WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:	Docket No. 08-2022-OSPI-01663
Battle Ground School District	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
	Agency: Office of Superintendent of Public Instruction
	Program: Special Education
	Cause No. 2022-SE-0097

Language Access Notice

English

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[redacted]

A due process hearing was held before Administrative Law Judge (ALJ) Jacqueline Becker on April 25, 26, 27 and 28, and May 8, 2023, via zoom videoconference. The Parents of the Student whose education is at issue[1] (Parents) represented themselves. The Battle Ground School District (District) was represented by Erin Sullivan-Byorick and Nathan Schmutz, attorneys at law. Also present for the District was Ellen Wiessner, District Executive Director of Special Services.

PROCEDURAL HISTORY OF THE CASE

The Due Process Hearing Request (Complaint) in this matter was filed by the Parents with the Office of Administrative Hearings (OAH) on August 5, 2022. The Complaint was given Cause No. 2022-SE-0097 and assigned to ALJ Becker.

[1] To ensure confidentiality, names of parents and students are not used.

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A related case with identical parties was previously filed by the District on May 25, 2022, and was given cause number 2022-SE-0071. The District's case sought to establish the appropriateness of the reevaluation of the Student dated May 11, 2022. A due process hearing in that matter was held before ALJ Becker in September 2022. A final order was issued on December 1, 2022, which determined that the Student's reevaluation was appropriate and the Parents were not entitled to an independent educational evaluation (IEE) of the Student at public expense.

A motion for summary judgment was filed in this matter by the District in December 2022, seeking summary judgment as to all issues raised in the Complaint. An order granting in part and denying in part the District's motion for summary judgement was issued on February 17, 2023. The Parents filed a proposed amended complaint on December 20, 2022. The Parents were granted leave to amend the Complaint on March 15, 2023, and the due process hearing was set for April 25 through 28, 2023.

Multiple prehearing conference were held to address various issues. A [redacted] interpreter was provided for the Mother at all prehearing conferences and at the due process hearing.

EVIDENCE RELIED UPON

Exhibits Admitted

Parents' Exhibits: P1, P2, P4, P5, P7, P9, P10, P15, P16, P22, P27, P28, P32, P35-38, P40, P42, P44, P48.

District's Exhibits: D1-3, D5-10, D12-15, D17-19, D21-32, D34-36, D38-40, D42-44, D46-50, D53, D54, D56-58, D61-82.

Witnesses Heard

Margo Faron, District Occupational Therapist
Alex Bennet, Assistant Principal at Daybreak Middle School
Justin Pierce, Principal at Daybreak Middle School
Jaynie Mintz, District general education teacher
Teresa Edmiston, District general education teacher
Kim Hamilton, District school psychologist
Jordan Osborne, District general education teacher
Lesli Collum, Assistant Principal at Daybreak Middle School
Ellen Wiessner, District Executive Director of Special Services
Sarah Pitoyo, District speech-language pathologist
The Student's Mother
The Student's Father

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Post-Hearing Briefs

The due date for post-hearing briefs was July 6, 2023. The parties' post-hearing briefs were timely filed.

DUE DATE FOR WRITTEN DECISION

The due date for a written decision in this case was continued to thirty (30) calendar days after the close of the record by order dated September 12, 2022. The record closed with the receipt of the post-hearing briefs on July 6, 2023, and the due date for the written decision is August 5, 2023.

ISSUES

The issues heard at the due process hearing were:

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

i. Failing to adequately protect the Student from harassment, intimidation, and bullying (HIB) and failing to add goals to the Student's Individualized Education Program (IEP) pertaining to HIB;

ii. Denying the Parents meaningful participation in the IEP process by inappropriately cutting short the IEP meetings held on February 16 and May 11, 2022;

iii. Denying the Parents meaningful participation in the resolution process by refusing to allow the Parents to record the resolution meeting held on August 29, 2022;

iv. Denying the Parents meaningful participation in the IEP process by providing the Parents with an inaccurate [redacted] translation of the Student's discipline reports which list the wrong referrer;

v. Denying the Parents meaningful participation in the IEP process by treating the Student's mother with bias, including unfair treatment, providing erroneous translations, sending incomplete records, and providing unreasonable explanations pertaining to the resolution meeting;

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vi. Withholding speech services for the Student on several occasions in April 2022 without informing the Parents or Student, and failing to provide make up sessions for the missed services;

vii. Failing to address the Student's expressive language and self-advocacy difficulties, as well as his health issues, since March 2021;

viii. Failing to implement the Student's IEP when he transferred to the District in February 2021; and

ix. Providing an inappropriate IEP in March 2021 that failed to include adequate minutes of specially designed instruction (SDI) and failed to include necessary accommodations and modifications pertaining to communication, expressive language, and self-advocacy.

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

i. Continued monitoring of the Student's health and safety during school hours, especially at recess;

ii. Make up sessions for the speech services missed in April 2022;

iii. Special education programming with accommodations and modifications to address the Student's current needs;

iv. Continuation of a program to help improve the Student's self-advocacy skills, and a 504 plan;[2] and

v. Such other equitable remedies as are shown to be appropriate.

FINDINGS OF FACT

In making these findings of fact, the logical consistency, persuasiveness, and plausibility of the evidence has been considered and weighed. To the extent a finding of fact adopts one version of a matter on which the evidence conflicts, the evidence adopted has been determined to be more credible than the conflicting evidence. A

[2] A "504 plan" refers to section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 et seq., a federal statute that protects qualified individuals who have disabilities from discrimination based on their disabilities.

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84. Ms. Pitoyo does not think the Student needs to be monitored at school more than other students are monitored. Additional monitoring would be "very disruptive" to the Student because his peers would know he is being watched by the adults and that would adversely impact him. Tr. 209-10. It could also create inappropriate dependence on adults. *Id.*

85. The Student expressed to Ms. Pitoyo that he has mastered his communication goals and his work with her is "too easy." Tr. 210-11. The Student becomes less engaged when his work is too easy. Ms. Pitoyo feels it is harmful to the Student to be removed from the general education setting even for a short time because it removes him from participation with his peers. *Id.* She recommended that he be returned 100% to general education. *Id.* at 212.

86. Ms. Collum has interacted with the student in her role as assistant principal at Daybreak. She described him as quiet but willing talk to her if she greets him. She has noticed that the Student engages with his peers at recess, lunch, and in the classroom. She described him as "a very typical seventh grade student." Tr. 223-24. He does not have conflicts with other students and Ms. Collum thinks his social skills are above average. The Student has no concerning behaviors and he follows school rules. *Id.* She does not find the playground incidents in October 2021 to be concerning because the Student does not have a pattern of getting into conflicts with others. *Id*. at 249.

87. Ms. Mintz recalls hearing a rumor during the 2021-2022 school year that a student named [redacted] had bullied the Student. Tr. 312-14. The Parents are concerned that "[redacted] has bullied the Student and may continue to do so. No one at the due process hearing was able to identify a classmate of the Student named [redacted] and no one in the Student's grade is named [redacted] *Id.* at 308, 313. The other student involved in the recess altercation over the drawing in October 2021 is not named [redacted] *Id.* at 457.

88. The Father remains concerned that the Student might be "strangled" again. The Father is concerned that the Student could suffer permanent harm because he does not react "normally" to some circumstances and may not defend himself if he were to be strangled. Tr. 552. The Father thinks the Student needs additional supervision at school for another year. *Id.* at 553.

89. The Mother never complained to the District that she did not understand the [redacted] translations of the IEPs, PWNs, or other documents. Rather, she was consistently quite specific with her questions and disagreements about the contents of those documents. Tr. 463.

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CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

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 pursuant to these statutes, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. See *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). Since the Parents are seeking relief in this case, they have the burden of proof. Neither the IDEA nor Office of Superintendent of Public Instruction (OSPI) regulations specify the standard of proof required to meet a party's burden of proof in special education hearings before OAH. Unless otherwise mandated by statute or due process of law, the U.S. Supreme Court and Washington courts have generally held that the burden of proof in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 98-102, 101 S.Ct. 999 (1981*); Thompson v. Department of Licensing*, 138 Wn.2d 783, 797, 982 P.2d 601 (1999); *Hardee v. Department of Social & Health Service*s, 172 Wn.2d 1, 256 P.3d 339 (2011). Therefore, the Parents' burden of proof in this matter is preponderance of the evidence.

The IDEA

3. The IDEA and its implementing regulations provide federal funds 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 IDEA, 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.

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Rowley, 458 U.S. at 206-207 (footnotes omitted).

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

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

Id. at 188-189.

5. The Supreme Court clarified the substantive portion of the *Rowley* test quoted above in 2017:

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

Endrew F. v. Douglas County Sch. Dist. RE-1, 580 U.S. 386, 137 S.Ct. 988, 999-1000 (2017).

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

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

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(III) caused a deprivation of educational benefit.

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

7. The IDEA does not require a school district to provide a "potential-maximizing education" in order to provide FAPE, but only a "basic floor of opportunity" that provides "some educational benefit" to the student. *Rowley,* 458 U.S. at 200-01.

Whether the District denied the Student FAPE by failing to adequately protect him from HIB and failing to add goals pertaining to HIB to his IEP

8. 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. As the U.S. Supreme Court has made clear, "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 U.S. Dist. LEXIS 77834 *21, 119 LRP 18751 (W.D. Wash. 2019), *aff'd sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 22 F.4th 1048 (9th Cir. 2022) (*quoting Endrew F.*, 137 S.Ct. at 994).

9. The Office of Special Education Programs (OSEP), which is part of the Office of Special Education and Rehabilitative Services (OSERS), has described bullying as follows:

> Bullying is characterized by aggression used within a relationship where the aggressor(s) has more real or perceived power than the target, and the aggression is repeated, or has the potential to be repeated, over time. Bullying can involve overt physical behavior or verbal, emotional, or social behaviors (e.g., excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation) and can range from blatant aggression to far more subtle and covert behaviors.

Dear Colleague Letter, 61 IDELR 263 (OSERS/OSEP 2013).

10. In *M.L v. Federal Way Sch. Dist.,* 394 F.3d 634 (9th Cir. 2015), the U.S. Court of Appeals for the Ninth Circuit determined that the student at issue in the appeal was not denied FAPE when his classroom teacher failed to stop classmates from

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teasing him. The court determined there was no evidence that the teasing affected the student's education and concluded the teasing did not result in the loss of educational benefit. The court rejected the parents' argument that unaddressed teasing was "potentially dangerous" because it could escalate to physical abuse that the student's limited verbal skills would prevent him from reporting. *Id.* at 651. In discussing the issue, the court cited with approval authority holding that HIB must be so severe that it effectively bars the victim's access to an educational opportunity before it amounts to a denial of FAPE. *Id.* at 650-51.

11. In the present case, there is no evidence in the record that the Student was ever subjected to bullying or any other form of HIB. The playground incident in October of 2021 was an isolated skirmish over a drawing and in no way represented a pattern of HIB. The evidence does not support a conclusion that HIB affected the Student's education or resulted in him losing educational benefit. The evidence likewise does not support a conclusion that the District failed to protect the Student from HIB, or that he needed IEP goals pertaining to HIB.

12. As set forth above, FAPE consists of SDI supported by such services as are necessary to permit a child to benefit from the instruction. There is no evidence that the Student was denied FAPE in any way at any time. He met his IEP goals, performed well in school, and was determined to no longer need special education services as of May 2022.

13. For these reasons, the Parents have not met their burden to prove this claim by a preponderance of the evidence.

Whether the District denied the Student FAPE by failing to address his expressive language and self-advocacy difficulties, as well as his health issues, since March 2021[9]

14. There is no evidence in the record that the Student had "health issues." The fact that he may not have consumed as much water at school as his Mother wanted him to, and did not always eat his lunch, does not amount to a health issue that the District needed to address. There is no evidence that the Student had health issues of any kind that impacted his learning.

15. The Student received communication SDI as soon as he transferred to the District. The IEP developed in March 2021 doubled the Student's minutes of communication services. It contained a goal specifically related to self-advocacy, and

[9] For clarity, the issues are analyzed in a different order than they are presented in the statement of issues.

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two other goals related to communication. The Student met his self-advocacy goal and the other communication goals as of February of 2022.

16. The March 2021 IEP noted that the Student's expressive language skills were within the average range for his age. No difficulties with expressive language were noted and none have been established by the Parents. The assessment revision conducted in May 2021 did not establish a need for SDI in any new areas.

17. There is no evidence that the Student was denied FAPE due to the District failing to provide SDI for expressive language or failing to address health issues. Likewise, there is no evidence that the Student was denied FAPE due to a failure by the District to address his self-advocacy skills.

18. For these reasons, the Parents have not met their burden to prove this claim by a preponderance of the evidence.

Whether the District denied the Student FAPE by failing to implement his IEP when he transferred to the District in February 2021

19. Washington law is clear regarding how a school district must handle the transfer of a student eligible for special education from a different state:

> If a student eligible for special education transfers from a school district located in another state to a school district within Washington state and had an IEP that was in effect in the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district:
>
> (a) Conducts an evaluation to determine whether the student is eligible for special education services in Washington state, if the school district determines an evaluation is necessary to establish eligibility requirements under Washington state standards; and
>
> (b) Develops and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

WAC 392-172A-03105(5).

20. The meaning of "comparable" in this context has been addressed by OSEP and the courts. In *Sterling A. v. Washoe County Sch. Dist.,* 51 IDELR 152 (D. Nev. 2018), the court held that the services provided to the child at issue by the new

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school district were similar and equivalent to the services that had been provided in the previous district even though they were delivered in a different setting (at a local elementary school rather than in the home). Thus, a new school district is not required to provide the exact same services set out in the student's previous IEP; it is required to provide comparable services, i.e., services that that are "similar" or "equivalent."

21. The Student at issue here was provided with services comparable to those he had been receiving in California, i.e., 60 minutes per month of speech-language SDI, as soon as he moved to the District. Because the Student was attending school in the District remotely for three days per week in February 2021, some of the California IEP's accommodations were unnecessary and were not implemented each day, such as preferential classroom seating.

22. A new IEP was developed on March 1, 2021, almost immediately after the Student moved to the District, which doubled the amount of SDI he received and set forth new accommodations. Upon development of the new IEP, the District was not obligated to provide services comparable to those in the California IEP and the District was certainly not obligated to implement the California IEP to the letter, as the Parents seem to argue in their briefing. Parent's Closing Statement pp. 9-10.

23. There is no evidence that the Student was denied FAPE due to the District failing to implement the California IEP when the Student transferred to the District. Accordingly, the Parents have not met their burden to prove this claim by a preponderance of the evidence.

Whether the District denied the Student FAPE by providing an inappropriate IEP in March 2021 that failed to include adequate minutes of SDI, and failed to include necessary accommodations and modifications pertaining to communication, expressive language, and self-advocacy

24. As set forth above, in order to provide FAPE an IEP must be reasonably calculated to enable a child to make progress appropriate in light of his circumstances. *Endrew F.,* 137 S.Ct. 999-1000.

25. An IEP must include a statement of the special education and related services to be provided to the student to enable him to advance appropriately toward attainting annual goals. WAC 392-172A-03090(d). "Related services" means such services as are required to assist a student eligible for special education to benefit from special education, including psychological services and counseling. WAC 392-172A-01155(1). An IEP must also include a statement of the program modifications and supports that will be provided to enable a student to advance appropriately, to

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be involved in and make progress in the general education curriculum, and 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).

26. It is well established that the appropriateness of an IEP must not be judged in hindsight, but rather based on the information that was reasonably available to the parties at the time the IEP was developed. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).

27. As discussed above, there is no evidence that the Student required SDI or accommodations and modifications to address expressive language. He did not have a deficit in his expressive language skills.

28. The March 2021 IEP provided for 120 minutes per month of communication SDI with a focus on social language and self-advocacy. It also provided accommodations and modifications, such as preferential seating and repeating and modeling directions. The assessment revision conducted in May 2021 did not establish a need for SDI in any new areas. The Student achieved all his IEP goals in less than a year. Thus, the evidence is clear that the March 2021 IEP was a comprehensive plan that was "tailored to the unique needs" of the Student, as is required by the IDEA.

29. The Parents argue that the student needed additional support in order to "reach his full potential" and advance in his education with an eye toward employment and independent living. Parents' Closing Statement p.12. However, this is not what the IDEA calls for and the Parents' goal that the Student "reach his full potential" seems to be the gravamen of their dispute with the District. A school district is not required to provide a "potential-maximizing education" in order to provide FAPE, but only a "basic floor of opportunity" that provides "some educational benefit" to the student. *Rowley,* 458 U.S. at 200-01.

30. It is concluded that the March 2021 IEP more than met the requirements of the IDEA as articulated in *Rowley*, and the District had no obligation to provide additional services aimed at helping the Student reach his full potential. The March 2021 IEP was appropriate in light of the Student's circumstance and provided him with FAPE.

31. Accordingly, the Parents have not met their burden to prove this claim by a preponderance of the evidence.

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Whether the District denied the Student FAPE by withholding speech services on several occasions in April 2022 without informing the Parents or Student, and failing to provide make up sessions for the missed services

32. At issue here is whether the District failed to implement the Student's IEP when Ms. Pitoyo missed sessions with the Student and did not make up the missed time.

33. *Van Duyn v. Baker Sch. Dist.,* 502 F.3d 811 (9th Cir. 2007), addresses whether services were provided to a student "in conformity with" the IEP. According to *Van Duyn*, minor discrepancies between the services required by the IEP and those that are provided do not violate the IDEA. *Id.* at 822. The *Van Duyn* court stated:

> "[S]pecial education and related services" need only be provided "*in conformity with*" the IEP. 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 and 822 (italics in original). A child's educational progress, or lack thereof, may be probative of whether there has been more than a minor shortfall in the services provided. *Id.* at 822.

34. In April of 2022, Ms. Pitoyo missed approximately three 15-minutes sessions with the Student due to illness. Those sessions were not made up. Ms. Pitoyo opined that missing those sessions did not negatively impact the Student. This opinion is supported by the evidence in that Student had met all his IEP goals as of February 2022, so a new goal was created. The Student was then determined to no longer require special education services on May 11, 2022.

35. Due to stay put being in effect for the Student for more than an entire school year, he received approximately 945 minutes of communication SDI above what was called for by his IEP. There is absolutely no evidence that the denial of 45 minutes of services in April 2022 negatively affected the Student in any way.

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36. It is concluded that the 45 missed minutes were not material and were, at most, a very minor implementation failure. Moreover, the services the Student received during stay put more than compensated for any implementation failure.

37. For these reasons, it is concluded that the Student was not denied FAPE due to the missed speech services. Accordingly, the Parents have not met their burden to prove this claim by a preponderance of the evidence.

Meaningful Participation

38. Four of the Parents' claims allege they were denied meaningful participation in the IEP and resolution process. The IDEA requires that parents be given the opportunity to "participate in meetings with respect to the identification, evaluation, and educational placement of the child." *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed. Appx. 342 (9th Cir. 2007); 20 U.S.C. § 1415(b)(1). 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,* 239 Fed. Appx. at *4.

39. Neither the IDEA nor Washington special education law specifically define "meaningful participation." Determining what is "meaningful" requires balancing of the totality of the circumstances of a particular meeting. *Mercer Island Sch. Dist.*, 121 LRP 1640 (SEA Wash. 2020) (upholding the school district's refusal to provide recordings and transcripts of IEP meetings to the parent). In reviewing and balancing the totality of the circumstance, a tribunal may consider such things as whether the parents received notice of meetings, received draft documents before meetings, engaged in discussion, posed questions, and had opportunities to comment. *Id.*

40. A school district is required to notify parents of meetings and to schedule meetings at a mutually agreeable time and place. WAC 392-172A-03100. School districts are also required to provide interpreters for parents whose native language is not English, and to give parents a copy of their student's IEP at no cost. *Id.*

Whether the District denied the Student FAPE by denying the Parents meaningful participation in the resolution process when it refused to allow the Parents to record the resolution meeting held on August 29, 2022

41. The IDEA mandates that a school district must convene a meeting with the parent and relevant members of a student's IEP team within 15 days of receiving notice that a parent has filed a due process hearing request. The purpose of what is commonly referred to as "a resolution meeting" is "for the parent of the child to discuss the due process hearing request, and the facts that form the basis of the

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request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request." WAC 392-172A-05090(1)(a) and (b).

42. OSEP has clarified that a state educational agency has the option to require, prohibit, limit, or otherwise regulate the use of recording devices at IEP meetings. The IDEA does not authorize or prohibit the recording of meetings by a parent or a school official. If the use of recording devices is prohibited or limited, the state educational agency must make exceptions for a parent for whom recording devices are necessary to understand the IEP or the IEP process. Letter to Anonymous, 40 IDELR 70 (OSEP 2003).

43. Washington law prohibits the recording of private conversations without first obtaining the consent of all persons engaged in the conversation. RCW 9.73.030. In the present case, the District did not consent to the Parents' request to record the resolution meeting.

44. The Parents did not present persuasive evidence at the hearing that recording the resolution meeting was necessary for either of them to understand the process. The Mother was provided with an interpreter, and the Father, who speaks English, was present at the entire meeting. The purpose of the resolution meeting was for the District to have the opportunity to resolve the disputes that were the basis of the due process hearing request. At the meeting, the Mother raised the same concerns that she had raised on many previous occasions. Ms. Wiessner understood what the Parents were asking for and understood the dispute that formed the basis of the request, i.e., the Parents wanted the Student to continue to receive special education services and the District did not agree that continued services were necessary or appropriate. The Parents and the District clearly understood these were the issues to be decided at the due process hearing. There is ample evidence that the issues had been discussed by the Parents and the District on *numerous* occasions.

45. To the extent the Mother argues that she could not understand what transpired at the meeting without listening to a recording of it afterward, the evidence does not support that argument. The Mother's spouse speaks English and was present. The Mother speaks English well enough to have obtained two associate degrees in English-speaking programs without the use of an interpreter. English is the primary language spoken in the family home. The Mother has repeatedly asked the District specific questions about various documents she received in English. And the Mother was provided with an interpreter at the meeting. Moreover, questions asked by the Mother at the due process hearing indicate that she wanted a recording of the meeting to "prove" what was discussed, not to aid her in understanding what transpired. This is confirmed in the Parents' post-hearing briefing in which they

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contend that they wanted a record of what happened at the resolution session "that everyone could agree on in the future." Parents' Closing Statement p.3.

46. The Parents have not met their burden to prove that being denied permission to record the resolution meeting impaired their ability to meaningfully participate in the resolution process. And there is no evidence that the Student was denied FAPE by the District's refusal to consent to the Parents' request to record the resolution meeting. Accordingly, the Parents have not met their burden to prove this claim by a preponderance of the evidence.

Whether the District denied the Student FAPE and denied the Parents meaningful participation in the IEP process by inappropriately cutting short the IEP meetings held on February 16 and May 11, 2022

47. Two days prior to the February 16, 2022 meeting, the Parents were provided with a draft of the reevaluation that was to be discussed. The Student's homeroom/math teacher for the 2021-22 school year opined that the Parents had "ample time" to talk about the Student at the meeting. The evidence supports this opinion in that, *due to input from the Parents* at the meeting, the Student was not exited from special education as the District had initially recommended. Rather, he was provided with a new IEP and the reevaluation was extended to collect more data. The Parents were "happy" with this decision to extend the reevaluation and continue services in the interim.

48. There is no evidence that the meeting was "cut short" or that the Parents were denied an opportunity to provide input and pose questions. After balancing the totality of the circumstances of this meeting, it is concluded that the Parents were not denied meaningful participation in the February 16, 2022 meeting.

49. With respect to the May 11, 2022 meeting, the Parents were provided with a draft of the reevaluation report prior to that meeting, as well, and had questioned the reevaluation findings through email communications prior to the meeting. The meeting lasted approximated 90 minutes and an interpreter was provided for the Mother. Ms. Hamilton and Ms. Pitoyo felt that the issues were thoroughly discussed and the meeting "concluded naturally." No one was cut off from speaking or expressed that they needed more time to give input. Both Parents provided input, and the Father left before the meeting concluded.

50. The Parents argue that Mr. Osborne's absence at the meeting deprived them of the opportunity to discuss the Student's needs regarding self-advocacy, as well social, pragmatic and expressive language skills. Parent's Closing Statement p.8. This is not persuasive evidence that the Parents were denied the opportunity to

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participate meaningfully in the May 11, 2022 meeting. Two other general education teachers attended the meeting. Mr. Osborne had attended and participated in the February 16th meeting and there is no evidence that he had changed his opinion or had garnered additional input to offer between February and May. Mr. Osborne agreed with the team's decision to exit the Student from special education reached at the May 11th meeting.

51. The evidence overwhelmingly supports the IEP team's conclusion at the meeting that the Student no longer needed special education services. There is no evidence that the meeting was "cut short" or that the Parents were denied an opportunity to provide input and pose questions. The fact that the IEP team did not adopt the Parents' recommendation that special education services be continued does not mean the Parents were deprived of meaningful participation in the decision-making process. After balancing the totality of the circumstances of this meeting, it is concluded that the Parents were not denied meaningful participation in the May 11, 2022 meeting.

52. For these reasons, the Parents have not met their burden to prove this claim by a preponderance of the evidence.

Whether the District denied the Student FAPE by denying the Parents meaningful participation in the IEP process by providing the Parents with an inaccurate [redacted] translation of the Student's discipline reports which list the wrong referrer

Whether the District denied the Student FAPE by denying the Parents meaningful participation in the IEP process by treating the Student's mother with bias, including unfair treatment, providing erroneous translations, sending incomplete records, and providing unreasonable explanations pertaining to the resolution meeting

53. These two issues are related and will be addressed together.

54. There is no evidence that the District treated the Mother unfairly or with bias in any way. Rather, the evidence demonstrates that the District staff members were remarkably patient with the Mother's constant inquiries about the Student and were consistently responsive and appropriate in all their dealings with her.

55. There is no evidence that "unreasonable explanations" about the resolution meeting were given to the Parents. It is apparent that the District and the Parents disagreed about whether the Student needed continued special education services, and agreement could not be reached at the meeting.

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56. There is no evidence that the Parents were given incomplete records by the District.

57. Regarding erroneous translations of documents, the translation of the letter pertaining to the playground incident in October 2021 contains errors, including listing Ms. Watts as the discipline officer rather than Mr. Pierce.[10] The Mother found and pointed out this error after comparing the documents herself. The [redacted] translation was not requested by the Parents until over a year after the letter was originally sent, yet the Parents argue that the inaccurate translation prevented them from getting "further information from this primary source." Parents' Closing Statement p.4. However, the evidence is clear that the Parents were given all the necessary information about the incident at the time it occurred, and the Mother met with Mr. Pierce to discuss the altercation just a few days later. It is concluded that the translation errors in this letter are inconsequential and have not impaired the Parents' ability to meaningfully participate in the Student's IEP process.

58. As found above in the Findings of Fact, the Parents were provided with the final, correct version of the May 2022 reevaluation report at the relevant time, i.e., in May 2022. The confusion with exhibits at the due process hearing in matter 2022-SE-0071 in September of 2022 is inconsequential and was rectified, and in no way impacted the Parent's meaningful participation in the Student's IEP process.

59. For these reasons, the Parents have not met their burden to prove these claims by a preponderance of the evidence.

Conclusion

60. Based on the record, it is concluded that the Parents have not established by a preponderance of the evidence that the District violated the IDEA or that the Student was denied FAPE in any way. Consequently, the Parents are not entitled to any relief.

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

[10] The Parents urge the ALJ to compare exhibits P1 and P35, and they point out the "very different formatting" between the two documents. Parent's Closing Statement pp. 3-4. However, exhibit P2 is the letter that appears to have been translated to yield exhibit P35. Those are the documents that have been compared herein.

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ORDER

The Parents have not established that the Battle Ground School District violated the IDEA or that the Student was denied FAPE. The Parents are not entitled to any relief and their requests for relief are DENIED.

Served on the date of mailing.

Jacqueline H. Becker
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 (90) 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, Legal Services, PO Box 47200, Olympia, WA 98504-7200. To request the administrative record, contact OSPI at appeals@k12.wa.us.

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that true copies of this document were served upon the following as indicated:

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Dated July 27, at Seattle, Washington.

Representative
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cc: Administrative Resource Services, OSPI