Ms. Larson each replied to the Parent regarding her concerns with the contents of the December 10, 2021, PWN and stated they would provide a second PWN addressing the Parents’ concerns. (P63, pp.1-9; Tr., pp.338-339 (Larson).)

53. On January 3, 2021, the Parents emailed Dr. Clancy and stated that they had “not received . . . the comp ed proposal as you said would be sent out [the week of December 13, 2021].” (P63, p.5; Tr., pp.1283-1286 (Clancy).)

54. On January 19, 2021, Ms. Larson emailed the Parent a PWN dated January 18, 2021, as well as progress reports for the Student. (D48, pp.3-4; P63, pp.9-10; Tr., pp.338-339 (Larson).) This PWN clarified the communications between Ms. Larson and the Mother regarding the District’s practice versus policy of requiring participants to make a request to record a meeting 24 hours prior to the meeting. (D48, pp.3-4; P69, pp.3-4; Tr., pp.338-339 (Larson).) The PWN also clarified that only compensatory education services for the ESY period of June 21, 2021, to July 29, 2021, were discussed at the December 2, 2021, IEP meeting, and stated that any request for compensatory services for the period of September 1, 2021, through November 19, 2021, could be discussed separately in the future. (*Id.*) The Mother received the PWN dated January 18, 2021, on January 19, 2021. (Tr., pp.527-528 (Mother).)

55. As of the date of the hearing, the District had not given the Parents a written agreement for ESY compensatory education services as described in the December 10, 2021, PWN or the January 18, 2021, PWN. (Tr., pp.177-178, 333-334 (Larson); 506-507 (Mother); 1284-1286 (Clancy).) As of the date of the hearing, the Student’s IEP team had not met to discuss compensatory education services because of missed sessions between September 1, 2021, and February 28, 2022. (*Id.*)

### **Progress Reporting – March 2021**

56. The District issues student IEP progress reports on a triennial basis each November, March, and June. (Tr., pp.146-147, 229-232 (Larson); 601-602 (Best); 741-744 (Zook); 776-777 (Laurila); 898-890 (Ottman); 1192 (Ding).) The Student’s IEP reflects after each goal that progress reporting would occur by “written progress report” on a “trimester” basis. (D19, pp.1-22; D24, pp.1-22; Tr., pp.229-232 (Larson).)

57. Between March 1 and March 5, 2021, the District personnel assigned to the Student conducted progress reporting as to the goals in the June 11, 2020, IEP. (D23, pp.1-6; P79, pp.1-5; Tr., pp.229-230 (Larson).) Regarding the Student’s cognitive development and adaptive skills, progress reporting showed the Student mastered her goals. (Tr., pp.898-899 (Ottman).) The progress reports also showed the Student made sufficient progress towards her communication goals. (*Id.*)

58. Regarding the Student's gross motor and fine motor goals, [REDACTED] and therefore no progress was reported. (D23, p.3; D45, p.6; P79, p.3; Tr., pp.741-744 (Zook).) However, progress reporting showed the Student mastered or made sufficient progress on all other gross motor and fine motor goals. (*Id.*)

59. The District did not include any written progress reports regarding the Student's vision goal. (*Id.*) However, Ms. Mancillas conducted progress reporting and discussed the Student's progress in the area of vision with the Parent prior to the March 5, 2021, IEP meeting. (Tr., pp.392, 399-404 (Mancillas); 669-670 (Mother).)

60. The Mother and the other members of the IEP team reviewed the Student's present levels of performance and progress reporting, including the area of vision, as part of the IEP team meeting on March 5, 2021. (D23, p.3; D45, p.6; Tr., pp.234-236 (Larson); 741-744 (Zook).)

#### **Progress Reporting – June 2021**

61. On June 10, 2021, prior to implementing the ESY IEP on June 21, 2021, the District conducted progress reporting in the area of communication and noted that the Student had mastered a communication goal and showed sufficient progress towards another communication goal. (D45, pp.1-7; P17, pp.3-4; Tr., pp.265-267 (Larson).) Also, as of June 4, 2021, the Student demonstrated an emerging skill towards her fine motor goal, and as of June 8, 2021, the Student demonstrated sufficient progress towards her gross motor goal. (D45, pp.1-7; P17, pp.4-5; Tr., pp.265-267 (Larson); 742-744 (Zook).) In the area of adaptive skills, progress reporting showed that as of June 18, 2021, the Student's skills were emerging, and that her skills were either emerging or she was making sufficient progress in the area of cognitive development. (D45, pp.1-7; 907-910 (Ottman).)

62. In the area of vision, Ms. Mancillas did not conduct progress reporting in June 2021. (D45, pp.1-7; Tr., pp.392-394 (Mancillas).) However, Ms. Mancillas experience during this period was that the Student was progressing in the area of vision, but her medical conditions caused the Student's progress to fluctuate over time. (Tr., pp.401-406 (Mancillas).)

63. There is no evidence in the record that the District created a written progress report or issued the written progress report to the Parent in June 2021.



## **Progress Reporting – ESY Period June 21, 2021, to July 29, 2021**

64. The District providers did not conduct progress reporting at the end of the ESY period because progress reporting for the ESY period is not required by the District's triennial progress reporting system. (Tr., pp.870-872 (Zook); 909-910 (Ottman); 1201 (Ding).) However, the District's IEP reporting software system allows for such progress reports and the District encourages its staff to conduct ESY progress reporting at the end of the ESY period. (Tr., pp.939-940, 1300-1301 (Clancy).)

65. During the December 2, 2021, IEP meeting, the IEP team discussed providing the Parents with written progress reports for the ESY period. (D43, pp.3-4; P59, pp.1-3; P62, p.7.; Tr., pp.514-515 (Mother).) To accommodate the Parents the District created written progress reports for the ESY period based on the providers' notes and records. (Tr., pp.146 (Larson); 617-618 (Best); 791 (Laurila); 791-792 (Zook); 912 (Ottman); 1194-1196 (Ding).) The District staff compiled the information in a written progress report and noted the reporting date as July 30, 2021. (D45, pp.1-7; P59, pp.1-3.)

66. On December 2, 2021, Ms. Ottman emailed the Parent "the most recent progress report." (P60, p.1; Tr., pp.515-516 (Mother).) This progress report included progress reporting data for the ESY period, and data from September 1, 2021, to November 19, 2021. (P60, p.1; Tr., pp. 515-516 (Mother); 911-913 (Ottman).) The Parent emailed Ms. Ottman stating that she disputed an entry made by Ms. Ding on July 7, 2021. (P60, pp.1-3; Tr., pp.515-516 (Mother).) Ms. Ding offered to correct the entry error via email on December 6, 2021. (P60, p.6; Tr., pp.515-516 (Mother); 1194-1196 (Ding).)

## **Progress Reporting - September 2021 through December 2021**

67. On October 28, 2021, via email the Parents' requested "any progress reports or notes," stating that she had not received any progress reports since March of 2021. (P44, p.22; Tr., pp.486-487, 511 (Mother).)

68. On October 28, 2021, Ms. Ding, via email, provided the Parent with a progress report for "the work that we have been doing recently." (P46, p.1; Tr., pp.515-516 (Mother); 1201 (Ding).) Ms. Ottman communicated that progress reports are issued in November and that the Parent would receive progress reports around the time of parent-teacher conferences in November 2021. (P46, p.2; Tr., pp.515-516 (Mother); 908-910 (Ottman).)

69. The District's parent-teacher conferences were scheduled for November 17 through 19, 2021, and Ms. Ottman, as the Student's case manager, was obligated to provide progress reports to the Parents. (Tr., pp.230-231 (Larson); 909-913 (Ottman).) The Parent attended a parent-teacher conference on November 17, 2022, and the Mother and Ms. Ottman discussed the Student's progress for the ESY period and the 2021-2022 academic year. (Tr., pp.511-512 (Mother); 909-914 (Ottman).) Ms. Ottman provided the Parents with progress reporting information that combined the Student's progress for the ESY period and the first trimester of the 2021-2022 academic year, but Ms. Ottman did not provide the Parent with a written progress report. (*Id.*)

70. On November 19, 2021, the Parents requested the Student's "progress records" by emailing a request to the District's special education records staff. (D41, p.1; Tr., pp.512-513 (Mother).) The same day, the Parents again asked for progress reports via email to Ms. Larson. (P52, p.5; P53, p.19; Tr., pp.514-516 (Mother).)

71. On November 22, 2021, via email, Ms. Larson provided the Parents with written progress reports for the period of September 1, 2021, through November 19, 2021. (D45, pp.1-7; P17, pp.1-5; P52, pp.5-6; Tr., pp.146-147, 260-260 (Larson).) The progress report showed that in the area of gross motor the Student's skills were emerging, and in the area of vision the Student was making sufficient progress. (D45, pp5-6; P17, pp.1-5.; Tr., pp.740-742 (Zook); 1201 (Ding).) The progress report shows that the District's staff had not created a written progress report for the areas of adaptive skills, cognitive development, communication, and fine motor as of November 22, 2021. (D45, p.6; Tr., pp.909-913 (Ottman); 742-743 (Zook).)

72. Ms. Larson, via email, described the progress reporting process to the Parent, stating:

*There are progress notes provided for ESY from most service providers, but I agree in looking (sic) the PT and OT will need to provide updates on ESY progress. Progress notes are attached to the current IEP doc. That is why you are not seeing progress notes from anything prior to March 2021 in the docs that were provided to you. If you would like to look at last years' progress, the previous IEP would need to be referenced.*

(D42, pp.1-3; P52, p.7; Tr., pp.260-262 (Larson); 513-514 (Mother).)

73. On November 30, 2021, Ms. Ottman created a written progress report in the area of cognitive development and reported that the Student had mastered one goal, and that her

skills were either emerging or she was making sufficient progress towards two other goals. (D45, pp.1-7; Tr., pp.909-914 (Ottman).)

74. Ms. Laurila, SLP, created a written progress report in the area of communication on December 3, 2021, and reported that the Student had mastered one goal and was making sufficient progress towards another goal. (D45, pp.107; Tr., pp.790-792 (Laruila).)

75. In the area of fine motor, the Ms. Best created a written progress report showing that as of December 3, 2021, the Student was making minimal progress towards her goals. (D45, p.5; Tr., pp.652-653 (Best).)

76. On December 2, 2021, Ms. Ottman emailed the Parent “the most recent progress report.” (P60, p.1; Tr., pp.515-516 (Mother).) This progress report included progress reporting data for the ESY period of June 21, 2021, through July 29, 2021, and from September 1, 2021, to November 19, 2021. (P60, p.1; Tr., pp. 515-516 (Mother); 911-913 (Ottman).)

77. During the December 2, 2021, IEP meeting Ms. Larson displayed all written progress reporting since March 5, 2021, on a video screen for the Mother to view. (D43, pp.3-4; P59, pp.1-3; P62, p.7.; Tr., pp.514-515 (Mother).) The Parent was confused because the District’s staff’s written progress reporting was dated December 3, 2021, the date after the meeting. (Tr., pp.515-516 (Mother).)

78. On December 10, 2021, Ms. Larson emailed the Parents a PWN from the December 2, 2021, IEP team meeting, and included a copy of the progress reports discussed at the IEP meeting. (P63, pp.3-4; Tr., pp. (Larson).) On January 19, 2021, Ms. Larson emailed the Parents a copy of the January 18, 2021, PWN and a copy of the most recent progress reports, and also mailed the documents to the Parents’ home address. (*Id.*) Also, Ms. Larson included the following in the January 19, 2021, PWN:

*4. [The Mother] states that she has not received any ESY progress reports or notes. As requested by [the Mother] she would like it documented that she does not believe that she has received nay ESY progress notes or reports. As stated in the prior written notice from the meeting on December 2, 2021, during this meeting the screen was shared to show [the Mother] where the progress note are located in the IEP document and that the ESY progress notes have been shared. This was also addressed in an email from Ms. Larson to [the Mother] on November 22, 2021. Another copy of progress notes will be mailed home with this prior written notice.”*

(P69, pp.3-4.)

### **Scheduling Contracted Providers**

79. After the October 28, 2021, and November 5, 2021, IEP team meetings, the District did not propose to amend the Student's IEP to allow either District employees or contract employees to deliver the Student's SDI in the Student's home. (Tr., pp.137-138, 277-279 (Larson).) But, after the October 28, 2021, and November 5, 2021, IEP meetings, Ms. Best (OT) and the Mother believed that the Parents had accepted the District's offer to send contracted providers into the Student's home to deliver the March 5, 2021, IEP required SDI. (Tr., pp.502-504; (Mother); 612-614 (Best).)

80. On November 15, 2021, the Parent emailed Ms. Larson stating: "You indicated it would not take too long to coordinate in person home instruction through a contract agency and November 19<sup>th</sup> was the timeline set. The 19<sup>th</sup> is only a few days (sic) and I haven't had any contact since the meeting ended on November 5." (P51, p.1; Tr., pp.502-504 (Mother).) Ms. Larson responded that the District had a contract with an SLP and an OT, but is still seeking to contract with a PT, a TVI, and a certificated special education teacher. (*Id.*)

81. On November 16, 2021, Joanie Bailey, the District school psychologist assigned to conduct the reevaluation of the Student, communicated with the Mother via email about scheduling contracted personnel to conduct an in person evaluation of the Student on November 24, 2021. (D40, pp.1-2; P52, pp.1-8.) Ms. Bailey communicated that the selected location was "Tillicum Portable 25" because it was an authorized location for District employees to perform "child find" work and because it is close where the Student resides. (*Id.*) The Parent communicated that the Student was [REDACTED] and that "it is not practical to move forward with these evaluations in person or with [the Student's] current IEP team at all . . . It appears that it makes the most sense for the evaluations to take place in our home with the new [contracted personnel] as [the Student] is a homebound student with medical limitations." (P53, p.2.)

82. In response, Ms. Bailey asked if the Parents were revoking consent to perform the reevaluation. (P53, p.8.) The Parent responded "I do not consent to [the Student] moving forward with in person evaluations with the current [assigned District employees]. Ms. Larson (special education supervisor) has a partially assembled [contracted] team that should be coming into our home soon." (P52, p.3.)

83. Ms. Larson and the Mother continued to communicate via email, with Ms. Larson explaining that it would be advantageous to participate in the reevaluation with current District employees because they were most familiar with working with the Student. (D42, pp.1-8; P52, pp.4-5; Tr., pp.278-279 (Larson).) Ultimately the Mother decided that “I would rather the evaluations be done properly and thorough (*sic*) with the appropriate people present,” and “It doesn’t’ make sense for the old [District employee] team to evaluate [the Student] . . .” (D42, pp.1-8; P52, pp.4-5; Tr., pp.278-279 (Larson).) On November 24, 2021, the District issued the Parents a PWN stating that the District was “refusing” to “continue” a “reevaluation” based on “parent emails to stop the reevaluation process.” (P57, p.1; Tr., pp.278-279 (Larson).)

84. Ms. Larson continued to seek contracts with a TVI, PT, and certified special education teacher to provide the Student with in person SDI in the home, and to schedule the contracted SLP and OT to begin working. (P52, p.7; Tr., pp.170-171 (Larson).) Ms. Larson attempted to establish a new team in its entirety before beginning services because the team members are required to collaborate with the current District employees and each other. (Tr., pp.170-171; 302-304 (Larson).) As part of establishing a new team to provide services to the Student, Ms. Larson was required to ensure that the District was complying with the terms of the contract between the District and the contract providers. (Tr., pp.302-304 (Larson).) Between November 5, 2021, and January 19, 2022, Ms. Larson reviewed the available contract providers and contract terms, and schedule those providers who were willing and able to perform work in the Student’s home. (*Id.*) However, because the contracted providers manage a caseload of 65-70 students at a time, it was challenging to coordinate the Student’s contracted provider services. (*Id.*)

85. At the December 2, 2021, IEP team meeting the participants discussed the status of the District’s offer to send contracted providers to deliver SDI in person in the Student’s home:

*[The Parents] inquired about the transition from a virtual education team to an in-person team. [The District] confirmed that there are two of the team members that are currently employed: SLP and OT. The [D]istrict is continuing to work with outside contract companies to hire the remaining providers for in-person instruction (certificated teacher, PT and TVI). [The Parent] asked about a start date for the two that are already onsite. [The District] was attempting to start in-person services once the full team has been established. Due to the length of time, [the District] will consider a hand off to the two [SLP and OT] that are currently on staff.*

(D43, pp.3-4; P62, p.1; Tr., pp.170-171 (Larson).)

86. On December 9, 2021, the Parent emailed Dr. Clancy, stating that she had not yet received any further communication about scheduling the contracted SLP and OT. (P62, pp.1-2; Tr., pp.516-517 (Mother).) On December 13, 2021, the Parent sent another email to Dr. Clancy describing in detail her disagreement with the December 10, 2021, PWN, particularly with the statements that the District was willing to send the contracted SLP and OT personnel to provide the Student's SDI and related services in person in the home. (D44, pp.1-3; P63, pp.2-3.) The same day, on December 13, 2021, Dr. Clancy responded via email, stating:

*The first critical point I want to reiterate – we continue to have services available at [the Student's] current school placement, Evergreen Elementary, where we can take significant steps to ensure that she is served in a safe environment.*

.....

*Ms. Larson continues to work with our staffing agencies regarding the services you have requested to be provided in your home. We have discussed having some of those services begin after winter break for the contractors that have been confirmed and are willing to come into your home. Ms. Larson is working on scheduling those services. The week of January 3<sup>rd</sup>, the current service team will discuss services with the contract agency SLP and OT, and services will begin in the home the following week. We will begin these services with co-teaching with the current providers for a few sessions to ensure a smooth transition.*

(D44, pp.1-3; P63, pp.3-4; Tr., pp.507-508 (Mother).)

87. On January 5, 2022, Ms. Larson emailed the contracted providers Deborah Haynes, OT, and Sylvia Gonzalez, SLP, as well as the Student's current District employed service providers, and stated "the team will be handing off the OT and SLP services to other providers that are contracted . . . We would like to also start [contracted service providers] in the home within a week of this email. Please let me know if that is a reasonable timeline." (D46, p.1; Tr., pp.174-175; Tr., pp.506-508 (Mother).)

88. On January 7, 2022, the Parents emailed Ms. Larson stating: "When will they be coming out to work with [the Student]? Today is January 7<sup>th</sup> and I have received zero communication about the new therapists who are supposed to begin services in a few days." (D44, pp.1-3;

P63, pp.7-8; Tr., pp.506-508 (Mother).) Ms. Larson responded that she was out sick and that she was continuing to work with the contracted providers to develop a schedule. (Id.; Tr., pp.174-175 (Larson); 508-509 (Mother).)

89. On January 12, 2022, the OT contracted service provider emailed Ms. Larson stating:

*I have some concerns regarding [REDACTED]  
[REDACTED] My caseload has difficulty wearing masks and I have gotten quite a few severe colds from [students] that have thus far tested negative for COVID . . . We are currently in a COVID surge and I was just told that the health department is closing classrooms at schools in our district, starting in home services at this time would seem to be against current prevailing trends. As such, I would also like in writing a waiver of liability from the parents for my company/the district.*

(D47, pp.1-2; Tr., pp.279-282 (Larson).) Ms. Larsen inquired about the OT contract provider's concerns via email dated January 18, 2022, and the OT contract provider confirmed that her concerns had been addressed. (Id.)

90. On January 18, 2022, Ms. Larson emailed the Parent to inform her that she was "out of the office last week" due to illness, and that she was "checking in with the team to receive an update on the progress of handing off the student information so in person services can start." (P67, p.2; Tr., pp. (Larson).)

91. On January 19, 2022, Ms. Larson emailed the Parent a PWN dated January 18, 2022, as well as progress reports for the Student. (P63, pp.9-10; Tr., pp.171-173 (Larson).) Regarding contracted personnel, the PWN stated:

*5. [The Mother] outlined in her email [of December 13, 2021] that the (sic) "The Clover Park School District was attempting to start in-person services once the full team has been established. Due to the length of time, the Clover Park School District will consider a hand off to the two [SLP and OT] that are currently on staff." She went on to express that she was shocked to learn the Clover Park School District is considering a hand off to the two providers that are currently on staff that will be moving into the positions to serve [the Student] in person. [The Mother] writes in her email she believes that Ms. Larson was refusing to allow them to begin services until an entire team could be assembled.*

6. *The Clover Park School District has been preparing the hand off of services from the [District employed] virtual providers to the in-person [contract] providers for Occupational Therapy and Speech Language Pathology. A meeting with providers is scheduled for January 19, 2022, to ensure that all parties have the necessary information to support [the Student] and to determine a start date.*

7. *In the [December 13, 2021] email from [the Mother] she documented that the family remains in contact with the previous Teacher for the Visually Impaired [Ms. Mancillas] and that this person would be willing to provide services to [the Student] in person. In an (sic) email response from Dr. Michaela Clancy it was explained that this would not work as the previous teacher is fully contracted with another district. Dr. Clancy responded via email to that request on December 13, 2021.*

(P69, pp.3-4; Tr., pp.172-173 (Larson).)

92. On January 26, 2022, Sylvia Gonzalez, the contracted SLP, emailed the Parent a notice titled "In Person Home Bound Services January 2022," stating that "OT & SLP homebound therapy services . . . begin Monday, February 7, 2022. There are several time options proposed for this date so please review and let us know your first and second choices." (P73, p.1; Tr., pp.176-177 (Larson).) The Parent and Ms. Gonzalez coordinated to begin sending contracted OT and SLP providers into the Student's home to provide in person services on February 7, 2022, at 11:00 a.m. to 12:00 p.m. (Tr., pp.508-509 (Mother).)

#### **Compensatory Education - ESY Period June 21, 2021, to July 29, 2021**

93. The week of June 21, 2022, Ms. Zook (PT) was on vacation and therefore not able to provide the Student's SDI in the area of gross motor skills as per the ESY IEP. (D26, p.1; Tr., pp.863-865 (Zook).)

94. Ms. Ottman and the Parent agreed that due to scheduling conflicts the week of June 21, 2021, Ms. Ottman would provide SDI in the areas of adaptive skills and cognitive development during two sessions the week of June 28, 2021. (P.24, p.1; Tr., pp.452-453 (Mother); 906 (Ottman).)

95. The Student received SDI from an SLP in the area of communication the week of June 21, 2021, (P25, p.1) The Student's assigned SLP for the ESY period did not testify regarding



the SDI she provided, but Ms. Laurila accounted for any missed ESY period minutes and “added on minutes” to her sessions during the 2021-2022 school year with the Student to ensure all minutes were served. (Tr., pp.785-787, 800-803 (Laurila).)

96. The Student did not receive vision SDI the week of June 21, 2021. (Tr., p.317 (Larson).) Ms. Mancillas provided the Student with vision SDI the weeks of June 27, 2021, and July 5, 2021, with Ms. Ding. (Tr., pp.1133, 1205-1206, (Ding).) Ms. Ding provided the Student with vision SDI the weeks of July 12, 2021, and July 19, 2021. (Tr., pp.1133, 1205-1206 (Ding).)

97. Notably, the Student was ill and not able to attend any services the week of July 26 through July 29, 2021. (P81, p.1; Tr., pp. (Mother).)

98. The Mother believed that as of the end of the ESY period of June 21, 2021, through July 29, 2021, the Student was entitled to receive 75 minutes of vision SDI per week comprised of “two 30 minute sessions per week direct service, with the remaining 15 minutes to help create or provide specially designed instruction / assistance for the IEP team.” (P81, p.2; Tr., pp.451-459 (Mother); 1205-1206 (Ding).)

99. On November 16, 2021, the Parent emailed Ms. Larson and Dr. Clancy, stating that she had kept track of the SDI and related service minutes that she believed the Student did not receive for the ESY period:

*The week of 6/21/2021 [the Student] did not receive any minutes of vision, physical therapy, or speech therapy services.*

*The week of 6/28/2021 [the Student] did not receive any speech services.*

*The week of 7/5/2021 [the Student] received partial vision minutes (30 minutes) and received no speech services.*

*The week of 7/12/2021 [the Student] received no speech or vision services.*

*The week of 7/19/2021 [the Student] received no speech or physical therapy services.*

(P54, pp.1-2; P81, pp.1-3; Tr., pp.160-162 (Larson); 450-459; 504-505 (Mother).) Ms. Best (OT) did not miss any sessions during the ESY period. (Tr., pp.598-599 (Best).)

## Compensatory Education – September 1, 2021, through February 2022

100. The academic year started on Wednesday, September 1, 2021, and the District providers assigned to the Student used related service minutes to review the Student's IEP, create a service schedule, and collaborate as a team. (Tr., pp.254-260; 321-322 (Larson); 745-746 (Zook); 1122-1123 (Ding).) The District providers did not deliver SDI directly to the Student. (*Id.*)

101. The Student did not receive SDI from Ms. Ottman in the areas of adaptive skills (30 minutes per week) and cognitive development (30 minutes per week) on September 7, 2021, due to technical difficulties. (P36, pp.1-3.)

102. The Student did not receive vision services from Ms. Ding on September 6, September 13, September 20, and September 23, due to scheduling miscommunications. (P37, pp.1-3; P39, pp.1-3 Tr., pp.322-323 (Larson); 1126-1129, 1206 (Ding).) However, Ms. Ding provided the Student with one 30 minute regular session and one 30 minute make-up session on September 27, September 29, September 30, October 1, and October 4, 2021. (Tr., pp.1126-1129, 1197-1199 (Ding).)

103. Ms. Ding provided 60 minutes of vision SDI during two bi-weekly 30 minute sessions the weeks of October 18, 2021, and October 26, 2021, but missed providing services the weeks of November 1, 2021, and November 8, 2021. (Tr., pp.322-324 (Larsen); 1126-1128 (Ding).) Ms. Ding keeps a spreadsheet of the date of service and the minutes the Student is served and provides the report to Ms. Ottman. (Tr., pp.11340-1132 (Ding).) For the period of September 1, 2021, through the date of the hearing, Ms. Ding provided the Student with 870 minutes of vision SDI, which exceeds the SDI minutes required by the Student's March 5, 2021, IEP and ESY IEP. (Tr., pp.1132-1133, 1162-64 (Ding).)

104. On November 16, 2021, the Parent emailed Ms. Larson and Dr. Clancy, stating that she had kept track of the SDI and related service minutes that she believed the Student did not receive for the period of September 1, 2021, through November 8, 2021:

.....

*The week of 9/1/2021 [the Student] received no services.*

*The week of 9/6/2021 [the Student] received no speech or vision services.*

*The week of 9/21/2021, [the Student] received no vision services.*

*On November 1<sup>st</sup>, no vision services were provided.*

*On November 8<sup>th</sup>, Vision no-showed to a scheduled session, resulting in again missed minutes.*

*It is totaled between ESY and the new school year (2021-22) that [the Student] is owed 7 hours and 30 minutes of missed TVI minutes. [The Student] is owed 7 hrs of missed speech minutes. [The Student] is owed 2hrs 15 minutes of missed physical therapy minutes. [The Student] is owed 45 min of missed Occupational therapy minutes.*

(P54, pp.1-2; P81, pp.1-3; Tr., pp.160-162 (Larson); 450-455; 504-505 (Mother).)

105. Ms. Ding provided 60 minutes of vision SDI to the Student during two, bi-weekly 30 minutes sessions per week the weeks of November 15, November 22, November 29, December 6, and December 13, 2021. (Tr., pp.1131-1134 (Ding).) Ms. Ding provided 60 minutes of vision SDI to the Student the weeks of January 3, January 10, January 17, January 24, and January 31, 2022. (*Id.*) Ms. Ding collaborated with the Student's other service providers bi-weekly for a total of 45 minutes to 1 hour per week as required by the March 5, 2021, IEP related service minutes. (Tr., pp.1122-1123 (Ding).) On February 7, 2022, Ms. Ding experienced a dental emergency and was not able to provide 30 minutes of vision services. (*Id.*) On February 14, 2022, Ms. Ding encountered a scheduling conflict and did not deliver SDI that day or on February 17, 2022.

106. On December 6, 2021, Ms. Ottman was not able to deliver SDI in the areas of adaptive skills and cognitive development because her microphone failed. (Tr., pp.323-326, (Larson); 683-686 (Mother).)

107. On December 13, 2021, Ms. Zook (PT) was not able to deliver the Student 45 minutes of SDI in the area of PT due to a scheduling conflict. (Tr., pp.865-866 (Zook).)

108. On January 3 and 17, 2022, Ms. Ottman was not able to deliver the Student 30 minutes of SDI in the areas of cognitive development and adaptive skills because of a medical appointment. (P71, p.3; Tr., pp.683-686 (Mother).) The week of January 17, 2022, through January 21, 2022, the Mother and Ms. Ottman emailed about scheduling "make up" sessions because she had missed providing services to the Student on December 6 and December 10,

2021, and January 3, 7, 10, and 21, 2022. (P71, p.3; Tr., pp.683-686 (Mother.) Ms. Ottman and the Parent communicated about scheduling the make-up services beginning on January 21, 2022. (*Id.*)

109. At the time of hearing, the Mother believed that the following additional services were missed between September 1, 2021, and February 14, 2022:

*September 13, 2021 – Only partial vision services were provided (30 minutes). [Ms. Ding] no-shows 9/20 and 9/23. Emailed [Ms. Ding] on 9/27 about missed sessions.*

*September 27, 2021 – Only partial vision services were provided (60 minutes). [Ms. Ding] no-shows to morning session 9/27. Met in afternoon.*

*Week of October 4, 2021 - Only partial vision minutes were provided. (60 minutes)*

*Week of October 11, 2021 – Only partial vision minutes were provided (60 minutes)*

*Week of October 18, 2021 – No vision services were provided. These were to be made up by adding an extra day for the next couple weeks. Only partial minutes were made up (60 minutes). On 10/15 [Ms. Ding] cancels 10/18 session due to needing to attend an appointment. Requested to add 5 additional minutes to each session until compensated.*

*Week of October 25, 2021 – only partial vision services were provided. (60 minutes) 10/25 and 10/27. [Ms. Ding] did not extend either session as agreed, emailed [Ms. Ding] (10/27 to address this and request that the missed sessions be made up in full. [Ms. Ding] agrees to 2 separate 30 minute sessions 10/29 [and] 11/5.*

*....*

*Week of December 6, 2021 – No special education minutes from teacher were provided. On 12/6/21 [Ms. Ottman] signed into teams but we could not hear her. She does email and say she apologizes that her microphone will not work. On 12/10/2021 [Ms. Ottman] emails 30 minutes before the scheduled session and says her microphone is not working still.*

*Week of December 13, 2021 – No PT minutes were provided. [Ms. Zook] cancels saying she has another meeting scheduled during [the Student’s] session time and it slipped her mind.*

*Wek (sic) of January 3, 2022 – 1/21 no sped, [Ms. Ottman] cancels has medical appointment*

*Week of January 17, 2022 – 1/21 no sped, [Ms. Ottman] cancels has medical appointment.*

*Week of February 7, 2022 - 2/7 no vision, [Ms. Ding] emails saying she has a dental emergency and cannot make [the Student’s] week*

*Week of February 14, 2022 – 2/14 no vision. [Ms. Ding] emails 5 minutes after services were to start, saying she has another meeting and cannot see [the Student]. 2/17 no vision. [Ms. Ding] cancels meeting with no explanation.*

(Tr., pp.453-467, 564-569 (Mother).)<sup>19</sup>

110. The Mother’s understanding was that the related service minutes in the March 5, 2021, and May 3, 2021, IEPs were supposed to be directly served by delivering SDI to the Student, and not used by the District’s employees to coordinate, collaborate, and create instructional plans. (Tr., pp.679-680 (Mother).) The Mother tracked in her journal the SDI minutes the District actually provided to the Student directly, but she did not distinguish between the SDI minutes and the related service minutes required by the March 5, 2021, IEP and May 2021 ESY IEP matrices. (Tr., pp.679-680 (Mother).) The Mother did not record or track make-up sessions. (Tr., pp.683-686 (Mother).)

111. The Student missed a number of other service minutes and sessions due to increased seizure activity and medical issues during the period of March 5, 2021, through the date of the hearing. (Tr., pp.454, 464, 469, (Mother); 597 (Best); 1087-1099 (Macias).)

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<sup>19</sup> The Mother used Exhibits 82-85 to refresh her recollection, but these demonstrative exhibits were not admitted into the record. (Tr., pp.453-454 (Mother).)

## Filing of Due Process Hearing Request

112. The Parents served their due process hearing request on OSPI and the District on February 4, 2022. (Due Process Hearing Request, Certification of Delivery, p.7.) The Parents mailed their due process hearing request to the Office of Administrative Hearings (“OAH”) and the document was stamped “Received Feb 9 2022 OAH Seattle.” (Due Process Hearing Request, p.1.) The envelope containing the due process hearing request does not identify the date of mailing. (Due Process Hearing Request, Envelope, p.9.)

113. Ms. Gonzalez emailed the parent on February 7, 2022, stating that in person in the home services from the contracted OT and SLP will not begin on February 7, 2022. (Tr., pp.508-510 (Mother).)

## CONCLUSIONS OF LAW

### THE IDEA AND JURISDICTION

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

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief, in this case the Parents. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

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

First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational

benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

*Rowley, supra*, 458 U.S. at 206-07 (footnotes omitted). For a school district to provide FAPE, it is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity.” *Id.* at 200-01.

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

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

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

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

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

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

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

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

## PROCEDURAL VIOLATIONS

**The Parents Have Shown that the District Failed to Provide a PWN Within a Reasonable Time After the May 2021 IEP Meeting, in violation of WAC 392-172A-05010; The Parents have Not Shown that the District Failed to Provide a PWN after Subsequent IEP meetings.**

### a. Applicable Law

6. A district must provide a PWN to the parents of a child eligible or referred for special education within a reasonable time before it proposes to initiate or change the identification, evaluation, or educational placement of the student, or the provision of FAPE to the student, or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. WAC 392-172A-05010; 34 CFR 300.503(a). The PWN 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 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(2)).

7. 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 purpose of the notice is to provide sufficient information to protect the parents’ rights under the Act.” *Kroot v. District of Columbia*, 800 F. Supp. 976, 982 (D.D.C. 1992). “ We have interpreted a "reasonable time" to be at least 10 calendar days, although some fact situations would justify a more extended period of time. Whether a shorter period of time would be acceptable in the presence of parental consent remains to be addressed.” *Letter to Winston*, 213 IDELR 102 (OSEP 1987).



8. The Parents argue that 1) they did not receive the PWN for the ESY IEP developed at the May 2021 meeting, 2) they did not receive the October 28, 2021, PWN within a reasonable time, and 3) the December 10, 2021, PWN was inaccurate. The District argues that 1) the Parents' claim that the May 2021 was not provided is outside the scope of the issue presented, 2) the District provided the Parents with the October 28, 2021, PWN within a reasonable time, and 3) the District addressed the Parents' concerns with the December 10, 2021, PWN by issuing the January 18, 2022, PWN accounting for the Parents' concerns.

**b. Analysis – May 2021 PWN**

9. It is important to note at the outset that the PWN that addressed the ESY IEP meeting reflects a date of "April 30, 2021," but resulted from an ESY IEP meeting that occurred on May 4 or 5, 2021.

10. The District is incorrect that the Parents' challenge to the PWN from the May 2021 ESY IEP meeting is outside the scope of the issues presented. The issue presented above and in the Second Prehearing Order states that the Parents claim they were not provided with PWNs "beginning May 3, 2021 and thereafter." Therefore, the Parents' challenge to the PWN issued after the May 2021 ESY IEP is squarely within the issue presented and the Parents' claim will be considered.

11. Regarding the PWN from the May 2021 ESY IEP meeting, the record reflects that Ms. Ottman's name is on the PWN, but there is no testimony that Ms. Ottman created or issued the PWN to the Parent. Further, as found above Ms. Ottman actually testified she did not hold or attend an ESY IEP meeting, which is consistent with a statement in the PWN that Ms. Ottman was not at the May 2021 ESY IEP meeting.

12. The Mother, on the other hand, credibly testified that the Parents did not receive a PWN after the May 2021, ESY IEP meeting. Moreover, even if the Parents did receive a PWN after the May 2021, ESY IEP meeting, the PWN did not meet the standards of WAC 392-172A-05010 because it was not correctly dated, did not refer to the ESY IEP meeting where the actions were proposed, discussed, or rejected, and was apparently created by a person who did not attend an ESY IEP meeting on May 4 or 5, 2021.

13. The record available supports the Parents' claim that the District did not issue a PWN within a reasonable time after the May 2021 ESY IEP meeting. Additionally, even if the District did timely issue a PWN, the PWN does not meet the requirements of WAC 392-172A-05010.

Therefore, it is concluded that the District violated WAC 392-172A-05010 by failing to timely provide the Parent with a PWN from the May 2021 ESY period.

14. In order to obtain relief, the Parents must also show by a preponderance of the evidence that the failure to issue the PWN amounts to a denial of FAPE. Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

- (a) *impeded the child's right to a free appropriate public education;*
- (b) *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*
- (c) *caused a deprivation of educational benefits.*

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

15. The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry that must focus on the unique needs of the student at issue. “A focus on the particular child is at the core of the IDEA,” and an IEP must meet a child’s “*unique needs.*” *Endrew F.*, 137 S.Ct. at 999 (emphasis in original). “An IEP is not a form document,” and the “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Id.* “Above all, an IEP team is charged with developing a ‘comprehensive plan’ that is ‘tailored to the unique needs of a particular child.’” *L.C. on behalf of A.S. v. Issaquah Sch. Dist.*, 2019 WL 2023567 at \*21, 119 LRP 18751 (W.D. Wash. 2019)(quoting *Endrew F.*, 137 S.Ct. at 994), *aff'd sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022).

16. While the Parents’ confusion and frustration with the lack of a PWN is understandable, there is no evidence presented that the District’s failure to issue a PWN after the May 2021, IEP meeting impeded the Student’s right to FAPE or caused a deprivation of educational benefits. during the ESY period of June 21, 2021, to July 29, 2021. The ESY IEP simply continued the Student’s March 5, 2021, IEP for a defined period of time to prevent loss of skill. Moreover, the Parents have not shown that they were denied an opportunity to participate in the decision making process because the Mother testified that she attended the May 2021 ESY IEP meeting, was aware of the ESY IEP’s contents, as well as, when and how it would be implemented.

17. Thus, while the District violated WAC 392-172A-05010 by failing to timely issue a PWN after the May 2021 ESY IEP meeting, the Parents have not met their burden and shown a denial of FAPE occurred. Therefore, no remedy is warranted in regard to this claim.

**c. Analysis – PWN October 28, 2021 PWN**

18. The Parents admit they received the October 28, 2021, PWN and the record shows that it was issued on November 5, 2021, which is within ten days of the October 28, 2021, IEP meeting. While it would have been more convenient for the Parents to receive the October 28, 2021, PWN prior to the November 5, 2021, IEP meeting, it cannot be said that the District violated WAC 392-172A-05010 by failing to issue the October 28, 2021, PWN on November 5, 2021. Given record, it is concluded that the Parents have not shown the District violated WAC 392-172A-05010.

**d. Analysis – PWN December 10, 2021**

19. Regarding the December 10, 2021, PWN, the District timely issued the PWN within eight days of the December 2, 2021, IEP meeting. The December 10, 2021, PWN's contents meet the requirements of WAC 392-172A-05010. Certainly, the Parents disputed the phrasing and verbiage of the December 10, 2021, PWN and the District responded by addressing the Parents' concerns in the January 18, 2022, PWN. The Parents received the January 18, 2022, PWN on January 19, 2022. There is no timing requirement regarding when a District must issue a subsequent PWN addressing a Parents' concerns regarding the content of an otherwise timely issued PWN that meets the requirements of WAC 392-172A-05010.

20. Given these circumstances, it must be concluded that the District timely issued the December 10, 2021 PWN within ten days of the December 2, 2021, meeting, the Parents received the December 10, 2021, PWN, and the District responded to the Parents' concerns in the January 18, 2022, PWN. Therefore, the Parents have not shown that a procedural violation of WAC 392-172A-05010 occurred.

**The Parents Have Not Shown that the District Failed to Meet the Requirements for Parental Participation in IEP Meetings beginning May 2021 and thereafter, as Required by WAC 392-172A-05010.**

**a. Applicable Law**

21. Parental participation in the IEP process is addressed in WAC 392-172A-03100. That rule provides:

*A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including:*

- (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and*
- (2) Scheduling the meeting at a mutually agreed on time and place.*
- (3) The notification required under subsection (1) of this subsection must:*
  - (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and*
  - (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student,*
- . . . .*
- (8) The school district must give the parent a copy of the student's IEP at no cost to the parent.*

22. Procedural safeguards are essential under the IDEA. The Ninth Circuit has stated that parents have a right to be involved in the development of a student's IEP:

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

*Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001). The IDEA requires that parents have the opportunity to “participate in meetings with respect to the identification, evaluation, and educational placement of the child.” WAC 392-172A-03100; 34 CFR §300.322. To comply with this requirement, parents must not only be invited to attend IEP meetings, but must also have the opportunity for “meaningful participation in the formulation of IEPs.” *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007).

23. A district violates this procedural requirement if it predetermines a student's placement, meaning that it “independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification.” *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). Likewise, a district “may not enter

an IEP meeting with a ‘take-it-or-leave-it’ approach.” *Id.* However, preparation by a district prior to an IEP meeting, including developing a draft IEP, does not itself establish predetermination. *Lee’s Summit R-VII Sch. Dist.*, 112 LRP 14677 (SEA MO 2012). Also, parents do not have veto power over individual provisions or the right to dictate any particular educational program. *Ms. S.*, 337 F.3d at 1131.

24. A parent is not prevented from participating in the IEP process if the school district first prepares an offer to be discussed at the meeting instead of conducting a “free-wheeling discussion and then creating an offer.” *Baquerizo v. Garden Grove Unified Sch. Dist.*, 826 F.3d 1179, 1186 (9th Cir. 2016).

**b. Analysis – May 2021 ESY IEP Meetings**

25. In their closing brief, the Parents do not argue that they were prevented from meaningfully participating in the May 2021 ESY IEP meeting. The District does not address this meeting in its closing brief either.

26. Notably, the record is confusing about when the May 2021, ESY IEP meeting occurred and who participated. However, the record supports a conclusion that the Mother attended the ESY IEP meeting, reviewed and discussed the contents of the ESY IEP with the team members present, and that the purpose of the meeting was to create an ESY IEP. The Mother did not testify that she was not able to meaningfully participate in the May 2021 meeting. As a result, it is concluded that the Parents have not shown they were not able to meaningfully participate in the May 2021, ESY IEP meeting.

**c. Analysis – October 28, 2021 IEP Meeting**

27. The Parents argue that Ms. Larson’s instruction to District IEP team members prior to the October 28, 2021, IEP meeting that they could not opine or comment on the Parents’ request to provide the Student with SDI in person in the home prevented the Parents from meaningfully participating. The District argues that the Parents have not proven their claims because the Mother attended the meeting and fully participated.

28. The October 28, 2021, IEP meeting met the requirements of WAC 392-172A-03100 because the IEP meeting time and place was mutually agreed to, the Parents received notice of the purpose, time, and location, and the Student’s entire IEP team, including the Parent, attended.

29. The only issue presented at the meeting was changing the Student's instructional model and/or service delivery location. Certainly, limiting the ability of the District's IEP team members to comment and discuss sending District personnel into the Student's home for in person instruction impeded what could have been a more collaborative process. However, the Parents' request was neither possible nor realistic at the time given the existence of the District's MOU. It is also noted that the District's personnel do not have a right under the IDEA to meaningful participation in the IEP meeting process; only the Parent has the right to meaningful participation in the IEP meeting process. The District's personnel has the obligation to present available options and to provide accurate information and answer questions.

30. At the October 28, 2021, IEP meeting, the Mother was able to ask questions and make requests, and Ms. Larson provided the Parent with answers and information about the District's ability to serve the Student in person in the home. Importantly, the District provided the Parents with the same instructional models and/or locations of service delivery (on-line remote during individual sessions, on-line remote through the Life Skills classroom, and "drive-in" services at the District), and Ms. Larson explained the instructional models. Thus, the District did not enter the meeting with a "take it or leave it" approach.

31. While the Parents frustration with the October 28, 2021, IEP meeting is understandable, the record reflects that the Parents had a meaningful opportunity to participate and choose from three distinct instructional models and/or service delivery locations. Therefore it is concluded that the District did not violate WAC 392-172A-03100.

**d. Analysis – November 5, 2021 IEP meeting**

32. Regarding the November 5, 2021, IEP meeting, the record again reflects that the Parents received notice of the meeting at a mutually agreeable time and place, notice of the purpose of the meeting, and the Mother attended with her advocate (Ms. Mashburn, PAVE). During this meeting the Mother and Ms. Larson discussed the same model and / or location of service delivery options, the Parent and Ms. Mashburn asked questions and advocated for the Student's needs, and Ms. Larson provided the Parents with information and answered her questions. Ultimately, the District offered to send contracted personnel into the Student's home to provide instruction in person. Therefore, the District did not enter the meeting with a "take it or leave it" approach.

33. Again, while the November 5, 2021, IEP meeting was challenging and focused on the conflict between the District's ability to provide the Parents with the specific result the Parents

requested, the Parents were provided with a meaningful opportunity to participate. Therefore, it is concluded that the District did not violate WAC 392-172A-03100.

**The Parents Have Shown that the District Failed to Timely Provide the Parent with Periodic Progress Reports in March 2021, June 2021, and November 2021 in violation of WAC 392-172A-03090.**

**a. Applicable Law**

34. An IEP must include:

(c) A description of:

....

*(ii) When the district will provide periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards); . . .*

WAC 392-172A-03090(1).

35. A district's obligation under the IDEA is to provide the parent with periodic progress reports. WAC 392-172A-03090(1)(c)(ii); 34 CFR § 300.320(a)(3). The regulations do not specify the exact content of the reports, or the remedy for failure to issue periodic reports of progress toward IEP goals. A district's failure to provide progress reporting data can be a procedural violation that results in a denial of FAPE. *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 855-856 (9<sup>th</sup> Cir. 2014).

36. The Parents generally argue that the written progress reports they received were not timely provided and that they were not timely informed of the Student's progress as a result. The Parents do not appear to claim, either during the hearing or in their closing briefs, that they did not receive the March 2021, and June 2021, written progress reports. The District argues that it provided the Parents with all written progress reports required by the June 11, 2020, IEP and March 5, 2021, IEPs.

37. Ms. Larson, Ms. Ottman, Dr. Clancy, as well as other District providers all testified that the District issued written progress reports on a triennial basis in November, March, and June. The June 11, 2020, IEP and the March 5, 2021, IEP corroborate their testimony, as these

documents require written progress reports on each goal in each area of concern on a “trimester” basis.

### **b. Analysis – March 2021 and June 2021 Written Progress Reports**

38. Regarding the March 2021 and June 2021, written progress reports, the District personnel assigned to the Student conducted progress reporting in the areas of adaptive skills, communication, cognitive development, gross motor, and fine motor skills, and provided a written report to the Parents. The record reflects that the District personnel used the progress reporting to inform the goals in the March 5, 2021, IEP. The Mother admitted that she received the March 2021 progress reporting attached to the March 5, 2021, IEP, and that she and the IEP team members discussed the proposed IEP goals based on the written progress reporting. There is no evidence that the Parents received the June 2021 written progress reports.

39. Ms. Mancillas, the Student’s TVI for vision, did not create a written report in either March 2021 or June 2021, despite conducting progress monitoring and discussing the Student’s progress with the Mother prior to and during the March 5, 2021, IEP meeting. Because no written report was created, it is concluded that the Parent did not receive a written progress report regarding the Student’s progress in the area of vision in March 2021, and June 2021. Thus, the Parents have shown that the District violated WAC 392-172A-03090(1).

40. However, the Parents make no assertion that the failure to provide them with a written progress reports prevented them from participating in the decision-making process or from understanding the Student’s progress between March 2021, and June 2021. On the contrary, the Mother discussed the Student’s progress and the proposed vision goal with Ms. Mancillas prior to the March 5, 2021, IEP meeting, and regularly during the Student’s SDI vision sessions. Additionally, the Parents do not argue that the lack of a written progress report from June 2021 either impeded the Student’s right to FAPE or caused a deprivation of educational benefit during the ESY period. Therefore, while the District violated WAC 392-172A-03090 by failing to give the Parents a written progress report in the area of vision in March 2021, and all progress reports in June 2021, it is concluded that the violation did not result in a denial of FAPE for the Student as per WAC 392-172A-05105.

### **c. Analysis – ESY Written Progress Reports**

41. ESY SDI and services are “provided to a student eligible for special education: (a) beyond the normal school year; (b) in accordance with the student’s IEP; and (c) are provided



at no cost to the parents of the student.” WAC 392-172A-02020. “The purpose of [ESY] is the maintenance of the student’s learning skills or behavior, not the teaching of new skills or behaviors.” *Id.* Additionally, the Student’s IEP is required to include “[ESY] services, if determined necessary by the IEP team for the student to receive FAPE.” WAC 392-172A-03090(g). However, there is no requirement in either WAC 392-172A-02020 and WAC 392-172A-03090 that requires school districts to conduct progress reporting for an ESY period.

42. The Parents argue that they were entitled to written progress reports after the end of the ESY period of June 21, 2021, and July 29, 2021, in order to understand whether the Student was making meaningful progress towards her IEP goals.

43. The District argues that there is no statute or rule that requires the District to conduct ESY progress reporting or provide written progress reports to the Parents at the end of the ESY period. While the District’s IEP software system allows for the District to conduct ESY progress reporting and the providers are encouraged to conduct such progress reporting, the District does not instruct or require its providers to conduct ESY progress reporting. Notably, the District providers all testified that they did measure the Student’s progress or issue written progress reports at the end of the ESY period.

44. The District is correct that there is no statute, rule, or District policy that required the District’s providers to provide written progress reporting at the end of the ESY period of June 21, 2021, to July 29, 2021. Further, the intent of ESY services is to prevent a loss of skill, not to ensure the Student is progressing towards IEP goals. It follows, then, that there is not an obligation to measure progress and create a written progress report, but instead the obligation is to note regression, loss of skill, and include progress notes if progress is made. Regardless, the District’s providers ultimately created ESY progress reports based on the available information and data, and provided the Parents with written progress reports on December 2, 2021.

45. The Parents, then, have not carried their burden and have not shown that the District engaged in a procedural violation by failing to provide the Parents with written progress reports at the end of the ESY period of June 21, 2021, to June 29, 2021.

#### **d. Analysis – November 2021 Written Progress Reports**

46. Beginning on October 28, 2021, the Parents made repeated requests for progress reports, and the District responded by informing the Parents that progress reports would be issued in November 2021, during parent teacher conferences. Only Ms. Ding provided the

Parent with a written progress report in the area of vision on October 28, 2021, in response to the Parents' request.

47. The testimony of the witnesses, together with the emails and written progress reports created in November and December 2021, show that the Mother did not receive written progress reports at the November 17, 2021, parent-teacher conference, but that the Mother and Ms. Ottman discussed the Student's progress for the ESY period and the period of September 1, 2021, through November 17, 2021. It appears from the dates on the progress reports and the testimony of the providers that the written progress reports were created between November 30, 2021, and December 3, 2021. The record also reflects that these written progress reports were shown to the Parent on December 2, 2021, during the IEP meeting, and emailed and mailed to the Parents on December 2 and December 10, 2021.

48. The record supports a conclusion that the District violated WAC 392-172A-03090 by failing to provide the Parents with written progress reports at the November 17, 2021, parent-teacher conference, and instead created the written progress reports at a later date.

49. However, the Parents have not shown that the District's failure to provide written progress reports on November 17, 2021, violated the Student's right to a FAPE as described by WAC 392-172A-05105. The Parent discussed the Student's progress with Ms. Ottman at the November 17, 2021, parent-teacher conference and with the IEP team December 2, 2021. Ultimately, the Parent received the written progress reports on December 10, 2021. Thus, the Parent was not prohibited from participating in decision making due to a lack of written progress reports. Also, the Parent does not argue, and there is nothing in the record that indicates the Student's right to FAPE was denied or that she was deprived an educational benefit as per WAC 392-172A-05105.

50. Given the circumstances, then, it is concluded that the District violated WAC 392-172A-03090 by failing to provide the Parent with written progress reports on November 17, 2021. However, because the procedural violation did not amount to a denial of FAPE, the violation does not warrant any remedy as per WAC 392-172A-05105.

**The Parents Have Not Shown that the District Failed to Measure the Student's Progress toward Meeting the Annual Goals Set Forth in the Student's March 5, 2021 IEP.**

**a. Applicable Law**

51. An IEP must include:

(c) A description of:

*(i) How the district will measure the student's progress toward meeting the annual goals described in [the IEP] . . .*

WAC 392-172A-03090(1). A district's obligation under the IDEA is to periodically measure a student's progress toward annual IEP goals in accordance with the measuring methods described in the Student's IEP. WAC 392-172A-03090(1)(c)(ii); 34 CFR § 300.320(a)(3).

52. The Parent has the burden to establish as a procedural violation that the District did not measure the Student's progress toward meeting the annual goals in the March 5, 2021, IEP. As found above and concluded below, the Student's March 5, 2021, IEP contained measurable annual goals that included a statement of how progress towards each goal would be measured. Further, the March 2021, June 2021, and November/December 2021 progress reports reflect that the District's personnel measured the Student's progress. Each provider used a standardized indicator measurement from a table on the progress report form to generally describe the Student's progress, and the providers also entered notes regarding the Student's progress towards each goal.

53. Ms. Zook, Ms. Larson, Ms. Mancillas, Ms. Ottman, Ms. Best, Ms. Ding, and Ms. Laurila all testified about how they measured the Student's progress towards the March 5, 2021, IEP goals and that they measured the progress in March 2021, June 2021, and November/December 2021. Even Ms. Mancillas, while she did not create written progress reports in the area of vision, credibly testified that she measured the Student's progress and discussed the progress with the Mother on a regular basis. All the providers testified that the Student was progressing in some fashion towards each goal, despite some periods of illness and resulting regression.

54. While the Parents' confusing and frustrating experience regarding receipt of written progress reports, as well as the confusion around measuring the Student's progress during the ESY period, is certainly understandable, the Parents do not point to any evidence in the record that supports a conclusion that the District failed to ultimately measure the Student's progress towards the goals in the March 5, 2021, IEP. Given these circumstances, it must be concluded that the Parents have not carried their burden and have not proved that the District failed to measure the Student's progress as required by WAC 392-172A-03090.

The Parents Have Shown that the District Failed to Implement the Student’s IEP in the Areas of Cognitive Development, Adaptive Skills, and Gross Motor Skills as Required by the Student’s March 5, 2021, IEP through the 2021-2022 academic year and thereafter, as required by WAC 392-172A-03090 through 03115.

a. Applicable Law

55. Once an IEP is completed, the District is obligated to implement the IEP in conformity with its provisions. WAC 392-172A-03105(2)(b). Only material failures to implement an IEP violate the IDEA. *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.*

“[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).

56. All Washington school districts were ordered to stop all in-person educational programs on March 12, 2020, by proclamation from the Governor of Washington State. Governor Proclamation 20-08, 20-09.1. The U.S. Department of Education (“DOE”) issued guidance that same day stating:

*If an LEA closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, than an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child’s individualized education program (IEP) ....*

U.S. Dep't of Education, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (March 2020) at p. 2.

57. OSPI also issued guidance stating, “[t]here remains an expectation that individualized education program (IEP) services will be delivered to the maximum extent possible during the pandemic while adjusting delivery methods to comply with state and local health/safety restrictions.” *OSPI Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in Summer and Fall 2020* (released 3/24/20, last updated 8/26/20). This guidance further recognized that there have been no changes made to the IDEA or its implementing regulations, thus, school districts are not relieved of their obligation to comply with said laws. *Id.* Further, OSPI provided school districts with the “*Reopening Washington Schools 2020: Special Education Guidance*,” “*Special Education Planning Guide for Reopening Washington Schools 2020*,” and “*Summary of Reopening Washington Schools 2020: Special Education Guidance*” to assist schools with formulating reopening plans.

58. “If a student is absent for personal reasons, like illness or family trips, the district does not have to make up any IEP services that are missed. However, if the Student misses services due to reasons connected to school, like the student’s participation in a field trip or when a service provider is not available, the district must make up the missed IEP services.” Letter to Copenhagen, 108 LRP 33574 (2008)

## **b. Analysis**

59. The Parents argue that the Student is entitled to “5,880 minutes in all areas for the 2021-2022 school year. The District argues that the Parents confuse related service minutes and SDI, did not keep track of make-up sessions and extra sessions, and that some SDI may not have been provided but the failure was not a material failure.

60. The Parents’ request is contrary to their own record keeping which does not distinguish between related service minutes and SDI, and ignores the March 5, 2021, IEP service matrix requirements. Also, the Parents’ request does not account for the excess vision services provided on a bi-weekly basis, the make-up sessions administered by a number of the providers, and the accounting of services performed by the District’s personnel in December 2021.

61. Based on the available evidence and the findings of fact above, the Parent has shown that the District more likely than not did not provide the Student with SDI on the following days for the following minutes:

12/6/21	Cognitive Development	Ottman	30 minutes
12/6/21	Adaptive Skills	Ottman	30 minutes
12/13/21	Gross Motor	Zook	45 minutes

62. The reasons for missing these sessions include technical failure and the providers' personal appointments. Given the reason for the failure to implement, as well as the lack of evidence of make-up sessions, it must be concluded that the District failed to implement the Students' March 5, 2021, IEP on three occasions and therefore a violation of WAC 392-172A-02020 occurred. Relief in the form of compensatory education is warranted.

**The Parents Have Shown that the District Failed to Implement SDI in the Areas of Fine Motor, Gross Motor, Vision, and Communication as set forth in the Student's May 2021 IEP for the ESY Period of June 21, 2021, and July 27, 2021, as required by WAC 392-17A-02020 and WAC 392-172A-03090 through 03115.**

**a. Applicable Law**

63. The law that applies to a failure to implement an ESY IEP is the same as the law that applies to the failure to implement a regular IEP and is set forth above in Conclusions of Law paragraphs 55-58.

**b. Analysis**

64. The Parent argues that the Student is entitled to 675 minutes of SDI in all areas for the ESY period. The District again argues that the Parent has confused related service minutes with SDI minutes, and while some SDI may not have been provided, the failure was not a material.

65. The Parent has carried her burden and has shown by a preponderance of the evidence that on December 2, 2021, the District reviewed the ESY period provider notes and agreed to provide the Student with the following compensatory SDI: 45 minutes of OT, 45 minutes of PT, 2.5 hours of TVI, and 2.5 hours of SLP.

66. While the Findings of Fact above show that the District may not have actually failed to provide the Student with SDI in all the areas identified in the agreement, there was a meeting of the minds between the District and the Parents, that the District would provide SDI in these areas for the specific amount of time. The parties' agreement was reflected in the December

10, 2021, PWN and January 18, 2021, and as testified to by Dr. Clancy, no further action was required to begin providing compensatory education.

67. However, there is nothing in the record that shows the District followed through with providing the agreed upon compensatory education. On the other hand, the Mother, Dr. Clancy and Ms. Larson all testified that the compensatory education was not implemented, and the Parents' emails of December and January 2021, corroborate this testimony.

68. Therefore, it is concluded that there is sufficient evidence to show that the District materially failed to implement SDI in the areas of OT, PT, TVI, and SLP from June 21, 2021, through July 29, 2021, and then failed to provide the compensatory education it agreed to provide. As a result, the Parents have carried their burden of showing a violation of WAC 392-172A-02020 occurred and a remedy in the form of compensatory education is warranted.

### **SUBSTANTIVE VIOLATION**

**The Parents Have Not Shown that the District Failed to Develop Reasonable and Appropriate IEPs on March 5, 2021, and May 2021 that Include Annual Measurable Goals Designed to Enable the Student to Make Progress Given the Student's Individual Circumstances, as required by WAC 392-172A-03090.**

#### **a. Applicable Law**

69. When determining whether an IEP is appropriate, the "question is whether the IEP is reasonable, not whether the court regards it as ideal." *Rowley*, 458 U.S. at 206-07. The determination of reasonableness is made as of the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is "a snapshot, not a retrospective." *Id.* In developing a Student's IEP, WAC 392-172A-03110(1) requires the IEP team to consider:

- (a) The strengths of the student;*
- (b) The concerns of the parents for enhancing the education of their student;*
- (c) The results of the initial or most recent evaluation of the student; and*
- (d) The academic, developmental, and functional needs of the student.*

70. An IEP must include a statement of the program modifications and supports that will be provided to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with

other students, including nondisabled students. WAC 392-172A-03090(1)(c)-(d); 34 CFR 300.320(a)(4)(ii).

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

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

73. An IEP must contain a statement of a student's present levels of academic and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. WAC 392-172A-03090(1)(a); 34 § CFR 300.320(a)(1). Present levels must include baseline measurements for goals. *Northshore Sch. Dist.*, 114 LRP 2927 (SEA WA 2013).

74. An IEP must include a statement of the special education and related services to be provided to the student to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students. WAC 392-172A-03090(1)(d); 34 CFR §300.320.

75. "Specially designed instruction" means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the student's



unique needs that result from the student's disability and to ensure the student's access to the general education curriculum. WAC 392-172A-01175; 34 CFR §300.39(b)(3).

76. "Related services" are transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, including SLP and OT services and parent counseling and training. WAC 392-172A-01155(1).

77. School districts are generally entitled to deference in deciding what programming is appropriate for a student. *J.L. v. Mercer Island School Dist.*, 575 F.3d 1025, 1031 n.5 (9th Cir. 2009). For that reason, IEPs need not address the instructional method to be used unless a specific methodology is necessary for a student to receive an appropriate education. See *id.* at 1039; see also *Department of Education, Analysis of Comments and Changes to IDEA Regulations*, 71 Fed. Reg. 46665 (2006) (nothing in IDEA requires IEP to include specific methodology; methods may be addressed in IEP if necessary for child to receive FAPE).

78. The IEP Team must also determine a Student's "least restrictive environment," as required by WAC 392-172A-02050:

*Subject to the exceptions for students in adult correctional facilities, school districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided:*

*(1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and*

*(2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.*

79. Regarding a student's placement, the IEP team must consider the terms of WAC 392-172A-02060:

*(1) When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents,*

and other persons knowledgeable about the student, the evaluation data, and the placement options.

(2) The selection of the appropriate placement for each student shall be based upon:

- (a) The student's IEP;
- (b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section;
- (c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and
- (d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

(3) Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home.

80. The determination of reasonableness is made as of the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is “a snapshot, not a retrospective.” *Id.* (“Instead of asking whether the [IEP] was adequate in light of [the student’s] progress . . . the more pertinent question [is] whether the [IEP] was appropriately designed and implemented so as to convey a meaningful benefit [to the student].”)

81. “Actual educational progress can (and sometimes will) demonstrate that an IEP provides a FAPE . . . But the inverse of this rule is not always true, because an inquiring court ought not to condemn [an IEP] ex post merely because the disabled child's progress does not meet the parents' or the educators' expectations.” *Morrison v. Perry School Dep't.* 119 LRP 26408 U.S. Dist. Ct. Maine (July 11, 2019). A Court must examine the IEP prospectively, rather than retrospectively. *Adams*, 195 F.3d at 1149.

## **b. Analysis**

82. The Parent argues that the March 5, 2021, IEP, and therefore the May 2021, IEP that was based on the March 5, 2021, IEP, were not reasonable and appropriate because “it contained no mechanism to convert the [service delivery] to in-person at the home once the [Covid-19 public health emergency] subsided.” (Parents’ Closing Brief, pp.33-34.) Essentially, the Parents argue that the instructional models and/or service delivery location options for

after the Covid-19 public health emergency were not set forth in the March 5, 2021, IEP, and May 2021, IEP and therefore they were not reasonable or appropriate.

83. The District argues that the March 5, 2021, IEP and May 2021, IEP were reasonably calculated to allow the Student to make appropriate progress given the Student's circumstances. Specifically, the District asserts that both IEPs contained annual, measurable, appropriate goals based on the Student's current progress. The District also asserts that the Student's LRE and placement were agreed upon at the March 5, 2021, IEP meeting and that the LRE designation of "Homebound" with placement in the Evergreen Elementary Life Skills classroom is remains undisputed. (District's Post-Hearing Brief, pp.14-17.) Finally, the District asserts that the Parents are challenging the instructional models and/or service delivery locations which are not part of, or required to be included in, the Students' March 5, 2021, IEP or May 2021 IEP. Regardless, the District asserts that the Parents selected the instructional model and/or service delivery location of on-line remote learning at the March 5, 2021, IEP meeting, and May 2021, IEP meeting, and both IEPs reflect that the Student will access her education through on-line remote learning. Further, even though the District was not required to do so, the District has continued to offer multiple options for delivering the Students' SDI.

84. First, all the providers testified that the Student's goals were reasonably calculated to allow the Student to progress in each area of concern, and that the goals were measurable. Moreover, as demonstrated by the progress reporting conducted, the goals were created based on the Student's current progress and the Student regularly made progress towards each goal. The Parents have presented no evidence to the contrary and make no argument otherwise. In fact, the Mother testified that she does not dispute the goals or content of the March 5, 2021, IEP. (Tr., pp.519-520 (Mother).) Notably, the goals in the May 2021, IEP were exactly the same goals. Given the lack of any argument or evidence to the contrary, it must be concluded that the Parents have not carried their burden and have not proved that the March 5, 2021, IEP and May 2021, were not reasonably calculated to allow the Student to make appropriate progress given the Student's individual circumstances.

85. Regarding the claim that the District failed to specifically include in person in the home delivery of SDI in the March 5, 2021, IEP, and May 2021 IEP, the Parents' assertions confuse the Student's LRE and placement with the District's instructional models and/or service delivery locations.

86. Importantly, WAC 392-172A-02050 requires that District establish the Student's LRE and provide the Student with SDI "to the maximum extent appropriate in the general education environment," and in "special classes, separate school, or other removal . . . only if

the nature or severity of the disability,” requires such removal. Regarding the Student’s placement, WAC 392-172A-02060 requires that the decision regarding the Student’s placement be made annually and that the IEP team consider a range of placement options based on the Student’s IEP, LRE, and the option that “provides a reasonably high probability of assisting the student to attain his or her annual goals,” as well as “any potential harmful effect on the student or on the quality of service which he or she needs.”

87. In the issue statement presented, the Parents have not specifically alleged a violation of either WAC 392-172A-02050 or -06020. Even so, the District is correct that it is not disputed that the Student’s LRE is “Homebound/Hospital” and that the Student is placed at Evergreen Elementary School in the Life Skills classroom where she has been enrolled since 2017. Identification of the Student’s LRE and placement is all that is required to be included in the Student’s March 5, 2021, IEP, and the May 2021, IEP.

88. The Parents have failed to present any statute, rule, or policy that requires the District to set forth the instructional model and/or service delivery location in the March 5, 2021, IEP or May 2021, IEP. Even so, the March 5, 2021, IEP and May 2021, IEP establish clearly that the Student will access her education through the on-line remote option via the Life Skills classroom at Evergreen Elementary.

89. Notably the District offered the Parents three different instructional models and/or service delivery locations to choose from at the March 5, 2021, IEP meeting, and the Parents selected the option of on-line remote instruction. The Parents again selected on-line remote instruction at the May 2021, IEP meeting. Thereafter, the District repeatedly offered the Parents other instructional models and/or service delivery locations. It cannot be concluded, then, that the Parents did not receive ample opportunity select different instructional model and/or service delivery location at any given point.

90. Essentially, the Parents request a specific instructional model and/or service delivery location because in the past the Student temporarily received in person in the home instruction as per the “Hospital” designation of WAC 392-172A-02100. The Parents desire the same opportunity as long as the Student is [REDACTED] [REDACTED] By going to the Student’s home in July 2021, Ms. Ottman, Ms. Mancillas, Ms. Best, and Ms. Zook reinforced the Parents’ expectations that they were entitled to a specific instructional model and/or service delivery location.

91. However, WAC 392-172A-02100 applies for a defined period of four weeks and is “limited to services necessary to provide temporary intervention as a result of a physical disability or illness.” Further, Ms. Ottman, Ms. Best, Ms. Mancillas, and Ms. Zook violated the

District's policy against entering the home of a Student, and created an unrealistic expectation.

92. Given the extended length of time that the Student was homebound due to the Covid-19 public health emergency, the Parents' request to include in person in the home instruction in an annual IEP is contrary to WAC 392-172A-02100. Moreover, the Parents' reasoning ignores the fact that the District's employees are prohibited from entering the Student's home during the period at issue as per the MOU and TPCHD requirements.

93. Also, the District (even though not required to do so) attempted to meet the Parents' specific demands by sending contracted providers to the Student's home to deliver SDI in person. However, as evidenced by the lack of SLPs, special education teachers, and PTs available for contract, the District is unable to satisfy the Parents' request.

94. The Parents' desire to obtain the best instruction for the Student given the circumstances is understandable, but the District is not required to meet the Parents' specific demands for a particular instructional model and/or service delivery location when three other options (on-line remote access to the Life Skills classroom platform, on-line remote instruction in individual sessions, and "drive-in" services at the District) are available.

95. Given the specific issue identified by the Parents, the applicable law, and the evidence presented, it is concluded that the Parents have not carried their burden and have not shown that the District failed to develop a reasonable IEP that was calculated to enable the Student to make appropriate progress in light of her individual circumstances. Further, there is no statute, rule, or policy that requires the District to send District employees or contracted personnel into the Student's home to provide in person SDI.

96. Therefore, it is concluded that the Parents have not carried their burden and have failed to prove a violation of WAC 392-172A-03090.

### **REQUEST FOR RELIEF**

97. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), cited with approval in *R.P. v. Prescott Unif'd Sch. Dist.*, 631 F.3d 1117, 1125 (9<sup>th</sup> Cir. 2011). Compensatory education is not a contractual remedy, but an equitable one. "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9<sup>th</sup> Cir. 1994).

Flexibility rather than rigidity is called for. *Reid v. District of Columbia, supra*, 401 F.3d at 523-524. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Reid v. District of Columbia, supra*, 401 F.3d at 524.

98. As concluded above, the District violated WAC 392-172A-02020 for the period of June 21, 2021, through July 29, 2021. Based on the evidence available and the December 2, 2021, agreement between the parties, the Parents are awarded compensatory education in the form of SDI as follows: 45 minutes of fine motor (OT), 45 minutes of gross motor (PT), 2.5 hours of vision (TVI), and 2.5 hours of communication (SLP).

99. As concluded above, the District violated WAC 392-172A-02020 for the period of September 1, 2021, through February 17, 2022. Based on the evidence available, the Parents are awarded compensatory education in the form of SDI as follows: 30 minutes cognitive development (special education teacher); 30 minutes of adaptive skills (special education teacher); and 45 minutes of gross motor (PT).

100. The Parents included in their request for relief that the compensatory education be provided by sending personnel, contracted providers or District employees, into the home. As concluded above, the Parents' request to require the District employees into the home to provide compensatory education services is neither possible nor realistic, and therefore denied.

101. Therefore, it is ordered that the compensatory education awarded above may be provided by the District's employees via on-line remote instruction, or by contracted providers in person in the Student's home. Additionally, the Student may receive compensatory education awarded above via "drive-in" services at the District.

### ORDER

Based on the above findings of fact and conclusions of law, it is THEREFORE HEREBY ORDERED:

1. The Parents have shown that the District failed to provide a prior written notice within a reasonable time after the May 2021 IEP meeting in violation of WAC 392-172A-05010. The Parents have not shown that the Student was denied a FAPE and therefore no remedy is awarded.

2. The Parents have not shown that the District failed to provide a prior written notice after the October 28, 2021, November 5, 2021, and December 5, 2021, IEP meetings, in violation of WAC 392-172A-05010.

3. The Parents have not shown that the District failed to meet the requirements for parental participation in IEP meetings beginning May 2021 and thereafter, as required by WAC 392-172A-05010.

4. The Parents have shown that the District failed to timely provide the Parent with periodic progress reports in March 2021, June 2021, and November 2021 in violation of WAC 392-172A-03090. The Parents have not shown that the Student was denied a FAPE and therefore no remedy is awarded.

5. The Parents have not shown that the District failed to measure the Student's progress toward meeting the annual goals set forth in the Student's March 5, 2021 IEP, in violation of WAC 392-172A-03090.

6. The Parents have shown that the District failed to implement the Student's March 5, 2021, IEP during the ESY Period of June 21, 2021, through July 29, 2021, in violation of WAC 392-172A-03090 through 03115.

7. The Parents have shown that the District failed to implement the Student's March 5, 2021, IEP during the 2021-2022 academic year, in violation of WAC 392-172A-03090 through 03115.

8. The Parents have not shown that the District failed to develop reasonable and appropriate IEPs on March 5, 2021, and May 2021 that include annual measurable goals designed to enable the Student to make progress given the Student's individual circumstances, in violation of WAC 392-172A-03090.

IT IS FURTHER ORDERED THAT:

1. The Parents are awarded compensatory education of specially designed instruction as follows: 30 minutes cognitive development (special education teacher); 30 minutes of adaptive skills (special education teacher); and 45 minutes of gross motor (PT).

2. The Parents are awarded compensatory education in the form of specially designed instruction as follows: 45 minutes of fine motor (OT), 45 minutes of gross motor (PT), 2.5 hours of vision (TVI), and 2.5 hours of communication (SLP).

3. All other requests for relief are Denied.

Served on the date of mailing.



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COURTNEY E. BEEBE  
Administrative Law Judge  
Office of Administrative Hearings

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

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



DECLARATION OF SERVICE

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

Parents



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Dated August 26, 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