

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

North Thurston School District

Docket No. 04-2024-OSPI-02195

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

Agency: Office of Superintendent of  
Public Instruction

Program: Special Education

Cause No. 2024-SE-0052

A due process hearing was held before Administrative Law Judge (ALJ) Courtney Beebe on June 12 and June 17, 2024. The Caregivers of the Student whose education is at issue<sup>1</sup> appeared and represented themselves. The North Thurston School District (District) was represented by Lynette Baisch and Sharan Singh, attorneys at law. Also present for the District was Dr. Kari Lewinsohn, Director of Special Education.

**STATEMENT OF THE CASE**

**Procedural History**

1. On April 18, 2024, the Caregivers filed the Due Process Hearing Request, and the District filed a Response on May 1, 2024.<sup>2</sup> A scheduling notice issued on April 18, 2024, giving notice of a prehearing conference on May 16, 2024.
2. The parties appeared for the prehearing conference on May 16, 2024, and the First Prehearing Order issued on May 17, 2024. The First Prehearing Order gave the parties notice that the due process hearing would occur by video conference on June 12, and June 17, 2024.

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<sup>1</sup> To ensure confidentiality, names of Mr. and Ms. Caregiver (foster parents) and Student are not used.

<sup>2</sup> The District's response was not filed within ten (10) days of the filing of the due process hearing request. WAC 392-172A-05085(7). The District's response was filed thirteen (13) days after the due process hearing request. However, the District issued a prior written notice on April 17, 2024, that addresses the subject matter contained in the due process hearing request, and therefore met the requirements of WAC 392-172A-05085(7). Additionally, the remedy for not filing a timely response is an order from the tribunal to file the response prior to the due process hearing. *M.C. v. Antelope Valley Community College Dist.*, 151 Cal. App. 4th 961 (2017). Because the District ultimately also filed a responsive pleading, there is no other relief available for the untimely filing of the District's response.

3. The parties were given ten (10) days to object to the proposed issue statements in the First Prehearing Order. The District filed an objection on May 20, 2024, and the Caregivers filed an objection on May 28, 2024. Based on the April 18, 2024, Due Process Hearing Request and the parties' objections, the issues for hearing were established in the Second Prehearing Order issued May 29, 2024.

#### **Due Date for Written Decision**

4. At the due process hearing the parties agreed to extend the decision due date to July 19, 2024, to allow for transcript production and the filing of closing briefs. The request was granted on the record and the decision in this matter is due July 19, 2024.

#### **EVIDENCE RELIED UPON**

##### **Exhibits Admitted:**

District's Exhibits: D1, D2, D3, D4, D5, D6, D7, D8, D9, D10, D11, D12, D13, and D14,

Caregivers' Exhibits: P1, pp.12-32, pp.230-252, pp.307-317, pp.337-339; P2, pp.13-16, pp.39-40; P3; P4; and P12.

##### **Exhibits Not Admitted:**

Caregivers' Exhibits: P1, pp.1-11, pp.33-229; pp.253-306, pp.318-336; P2, pp.1-12, pp.17-38, pp.41-374; P5; P6; P7; P8; P9; P10; and P11.

**Witnesses Heard (in order of appearance):** Sonny Foster, Special Education Teacher; Sheila Nelsen, ; Stephanie DeWitt, School Psychologist; Chantel Packard, Principal; Dr. Kari Lewinsohn, Director of Special Education; Mr. Caregiver; and Ms. Caregiver.

**Witnesses Not Heard:** Tiffany Hinkle,<sup>3</sup> Leslie Hayden,<sup>4</sup> and Emily Ferguson.<sup>5</sup>

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<sup>3</sup> The District withdrew Tiffany Hinkle as a witness. Ms. Hinkel was not listed as a witness on the Caregivers' witness list.

<sup>4</sup> Leslie Hayden did not have personal knowledge of, or experience with, the Student and was therefore excluded from testifying. (Tr., pp.379-381.)

<sup>5</sup> The Caregivers requested issuance of a subpoena for Emily Ferguson, who is employed as a part-time substitute teacher at the District. As per RCW 34.05.446 and WAC 10-08-120, the tribunal issued a subpoena to the Caregivers for service on Ms. Ferguson. (Tr., pp.227-230.) The Caregivers were not able to serve the subpoena on Ms. Ferguson or contact her to request that she appear as a witness in this matter. (*Id.*) Ms. Ferguson did not attend the due process hearing and did not provide any testimony. The District declined to accept service of the subpoena on behalf of Ms. Ferguson.

## ISSUES

The issues noticed for hearing in the Second Prehearing Order are:

- 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 provide the Student with an Individualized Education Program (“IEP”) beginning April 17, 2024, that is reasonably appropriate to ensure the Student makes progress given his unique circumstances, specifically:*
    - a. *Failure to provide the Student with appropriate, measurable goals; and*
    - b. *Failure to provide the Student with appropriate accommodations;*
  - ii. *Failing to issue prior written notices that accurately describe the activities and agreements of the Student’s IEP Team at meetings beginning March 1, 2024, through the date of the due process hearing;*
- b. *And, whether [the Caregivers] are entitled to their requested remedies:*
  - i. *An order declaring that the Student was denied a FAPE;*
  - ii. *An IEP meeting;*
  - iii. *A reasonably appropriate IEP that ensures that the Student will make progress given the Student’s unique circumstances;*
  - iv. *Compensatory education services; and*
  - v. *Or other equitable remedies, as appropriate.*

(Second Prehearing Order, pp.3-5.)

## FINDINGS OF FACT

### The Student

1. During the 2023-2024 academic year the Student attended the third grade at an elementary school in the District. (D1, p.4; D11, p.4.) The Student is a nine-year-old who lives with his foster family the Caregivers. (*Id.*)

## The May 22, 2023, IEP

2. The Student was determined eligible for special education services in the area of social skills due to a disability in autism, as the result of a reevaluation performed on May 26, 2021. (P1, p.232; Tr., pp.235 (Foster); 311 (DeWitt).)

3. On May 22, 2023, the District implemented an IEP for the Student, and it included an annual “Social Skills: Self-Management Goal”:

*By 05/21/2024, when given a situation where he becomes upset or frustrated during an unstructured activity (i.e. recess) and in the absence of his preferred adult (Mr. Harn), [the Student] will stop, take a breath, think about his choices, and seek out a trusted adult for help (i.e. recess para, resource para, or teacher) if necessary, improving Self-Management skills, from responding with disruptive behaviors that look like minor physical aggression (i.e. hitting, pushing, or yelling at peers) in 40% of observed instances, to following all 4 steps with 100% accuracy in 90% observed instances, as measured by teacher observations and data collection. (SEL.SELF-MANAGEMENT. BENCHMARK 2A).*

(P1, p.339; Tr., pp.105-112 (Foster).)

4. The May 22, 2023, IEP also included an annual “Related Service Goal: Social Awareness”:

*By 05/21/2024, when given an opportunity to interact with peers, and [the Student] does not agree with their thought or opinion, [the Student] will accept that the peer’s thoughts and/or opinions differ from his own and not argue, improving Social Awareness, from requiring high adult assistance, to accept a peer’s thoughts and / or opinion is different from his own and not argue in 5 out of 10 observed instances (50% of instances), to independently accepting a peer’s thoughts and / or opinion is different from his own and not arguing with peer in 8 out of 10 observed instances (80% of instances), as measured by teacher observation and data collection. (SEL.SOCIAL-AWARENESS. BENCHMARK 4A).*

(P1, p. 240; Tr., pp.105-112 (Foster).)

5. The Student’s progress towards these goals was measured by collecting data on “fidelity charts” and “behavior charts.” The “Fidelity Chart” scored how well a

teacher implemented interventions and accommodations; the “Behavior Chart” scored the Student in the areas of peer interactions, social management, time on task, and physical contact / hand to self. (D11, pp.10-14; Tr., pp.82-83 (Foster).)<sup>6</sup> The Fidelity Charts and Behavior Charts contained rating scales for each period of the Student’s school day and were completed by District staff. (*Id.*)

6. The data was then compared to standards established by the “Washington State’s Social Emotional Learning Standards and Benchmarks” (“SEL.Self-Management.Benchmarks”) 2A and 4A:

- Standard 2: Self-Management—Individual can regulate emotions, thoughts, and behaviors.
  - Benchmark 2A: Demonstrates the skills to manage one’s emotions, thoughts, impulses, and stress in constructive ways.
- Standard 4: Social Awareness—Individual can take the perspective of and empathize with others from diverse backgrounds and cultures.
  - Benchmark 4A: Demonstrates awareness of other people’s emotions, perspectives, cultures, languages, histories, identities, and abilities.

(P1, p.239; Tr., pp.100-102 (Foster).)

7. The Student’s May 22, 2023, IEP also included a list of accommodations, but did not include any related services, modifications or special supports. (P1, p.241.) The accommodations included in this IEP were as follows:

Accommodations	Frequency	Location	Duration
Access to break spot or space to down-regulate	Quiet/Dark/Small specific hiding spots and / or sensory tools to utilize when beginning to escalate. Preteach a break procedure	General & Special Education	05/22/2023 To 05/21/2024
Additional time for assignments	Time and a half	General & Special Education	05/22/2023 To 05/21/2024
Allow access to examples of finished projects / assignments	As appropriate to help [the Student] visualize what the end product will look like	General & Special Education	05/22/2023 To 05/21/2024
Allow access to snacks, should the family provide them, throughout the school day	When requested; when appropriate (for example, not at recess, not at lunchtime)	General & Special Education	05/22/2023 To 05/21/2024
Allow Breaks	Schedule frequent breaks ahead of time; additional, [the Student] may exhibit behaviors when over-stimulated by sensory inputs, a break is recommended	General & Special Education	05/22/2023 To 05/21/2024

<sup>6</sup> The Caregivers submitted copies of the Behavior Charts from October 4, 2023 through May 9, 2024, in the record at P8, pp.1-24. However, the tribunal reserved ruling on admitting these documents until foundational testimony was offered by a witness. (Tr., pp.225-226 (ALJ Beebe).) None of the witnesses offered foundational testimony, and therefore the documents were not admitted into the record. Regardless, the Student’s progress towards the May 22, 2023, IEP goals is not at issue and the results of the Student’s progress based on these reports is admitted into the record at D12.

Allow [the Student] to contact his caregivers should it seem like it may ease his anxiety	When visibly anxious, agitated, or beginning to show signs of escalation	General & Special Education	05/22/2023 To 05/21/2024
Assistance with organization strategies for belongings and academic work	For desk area, help w/ managing supplies, only give a few items needed for project at a time	General & Special Education	05/22/2023 To 05/21/2024
Chunking Assignments into smaller parts	All longer assignments	General & Special Education	05/22/2023 To 05/21/2024
Place with a trusted recess supervisor (i.e. recess para in classroom assigned area, resource para, teacher) May change based on area of classroom assignment and paraeducators available	Recess	Playground / Outside	05/22/2023 To 05/21/2024
Preferential Seating	At all times	General & Special Education	05/22/2023 To 05/21/2024
SBA-Non-Embedded-Separate Setting / Small Group	ALL TESTING LOCATIONS	Testing: State Testing	05/22/2023 To 05/21/2024
Visual Schedule	Have a schedule posted in classroom	General & Special Education	05/22/2023 To 05/21/2024

(P1, pp.242-243.)

8. The May 22, 2023, IEP also provided that the Student would receive specially designed instruction (“SDI”) in the area of social skills at a rate of ten (10) minutes, one time per day and thirty (30) minutes, one time per day in the special education environment, to achieve the social awareness and self-management goals. (P1, p.244.) In the “Description of Services” below the service matrix in the IEP, the Student’s SDI was further described as follows: “[The Student] will receive 30 minutes of social skills SDI daily with an additional 10-minute social skills check in after lunch recess for real time coaching and skill building reinforcement centered around his Self-Management goal.” (*Id.*)

9. To track the Student’s progress towards his goals the District reviewed the Student’s Fidelity Charts and Behavior Charts during the customary reporting periods of June 16, 2023, November 10, 2023, February 2, 2024, and April 12, 2024. (D12, pp.1-2; D11, pp.10-14; Tr., pp.100-102 (Foster).) The District also engaged in a mid-reporting period review of the Student’s Fidelity Charts and Behavior Charts on March 11, 2024. (D3, pp.11-12; Tr., pp.101-102 (Foster).)

10. In order to achieve mastery of the skills identified in each goal, the Student was required to “show 80% or higher success over two reporting periods.” (D3, pp.11-12; D11, pp.10-14; Tr., pp.105-107 (Foster).)

11. Regarding the “Social Skills: Self-Management Goal,” on June 16, 2023, the Student “was able to stop, take a breath, think about his choices, and seek out a trusted adult for help in 90% of observed instances. He became disruptive with minor physical aggression in 10% of observed instances.” (*Id.*)

12. On November 10, 2023, a review of the Behavior Chart data showed that over the summer break and during September and October 2023, the Student’s percentage dropped to 77% of instances and it was noted that the Student “is struggling more during the structured times of the day. He has utilized Ms. Foster’s classroom and the Burin Den for breaks when he is upset or needing a break outside of the general education classroom.” (*Id.*)

13. A review of Behavior Chart data on February 2, 2024, showed that between November 2024 and January 2024, the Student’s percentage increased to 89%. (*Id.*) On April 12, 2024, a review of the Student’s Behavior Chart data showed that the Student had mastered the “Social Skills: Self-Management Goal” by achieving a percentage of 99%. (*Id.*)

14. Regarding the “Related Service Goal: Social Awareness,” a review of the Student’s Behavior Charts on June 16, 2023, showed the Student was “able to accept that the peer’s thoughts and/or opinion differ from his own and not argue, requiring adult assistance, . . . in 5 out of 10 observed instances (50% of instances).” (*Id.*)

15. On November 10, 2023, the Student’s Behavior Chart data showed that the Student’s percentage increased to 14 out of 15 observed instances (93% of instances). (*Id.*)

16. On February 2, 2024, the Student’s Behavior Chart data showed that the Student’s percentage increased to 98% of the days data was collected between November 2024 and February 2024. (*Id.*)

17. Finally, on April 12, 2024, a review of the Student’s Behavior Chart data for the period of February 2024 to April 2024, showed that the Student had mastered the “Related Service Goal: Social Awareness” by achieving a percentage of 99%. (*Id.*)

18. The Fidelity Chart and Behavior Chart data review conducted on March 11, 2024, also showed that the Student achieved an 89% of observed instances regarding the “Social Skills: Self-Management Goal,” and a 90% of observed instances regarding the “Related Service Goal: Social Awareness.” (*Id.*) Thus, as of March 11, 2024, and

April 12, 2024, the Student had demonstrated an 80% or higher success rate over two reporting periods and mastered each goal in the May 22, 2023, IEP. (*Id.*)

### **Development of the April 17, 2024, IEP**

19. In February 2024, the District performed a reevaluation (“Reevaluation”) of the Student, and after a meeting on February 27, 2024, the Reevaluation team determined that the Student remained eligible for special education services. (D1, pp.37-38; D11, p.211,; Tr., pp.83-84 (Foster); 310-318 (DeWitt).) As part of the Reevaluation, the District performed a “functional behavioral assessment,” (“FBA”) and reviewed the FBA on February 27, 2024. (D2, pp.1-10; Tr., pp.83-84 (Foster); 310-318 (DeWitt).) The Reevaluation team concluded that a Behavioral Intervention Plan (“BIP”) was not appropriate for the Student. (*Id.*)

20. On March 12, 2024, the District issued an IEP meeting invitation to the Caregivers for an IEP meeting on March 20, 2024, to review a proposed draft IEP. (D3, p.2; Tr., pp.84-85 (Foster).) The Students IEP team consisted of the Caregivers, Sonny Foster,<sup>7</sup> Special Education Teacher & Case Manager; Chantale Packard,<sup>8</sup> Principal / Administrator Designee; Conner Merrill, Administrator Designee; Dr. Kari Lewinsohn,<sup>9</sup> Director of Special Services / Agency Representative; Emily Ferguson, General Education Teacher; Stephanie Dewitt,<sup>10</sup> School Psychologist; and Sheila Nelsen,<sup>11</sup> Special Education Teacher. (D3, p.4; Tr., pp.80-81 (Foster); 310-318 (DeWitt); 272-274 (Nelsen).)

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<sup>7</sup> Sonny Foster has worked as a special education teacher at the District for four years. (Tr., pp.80-81 (Foster).) Ms. Foster earned a master’s degree in education and holds a Washington State Certification in the areas of K-12 special education and K-8 general education. (*Id.*) Ms. Foster has worked as a special education assigned to the Student since 2022 and delivers the Student’s SDI as per the May 22, 2023, IEP. (Tr., pp.80-81, 231-232 (Foster).) Ms. Foster sees the Student each day for his check out SDI service, and again for breaks and SDI delivery. (*Id.*)

<sup>8</sup> Chantale Packard is an elementary school principal at the District, but previously taught third grade and was a title lab specialist. (Tr., pp.334-336 (Packard).) Ms. Packard received a bachelor’s in English from Pacific Lutheran University and earned a Master of Arts and education. (*Id.*) Ms. Packard is a nationally board-certified teacher as a middle childhood generalist and is certificated by the State of Washington as a teacher and administrator. (*Id.*)

<sup>9</sup> Dr. Kari Lewinsohn is a director of special education at the District and has worked in education for over seventeen years. (Tr., pp.356-358 (Lewinsohn).) Dr. Lewinson holds a doctorate in special education and a master’s degree in administration with endorsements in principal and superintendent. (*Id.*) Dr. Lewinsohn has a master’s in curriculum and instruction and a bachelor’s degree in elementary education and special education. (*Id.*)

<sup>10</sup> Stephanie DeWitt is a school psychologist and holds a master’s degree in early childhood elementary education and a master’s in school psychology, as well as a bachelor’s degree in philosophy and a minor in psychology. (Tr., pp.310-311 (DeWitt).) Ms. DeWitt is a nationally certified school psychologist, and certificated in the State of Washington (*Id.*)

<sup>11</sup> Sheila Nelsen is a special education specialist at the District, and she is responsible to help teachers with IEP implementation, attend IEP meetings, and act as a case manager for students. (Tr., pp.271-272 (Nelsen).) Ms. Nelson worked as a paraeducator from 2003-2007 in special education classrooms, and from 2010 to 2022 as a behavioral teacher in an emotional behavior center. (*Id.*) Ms. Nelsen received a bachelor’s degree in elementary education and special education, and she has administration credentials through the University of Washington. (*Id.*) Ms. Nelsen is certified to work in public schools in special education by the State of Washington. (*Id.*)



21. On March 15, 2024, Ms. Foster emailed the Caregivers a draft of the proposed IEP (“First Draft IEP”). (D3, pp.1-21; D4, p.6; Tr., pp.84-85 (Foster).) In the email, Ms. Foster asked the Caregivers to:

*take the weekend to look it over and let me know of any major edits that you would like me to make before our meeting [on March 20, 2024,]. Please send me any major changes by Tuesday, March 19<sup>th</sup>, by 2pm(sic) so that I may adjust our documents for our meeting. You may send along with any major edits the completed parent feedback form and I will make all updates at the same time.*

(D4, p.6; Tr., pp.84-86 (Foster).)

22. The First Draft IEP included a review of the two goals from the May 22, 2023, IEP, a list of the Fidelity Chart and Behavior Chart review data from the June 2023, November 2023, February 2024, and March 11, 2024, the Student’s progress reports, and the interventions and accommodations currently in place or previously utilized. (*Id.*) The First Draft IEP also reflected the results of the February 27, 2024, Reevaluation and FBA. (*Id.*)

23. Based on the Student’s mastery of the May 22, 2023, IEP goals, the First Draft IEP included a proposed new annual “Social Skills: Social Management Goal”:

*By 03/24/25, when given a situation where he becomes upset or frustrated, [the Student] will identify and take steps to resolve interpersonal conflicts using prosocial communication (restorative practices, conflict resolution, use of affective statement) to solve peer conflicts without using physical aggression, improving Social Management skills, from having an average of 2 instances of physical aggression in 20 school days, to 1 or less instances physical aggression in 20 school days, as measured by teacher observations and data collection (SEL.SOCIAL-MANAGEMENT.BENCHMARK 2A).*

(D3, pp.12-13; Tr., pp.105-112 (Foster).) The SEL Social-Management Benchmark 2A measuring standard remained the same as described in the May 22, 2023, IEP. (*Id.*)

24. First Draft IEP also included a proposed new goal in the area of social skills for “Social Management: Peer Interactions”:

*By 03/24/25, when given an opportunity to interact with peers, and [the Student] wants to gain the attention of his peers(s), [the Student] will seek peer attention using prosocial words and actions (asking to play,*

*two way conversation) to gain positive peer interactions, improving Social Management Skills, from using unwanted physical contact (poking with objects, play hitting, pushing shoving) an average of 2 instances every 20 school days, to 1 or less instances every 20 school days, as measured by teacher observation and data collection (SEL.SOCIAL-MANAGEMENT.BENCHMARK 5A).*

(D3, pp.12-13; Tr., pp.110-114 (Foster).) SEL Social-Management Benchmark 5A is described in the First Draft IEP as:

*According to common core standards for social emotional benchmarks, same aged peers are able to:*

*Standard 5: Social Management – Individual can make safe and constructive choices about personal behavior and social interactions.*

*Benchmark 5A: Demonstrates a range of communication and social skills to interact effectively with others.*

(Id.)

25. The First Draft IEP proposed the following accommodations:

<b>Accommodations</b>	<b>Frequency</b>	<b>Location</b>	<b>Duration</b>
Access to break spot or space to down-regulate	Quiet/Dark/Small specific hiding spots and / or sensory tools to utilize when beginning to escalate. Preteach a break procedure	General & Special Education	03/25/2024 To 03/24/2025
Allow access to examples of finished projects / assignments	AS NEEDED BY STUDENT	Classroom	03/25/2024 To 03/24/2025
Additional time for assignments	AS NEEDED BY STUDENT	Classroom	03/25/2024 To 03/24/2025
Allow access to family provided snacks (When requested; when appropriate (not at recess / lunch))	AS NEEDED BY STUDENT	Classroom	03/25/2024 To 03/24/2025
Allow Breaks (scheduled ahead of time and when overstimulated).	AS NEEDED BY STUDENT	Classroom	03/25/2024 To 03/24/2025
Allow [the Student] to contact his caregivers should it seem like it may ease his anx (sic)	When visibly anxious, agitated, or beginning to show signs of escalation	Classroom	03/25/2024 To 03/24/2025
Chunking Assignments into smaller parts (limited visual stimuli)	AS NEEDED BY STUDENT	Classroom	03/25/2024 To 03/24/2025

Preferential Seating	At all times	General & Special Education	03/25/2024 To 03/24/2025
Reminders on organization strategies for belongings / academic work (limit materials given / on desk)	AS NEEDED BY STUDENT	Classroom	03/25/2024 To 03/24/2025
SBA-Non-Embedded-Separate Setting / Small Group	ALL TESTING LOCATIONS	Testing: State Testing	03/25/2024 To 03/24/2025
Visual Schedule	Have a schedule posted in classroom	Classroom	03/25/2024 To 03/24/2025

D3, pp.14-15.) The First Draft IEP did not include any modifications, special support, or related services. (*Id.*)

26. The First Draft IEP also provided that the Student would receive specially designed instruction (“SDI”) in the area of social skills at a rate of ten (10) minutes, one time per day and twenty-five (25) minutes, one time per day in the special education environment, to achieve the social awareness and self-management goals. (D3, p.17.) In the “Description of Services” portion of the IEP, just below the service matrix, the SDI was further described as follows: “[The Student] will receive 25 minutes of social skills daily with an additional 10-minute social skills check in / out (5 min. in AM check in and 5 min. check out at the end of day) for coaching and skill building reinforcement centered around his IEP goals. (*Id.*)

27. On March 17, 2024, the Caregivers emailed Ms. Foster four pages feedback on the proposed goals and accommodations. (D4, pp.3-6; Tr., pp.84-85 (Foster); (Ms. Caregiver).) The Caregivers requested that the First Draft IEP include all past Fidelity and Behavior Chart data in a table form, and also suggested changes to the substance of the goals to “focus more holistically and descriptively about what [the Student] and his teachers are experiencing without using criminalizing or deficit-based language.” (*Id.*) The Caregivers also asked to include the “specific teaching strategies, social skills, and supports that will be provided as part of this goal,” and that the goal “needs to include a goal and strategy of seeking help of a trusted adult.” (*Id.*)

28. The Caregivers proposed the following goals:

*When frustrated, upset, involved in conflict or faced with a non-preferred task, [the Student] will resolve the incident without physical contact (describe what the behavior is), but will increase self-management and relationship skills through prosocial communication, by expressing himself clearly and respectfully and advocating in a constructive way (listening, discussing solutions, making amends),*

*seeking assistance of a trusted adult after an independent attempt, taking a break and revisiting the conflict at a later time....*

....

*[The Student] will identify appropriate social rules and expectations for various social situations like gaining the attention of peers by identifying verbal, physical, and situational cues that affect how and when to ask a peer to play, participate in two-way conversation, or to gain positive interactions by improving social management skills from unwanted physical contact (poking)...*

(D4, pp.4-5.)

29. The Caregivers also specifically requested that the Student receive an accommodation to ensure he was finishing his assignments in class, and that the Caregivers “do not agree to the deletions or modifications” of the accommodations from the May 22, 2023, IEP, and asked “that they be returned back to their original form in this draft for the team to consider as a baseline.” (D4, p.5.) Specifically, the Caregivers requested that the “Place with a trusted recess supervisor” accommodation from the May 22, 2023, IEP be included. (*Id.*) The Caregivers also requested the following accommodations be added:

*For desk organization, we ask that this say Assistance, not reminders. Looking at the [general education] teacher comments and the notes of Shelly, this is a significant interruption to his learning when he dumps the contents of his desk throughout the day to find items. Observers in the classroom have all noted this as a substantial problem.*

*For breaks, please eliminate the requirement that breaks need to be scheduled. [The Student] needs to be able to take unscheduled breaks from the class when he is feeling angry.*

*For snacks, it needs to say available at all times. This should not be limited. This is a trigger for him that should be avoided at all times during the day.*

*When it comes to chunking assignments, we need to amend this to align with the changes that were made in the January IEP meeting. One assignment at a time, instead of chunking. Color copies provided if the assignment page cannot be isolated from a larger workbook.*

*There was discussion at the February IEP meeting about accommodations to assist [the Student] with his handwriting and multiplication tables. However, none of those strategies (sic) listed under accommodations.*

(D4, pp.5-6.)

30. Ms. Foster reviewed the Caregivers' feedback and on March 20, 2024, updated the First Draft IEP, and presented the Second Draft IEP at the March 20, 2024, IEP team meeting. (D4, pp.2, 8-29; Tr., pp.86-87(Foster).) At the IEP meeting on March 20, 2024, the Caregivers and the IEP team reviewed the Caregiver's feedback, and they discussed the Second Draft IEP. (*Id.*) Both Ms. Foster and Ms. Nelsen took notes, and after the meeting they consolidated their notes into one document (D5, pp.1-3; Tr., pp.86-87(Foster); 282-283 (Nelsen).)

31. After considering the Caregivers feedback and requests from the March 20, 2024, IEP meeting, Ms. Foster created a Third Draft IEP and emailed it to the Caregivers the following day, March 21, 2024. (D6, pp.1-23; Tr., pp. 87-88 (Foster).) In her email, Ms. Foster stated:

*Thank you again for meeting with the team yesterday to updated (sic) [the Student's] IEP. Attached you will find an updated draft of [the Student's] IEP as a result of our meeting yesterday. Please take the weekend to review this document and provide me with your feedback. I've included a PWN with this draft containing my understanding of what was agreed to by the IEP team and what was considered and rejected as of the conclusion of our meeting yesterday. Please let me know if I missed anything.*

*In addition, please note that I changed the start date of this IEP to 3/29/2024 in order to give you enough time to review the updated draft and for me to make any additional changes if necessary to this document.*

*If you could please provide me with any feedback by the morning of Wednesday, March 27<sup>th</sup> in regards to [the Student's] IEP. My hope is to receive your feedback, update the IEP, and have it locked by the end of day March 28<sup>th</sup>.*

(D6, p.1; Tr., pp.87-88 (Foster).)

32. The Prior Written Notice (“PWN”) attached to the Third Draft IEP had a date of “03/22/2024” and was stamped “DRAFT.” (D6, pp.21-23; Tr., pp.87-88 (Foster).) This PWN stated:

*Description of the proposed or refused action:*

*The purpose of this letter is to inform you that the IEP team would like to implement the IEP, as written for your student and provide him with the services laid out within in it, for which he has been found eligible for under WAC.*

*The team comprised of: Sonny Foster (Sped Teacher/Case Manager), Chantale Packard (Principal), Jason Noahr (caregiver/parent), Lorrell Noahr (caregiver/parent), Sheila Nelson (Sped Specialist), Kari Lewinsohn (District Rep.), and Emily Ferguson (Gened Teacher).*

*The IEP team met within the 30 calendar day timeline from the last evaluation dated 2/28/2024. Caregivers requested additional time to review the updates to the new IEP Review. The current IEP dated 5/22/2023 will remain in effect until the IEP review is finalized.*

*The reason we are proposing or refusing to take action is:*

*The reason the IEP team would like to implement the IEP, and provide your student with the special education services for which he has been found eligible for under WAC, is so that he can access and participate within the general education curriculum and setting, and so that he can demonstrate positive academic growth.*

*Description of any other options considered and rejected:*

*The following were considered, but not necessarily rejected by the IEP team at the meeting:*

- A. Team considerations were reviewed by the IEP team.*
- B. Present levels were reviewed by the team.*
- C. Goals were reviewed by the IEP team.*
- D. Student accommodations were reviewed by the team.*
- E. A variety of LRE placements were discussed by the team.*

*The reasons we rejected those options were:*

*The team responded to the above items in the following manner at the IEP meeting:*

*A. Under section 1, parent/caregiver feedback was updated to include 3 attachments to the IEP (Community Complaint (SECC No.23-162), procedural history and corrective actions, and CAP and file closure letter. Section 2, district-wide assessments were reviewed. Section 5 (behavior impedes one's own learning...) the team agreed to add [the Student's] recent Level 2 Autism diagnosis. Section 6 (English proficiency) the team agreed to add that [the Student] is a first generation American.*

*B. The team discussed removing Mrs. Hinkles teacher report from Nov. 2023 as the IEP team discussed and collaboratively agreed in Feb. 2024, many of these noted behaviors are no longer happening. The team agreed that the feedback provided by Ms. Ferguson is sufficient to show how [the Student] is currently performing in the classroom. The team also discussed defining what prosocial strategies are in the Present Levels of Performance (PLEP) and updating the social skills goals.*

C. The team discussed all goals. The team agreed changes would be made to include strength-based metrics and to define what

*Prosocial behaviors are in the PLEP.*

D. The team discussed updates to the accommodations page. Parent/caregiver requested adding multiplication chart and 100s chart based on Mrs. Packard's suggestions. Parent/caregiver requested verbiage change when addressing unstructured times and areas to "Provide supervision during unstructured times" instead of "provide student coaching around where he can locate a trusted adult in unstructured areas". Wording was not changed due to provided supervision is not an accommodation as it is a standard practice school wide for all students. After two proposed drafts, caregivers have expressed that they are extremely uncomfortable with the accommodation as it currently is written in this IEP.

E. The IEP determined that 80% – 100% of the time in general education is the most appropriate placement for the student. Caregivers shared that every year during the grade level field trip Mrs. Noahr rides with [the Student] on "the big" bus to see if he is ready and willing to ride the regular school bus every day to and from school. It was discussed that Special transportation will continue to be his selection for this IEP, but if and when he is ready the team will discuss making the change to regular school transportation.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

*In order to draft this IEP, the team considered and used, parent reporting, teacher reporting, teacher collected data, graded student work samples, progress monitoring data, a review of past student work, a review of past student educational and assessment records, and a review of past student health records.*

*Any other factors that are relevant to the action:*

*A copy of the Parent Procedural Safeguards was offered to the family during the meeting. The family declined both an electronic copy or a paper copy at this time.*

*The family and teacher were provided with an input form to be used for the initial drafting of this new IEP. The family and rest of the IEP Team were provided with an advanced copy of the plan prior to the IEP meeting.*

*Caregivers have expressed that they are extremely uncomfortable with the accommodation as it currently is written in this IEP. They feel there is a high liability risk as they know [the Student] may resort to hitting when frustrated as described in this IEP. They feel the goal of his accommodations is to mitigate the known risks and support [the Student] with the success of his goals.*

*This IEP is a working document. Any member of the IEP team may request a meeting at any time in order to review student progress, and/or to request or propose any changes to the IEP. This plan is a collaborative effort, designed to provide student with the greatest amount of success in his access and participation within the general education classroom setting and curriculum.*

(D11, pp.19-20; Tr., pp87-88 (Foster.)) The PWN included information about the IDEA procedural safeguards and where the procedural safeguards can be obtained, as well as sources for the Caregivers to obtain assistance. (*Id.*) The PWN also stated that the Third Draft IEP may be implemented on March 29, 2024. (*Id.*)

33. On March 25, 2024, the Caregivers submitted an email providing input on the Third Draft IEP. (D7, pp.3-4; Tr., pp.89-90 (Foster).) Generally, the Caregivers reiterated that they do not agree with the goals as written and that there should be additional accommodations, or accommodations should be reworded. (*Id.*)

34. Ms. Foster reviewed the Caregivers input and responded by email on March 25, 2024, as follows:

*Thank you for your feedback. I will be working with Shelia (Nelsen) to get the IEP updated. I will send home the finalized IEP by Friday, March 29<sup>th</sup>. Thereafter, if we need to make any substantial changes, we can amend, but I will be locking it up by the due date to keep everything current.*

(D7, p.2; Tr., pp.89-91 (Foster).) The Caregivers responded that they did not agree to this process, that the IEP was not due for annual renewal until May 22, 2024, that they would like an extension of the implementation date, and that the March 22, 2024, PWN was inaccurate. (D7, p.2.)

35. Via email on March 25, 2024, Ms. Foster agreed to:

*add to the current [March 22, 2024] PWN a statement to say that the team met within the 30-calendar day timeline [to hold an IEP meeting] from the last evaluation dated 2/28/2024. [Caregivers] requested additional time to review the updates to the new IEP Review. The current IEP dated 5.22.2023 will remain in effect until the IEP review is finalized.*

(D7, p.1; Tr., pp.88-90 (Foster).)

36. On March 29, 2024, Ms. Foster emailed the Caregivers a Fourth Draft IEP, a PWN, and a “new fidelity data sheet and proposed behavior chart.” (D7, pp.1, 6-29; D9, pp.1-31; Tr., pp.90-91 (Foster).) Ms. Foster noted that the May 22, 2023, IEP would remain in effect and asked the Caregivers to provide feedback on the Fourth Draft IEP and the proposed fidelity and behavior charts by April 8, 2024. (*Id.*)

37. The Caregivers provided input and feedback on the Fourth Draft IEP and the proposed fidelity and behavior charts by email on April 1, 2024. (D8, pp.3-4; Tr., pp.91-93 (Foster).) The Caregivers continued to dispute the contents of the PWN and the Fourth Draft IEP’s goals and accommodations. (*Id.*)

38. On April 10, 2024, Ms. Foster responded to the Caregiver’s April 1, 2024, email with two separate emails. First, Ms. Foster responded by providing a paragraph-by-



paragraph explanation in red font and provided copies of the updated fidelity chart and the behavior chart. (D8, pp.1-2, 12-14; Tr., pp.92-95 (Foster).) Ms. Foster also emailed the Parents a second time and provided a copy of a Fifth Draft IEP that included some of the changes requested by the Caregivers, and again responded paragraph by paragraph in red font. (D9, pp.1-31; Tr., pp.92-95, 97-98 (Foster).)

39. On April 10, 2024, the Caregivers responded by email that they could not agree to the Fifth Draft IEP because of the way the accommodations and modifications were structured and the way the goals were written. (D10, p.2; Tr., pp.96-98 (Foster).) Ms. Foster emailed the Caregivers on April 12, 2024, and said that she would respond to the Caregivers' concerns later in the week. (D10, pp.1-2; Tr., pp.96-98 (Foster).) Three days later, on April 15, 2024, the Caregivers provided information to Ms. Foster about some issues with the general education teacher not implementing the Student's current accommodations, and Ms. Foster responded that she understood their concerns, talked with the teacher, and updated the accommodations in the Fifth Draft IEP. (*Id.*)

40. On April 17, 2024, Ms. Foster emailed the Caregivers the following:

*To follow up on your email sent 4/15/ 2024 at 8:37 am. Following our IEP meeting on March 20<sup>th</sup> and after receiving your feedback for the new IEP, I've updated the IEP document as follows, please see attached final copy. The team would like to move forward with implementation of the updated IEP goals. This current IEP will be locked and another IEP meeting will be convened in May to discuss data collected under the new IEP and make any further revisions that may be indicated.*

*Additionally, please see attached PWN outlining the team's initiation of the new IEP as written and changes that were made following your 4/15/2024 email.*

(D11, p.1; Tr., pp.98-99 (Foster).) Attached to Ms. Foster's April 17, 2024, email was the final April 17, 2024, IEP. (D11, pp.2-18; Tr., pp. (Foster).)

41. The April 17, 2024, IEP included a recitation of the Student's progress and the supporting data, as well as "baselines" for reference. (D11, pp.10-12; D12, pp.1-3; Tr., pp.105-107, 108-112 (Foster).) Ms. Foster listed the interventions and accommodations that have been tried or are currently in place in a separate section of the April 17, 2024, IEP. (D11, p.11; Tr., pp.121-122 (Foster).)

42. The April 17, 2024, IEP also included the following annual "Social Skills: Social Management Goal":

*By 04/21/25, when given an upsetting incident (Peer conflict and/ or faced with a non-preferred task) [The Student] will resolve the incident using prosocial strategies (walking away, asking for help to solve, talk through the incident with an adult) and communication (use of words in a calm manner to express how he is feeling, actively listen to others, ask for adult assistance in solving conflict such as having a mediated and/or restorative conversation) improving Social-Management skills by using prosocial strategies and communication **from using prosocial strategies, and communication needing 4-5 from adults using prosocial strategies and communication independently with 1 or less prompts / reminders from adult** as measured by teacher observations and data collection. (SEL.SOCIAL-MANAGEMENT.BENCHMARK 2A).*

(D11, pp.11-12; Tr., pp.105-106 (Foster); 274-276 (Nelsen); 340-341 (Packard)<sup>12</sup> (emphasis added).)

43. Ms. Foster and the District IEP team members considered the “Social Skills: Social Management Goal” to be appropriate because the Student was able to stop and think and use communication skills but requiring him to do so independently more challenging and would cause him to progress. (Tr., pp.107-108 (Foster).) Ms. Foster’s review of the Student’s progress reports reflected that the Student needed to progress to communicating and using strategies independently, but still have the option to seek out a trusted adult. (*Id.*) Ms. Nelsen used data collected over a four-week period that reflected that his present levels of performance showed he needed “4-5 prompts to engage in prosocial communication,” and therefore his goal would be to engage in prosocial behavior with fewer prompts from adults. (Tr., pp.275-276 (Nelsen).)

44. The language of the “Social Skills: Social Management Goal” in the April 17, 2024, IEP emphasized achieving the target behavior (communicating and using strategies independently). (Tr., pp.107-108 (Foster); pp.275-276 (Nelsen).) In contrast, the language used in the “Social Skills: Social Management Goal” in the First Draft IEP focused on the problem behavior. (*Id.*) Ms. Foster had altered the language of this goal in the April 17, 2024, IEP in response to the Caregiver’s request that the goal use “prosocial language.” (*Id.*)

45. The April 17, 2024, IEP also included a proposed new related service goal in the area of “Social Skills: Social Management: Peer Interactions”:

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<sup>12</sup> Ms. Packard testified as follows regarding this goal: “I’m assuming that the word ‘prompt’ is missing, but because it’s indicated on one or less prompts / reminders, so there is a word missing there.” (Tr., p.341 (Packard).)

*By 04/21/25, when given various social situations (in lessons, role play, and in real time), [the Student] will identify social rules and expectations along with identifying verbal, physical, and situational cues, improving positive peer interaction (when / how to ask peer to play participate in two way conversation, and to gain positive peer attention), from showing positive peer interactions needing 4-5 adult prompts / reminders per opportunity to showing (sic) positive peer interactions from or needing 1 or less adult prompts/reminders, as measured by teacher observation and data collection. (SEL.SOCIAL-MANAGEMENT.BENCHMARK 5A).*

(D3, pp.12-13; Tr., pp.105-106, 108-110 (Foster); 273-276 (Nelsen).)

46. The Student had met the goal of accepting that peers had a different perspective and had mastered “Related Service Goal: Social Awareness” from the May 22, 2023, IEP, and he was ready to progress to learning not to argue with peers, and “being able to move on to prosocial interactions where engaging in positive interaction through, you know, conversation, role-playing.” (Tr., pp.109-112 (Foster).) The target of this goal was for the Student to accept a peer’s opinion, ask a peer to play, and hold a two-way conversation. (*Id.*) Ms. Nelsen used data collected over a four-week period to determine that the Student’s present levels of performance reflected that he needed “4-5 prompts to engage in prosocial communication,” and therefore his goal would be to engage in prosocial behavior with fewer prompts. (Tr., pp.275-276 (Nelsen).) The language of the “Social Skills: Social Management: Peer Interaction Goal” in the April 17, 2024, IEP emphasized the achievement of the target behavior as requested by the Caregivers, in contrast to the First Draft IEP version of this goal which focused on the problem behavior. (Tr., pp.111-112 (Foster).)

47. The Caregivers reviewed the April 17, 2024, IEP goals with the Student, and neither the Student nor the Caregivers understood the April 17, 2024, IEP goals. (Tr., pp.383-385, 389-392 (Mr. Caregiver); 408-429 (Ms. Caregiver).) The Caregivers could not discern how the Student’s progress would be measured. (*Id.*)

48. The April 17, 2024, IEP included the following accommodations and modifications:

Accommodations	Frequency	Location	Duration
Access to a 100s table for math	During all math assignments	Classroom	04/22/2024 to 04/21/2025
Access to break spot or space to down-regulate	Quiet/Dark/Small specific hiding spots and / or sensory tools to utilize when beginning to escalate. Preteach a break procedure	General & Special Education	04/22/2024 to 04/21/2025

Allow to modeled examples of finished assignments / classwork	AS NEEDED BY STUDENT	Classroom	04/22/2024 to 04/21/2025
Additional time for assignments	AS NEEDED BY STUDENT	Classroom	04/22/2024 to 04/21/2025
Allow access to family provided snacks (When requested)	AS NEEDED BY STUDENT	Classroom	04/22/2024 to 04/21/2025
Allow Breaks (student or teacher initiated).	AS NEEDED BY STUDENT	Classroom	04/22/2024 to 04/21/2025
Allow [the Student] to contact his caregivers should it seem like it may ease his anxiety	When visibly anxious, agitated, or beginning to show signs of escalation	Classroom	04/22/2024 to 04/21/2025
Multiplication Table	ALL TESTING LOCATIONS	Classroom	04/22/2024 to 04/21/2025
Preferential Seating	At all times	General & Special Education	04/22/2024 to 04/21/2025
SBA-Non-Embedded-Multiplication Table (Math Only)	ALL TESTING LOCATIONS	TESTING: State Testing	04/22/2024 to 04/21/2025
SBA-Non-Embedded-Separate Setting / Small Group	ALL TESTING LOCATIONS	TESTING: State Testing	04/22/2024 to 04/21/2025
SBA-Non-Embedded-Simplified Test Direction (Paraphrase of verbal instructions only)	ALL TESTING LOCATIONS	TESTING: State Testing	04/22/2024 to 04/21/2025
Visual Schedule	Have schedule posted in classroom	Classroom	04/22/2024 to 04/21/2025
When reprinting any colored assignments, teacher will print in color	CLASSROOM	Classroom	04/22/2024 to 04/21/2025

D3, pp.14-15; Tr., pp.113-118 (Foster).)

49. The “100s table for math” and the “multiplication table” accommodations requested by the Caregivers are designed to provide the Student with a visual when performing math equations and allow the Student to focus and process equations. (Tr., pp.112-113 (Foster).) The accommodation to allow the Student to “access a break spot or space to down regulate” addressed the Student’s potential to become overwhelmed. (Tr., pp.113-114 (Foster).) The Student was allowed “additional time for assignments,” so that he could process information and perform quality work. (*Id.*) The Caregivers had asserted that the Student’s history with food scarcity should be accommodated by allowing the Student access to snacks when requested. (Tr., pp.114-115 (Foster).) The Student was also allowed to initiate a break as well as respond to a teacher-initiated break as an accommodation for dysregulation. (Tr., pp.115-116 (Foster).) The Caregivers requested that the Student be able to contact them at any time if he needed to ease his anxiety, and this accommodation was also

included. (*Id.*) The Student was given preferential seating because it assisted him with engagement and focus. (Tr., pp.116-117 (Foster).) The accommodation for a visual schedule allowed the Student to see what is happening next and understand what his day looked like. (Tr., pp.118-119 (Foster).) The Student’s math journal was to be printed in color to achieve equity in resources for the Student. (*Id.*)

50. The State Benchmark Assessments (“SBA”) accommodations were added because the Student would be participating in state testing for the first time; given the other accommodations and the knowledge of the Student’s needs, Ms. Foster included these three accommodations in the April 17, 2024. IEP. (Tr, pp.117-118 (Foster).)

51. The April 17, 2024, also included two modifications, and two accommodations written in the modification table below the accommodation table:

Accommodations – Classroom: Keep classroom door closed when possible, to limit distractions, noise, & [the Student] Absconding	CLASSROOM	Classroom	04/22/2024 to 04/21/2025
Accommodations – Classroom: Verbal coaching, before & after unstructured time, to identify location of a trusted supervising adults (sic) in area	Unstructured areas	Unstructured Areas	04/22/2024 to 04/21/2025
Modification: Reminders on organization strategies for belongings / academic work (limit materials given / on desk)	AS NEEDED BY STUDENT	Classroom	04/22/2024 to 04/21/2025
Modification: Given one assignment at time (limited visual stimuli when possible, half sheets not print on back)	AS NEEDED BY STUDENT	Classroom	04/22/2024 to 04/21/2025

(D11, pp.13-14; Tr., pp.98-99, 119-120 (Foster).) Ms. Foster included these accommodations listed in the “Modifications” table because the “Accommodations” form limited the number of typed characters allowed in each cell, and there was not sufficient space to include the level of description the Caregivers requested. (Tr., pp.97-99, 119-120, 121-124, 134-136 (Foster).)

52. The Caregivers had asked that the accommodation of “Keep the classroom door closed when possible” be included in the IEP because they were concerned about the Student absconding from class, and to limit additional external distractions. (Tr., pp.119-120 (Foster).) Ms. Foster and the IEP team agreed that the accommodation was appropriate and had been employed already by the Student’s general education teacher. (*Id.*)

53. The Caregivers had previously requested that the following accommodation from the May 22, 2023, IEP be included in the April 17, 2023, IEP:

Place with a trusted recess supervisor (i.e. recess para in classroom assigned area, resource para, teacher) May change based on area of classroom assignment and paraeducators available	Recess	Playground / Outside	05/22/2023 To 05/21/2024
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(D4, p.5; Tr., pp.386-387, 391-392 (Mr. Caregiver).) The Caregivers were primarily concerned about the unstructured periods of the day because in October 2023 the Student dumped his lunch tray and punched a peer in the face during lunch period. (Tr., pp.133-135; 236-237 (Foster); pp.319-321 (DeWitt); 343-348 (Packard); 383-384 (Mr. Caregiver).) The Student was disciplined with an in-school exclusion<sup>13</sup> for a quarter of the school day as a result. (Tr., pp. 236-237 (Foster); 343-348 (Packard).) During the incident the Student was under the supervision of Ms. Packard in a designated area where he completed his schoolwork for the day. (Tr., pp.346-348 (Packard).)

54. As reflected in the April 17, 2024, IEP, the Student had mastered the May 22, 2023, IEP “Social Skills: Social Management Goal” which required that he stop, think and seek a trusted adult to assist him with communication and use strategies to navigate social interactions. (D3, pp.11-12; Tr., pp.101-102; 130-134 (Foster).) Also as reflected in the April 17, 2024, IEP, the Student’s new “Social Skills: Social Management Goal” required him to progress by independently communicating and use strategies to navigate social interactions. (D11, pp.11-12; Tr., pp.105-106 (Foster).) Because the Student’s IEP required the Student to progress, the IEP team concluded that the previous accommodation of placing the Student with a trusted adult for supervision was inconsistent new the April 17, 2024, IEP “Social Skills: Social Management Goal.” (Tr., pp.130-134 (Foster).)

55. Instead, the IEP team concluded that the Student needed an accommodation of only verbal coaching before and after unstructured time (recess, transitions, passing time, lunch, and health room visits) so that he identified and understood the trusted adults available to him should he need support, but he could also independently develop new skills. (*Id.*) Additionally, all students at the District are supervised during

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<sup>13</sup> “Exclusion” means the Student was excluded from the classroom for the rest of the day and placed with a staff member to complete his schoolwork. (Tr., pp.295-296 (Nelsen).)

unstructured times, so the Student remained supervised at all times.<sup>14</sup> (*Id.*) As a result, the IEP team rejected the Caregivers’ requested accommodation. (*Id.*)

56. The Caregivers had also previously requested that the following accommodation from the May 22, 2023, IEP be included in the April 17, 2024, IEP:

Assistance with organization strategies for belongings and academic work	For desk area, help w/ managing supplies, only give a few items needed for project at a time	General & Special Education	05/22/2023 To 05/21/2024
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(D4, p.5; D9, p.1; Tr., pp.387-388, 393-394 (Mr. Caregiver).) The Caregivers requested this accommodation because in the past the Student had been observed by Ms. Nelsen dumping his desk onto the floor to find his daily math journal, and this behavior was not uncommon to the Student. (Tr., pp.284-286 (Nelsen); 430-432 (Ms. Caregiver).)

57. However, Ms. Foster had provided the Student with direct SDI during the 2023-2024 academic year “on organizing his desk,” and she had done so at the request of the Caregivers. (Tr., pp.120-126 (Foster); 303-302 (Nelsen).) Ms. Foster had observed that the Student “has a cleaner desk that most of the students I’ve seen in just his classroom,” and she has performed multiple desk checks that revealed the Student can “find items rather quickly.” (*Id.*) The IEP team discussed this issue with the Caregivers at the March 20, 2024, IEP meeting, and explained that the Student had received direct SDI and skill building regarding desk organization, and that the information was reflected in the Student’s present levels of performance in the April 17, 2024, IEP. (*Id.*)

58. Because the Student had learned the specific skill of organizing his desk and he was able to access his education, Ms. Foster and the IEP team concluded that the Student needed only reminders to maintain the skill. (*Id.*) Therefore, the modification of “Reminders on organization strategies for belongings / academic work (limit materials given / on desk),” was included in the April 17, 2024, IEP and the Caregiver’s requested accommodation was rejected. (*Id.*)

59. The Caregivers had previously requested that the April 17, 2024, IEP include the following accommodation that was included in the May 22, 2023, IEP:

Chunking Assignments into smaller parts	All longer assignments	General & Special Education	05/22/2023 To 05/21/2024
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<sup>14</sup> The Student in this case did not at any time receive additional, or a higher level of, supervision than other students at the school he attended. (Tr., pp.131-134, 256-258 (Foster); 350-351 (Packard).)

(D4, p.5; D9, p.1; Tr., pp. (Ms. Caregiver).)

60. The IEP team discussed the Student's need for limited visual stimuli and the concluded that it would assist the Student to have his assignments "chunked into a half sheet" and given to him one assignment at a time. (Tr., pp.129-131 (Foster).) The Student's teacher "would determine, based on the student's need, how to best set up that assignment" because not all assignments are conducive to being set up on a half-sheet. (*Id.*) The IEP team, then rejected the Caregivers' request, and instead created the modification "Given one assignment at time (limited visual stimuli when possible, half sheets not print on back)" because it was more flexible for the Student and the general education teacher. (*Id.*)

61. The April 17, 2024, IEP also provided that the Student would receive SDI in the area of social skills at a rate of ten (10) minutes, one time per day and twenty-five (25) minutes, one time per day in the special education environment, to achieve the social awareness and self-management goals. (D3, p.17.) In the "Description of Services" portion of the IEP, just below the service matrix, the SDI was further described as follows: "[The Student] will receive 25 minutes of social skills daily with an additional 10-minute social skills check in / out (5 min. in AM check in and 5 min. check out at the end of day) for coaching and skill building reinforcement centered around his IEP goals." (*Id.*)

62. Also attached to the April 17, 2024, IEP was a copy of the March 22, 2024, PWN and a new PWN dated April 17, 2024.<sup>15</sup> (D11, pp.19-27; Tr., pp.98-100 (Foster).) The April 17, 2024, PWN stated as follows:

*Description of the proposed or refused action:*

*The purpose of this letter is to inform you that following the IEP Team Meeting on 3/20/2024 to collaboratively review the DRAFT IEP, and after receiving parent feedback on any major changes, the following changes were made to the IEP. The IEP Team plans to implement the IEP as written (including the following listed changes discussed at the meeting and through parent feedback received (3/17/2024, 3/25/2024, 4/1/2024, and 4/10/2024).*

*The IEP team would like to implement the IEP, as written with the following changes for your student and provide him with the services laid out within in it, for which he has been found eligible for under WAC.*

*1. The following changes were made as discussed at the IEP Team Meetings and after receiving parent feedback:*

*2. Team Considerations: Strengths of the student: Caregivers wanted Parent Feedback (sent 3/11/2024) do be moved under Student Strengths, and over feedback received 3/17/2024. Under the 5th bullet, behavior impedes.. (sic) Caregivers' wanted a note*

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<sup>15</sup> Ms. Foster erroneously included a "Meeting Notice" that is included in the record at D11, p.26. (Tr., pp.99-100 (Foster).)



regarding [the Student's] updated Autism Level 2 diagnosis. Under the 6th bullet, student with limited English proficiency... sped teacher added [the Student] is a first generation American.

3. Present Levels of Educational Performance (PLEP)

4. General Education Teacher report: The team decided to remove Mrs. Hinkle's feedback from 11/2023 as the behaviors no longer apply.

5. Social Skills: The team agreed to update and add prosocial strategies to the present levels.

6. IEP Goals: [Caregivers] requested more strength-based goals instead of deficit based.

7. Accommodations: remove provide snacks when appropriate (i.e. not at recess/lunch) Allow access to family provided snacks (When requested).

8. Accommodations: Access to a 100s table for math

9. Accommodations: wording allow breaks (scheduled or when upset or overstimulated), replace with Allow breaks (student or teacher initiated)

10. Accommodations: Add SBA-Non-Embedded-Multiplication Table (Math Only)

To better accommodate the flexibility of wording on some of these accommodations and to target things that were specific to your child's needs we've moved some of the accommodations to the modifications section.

11. Modifications: Accommodations: Add Keep classroom door closed, when possible, to limit distractions, noise, & [the Student] absconding.

12. Modifications: Accommodations: Add Verbal coaching, before & after unstructured time, to identify location of a trusted adults in area.

13. Modification: Given one assignment at a time (limited visual stimuli when possible; half sheets not printed on back)

14. Modification: Reminders on organization strategies for belongings/academic work (limit materials given/on desk).

15. State or District Wide Assessments of Student: Testing list updated for this year and next to include list of accommodations by assessment.

16. Special Education Services: Special Education Service minutes were updated, and explained within the description of service box.

17. LRE: The LRE page was updated to reflect the service minutes.

....

The reason we are proposing or refusing to take action is:

The reason the IEP team would like to implement the IEP, and provide [the Student] with the special education services for which he has been found eligible for under WAC, is so that he can access and participate within the general education curriculum and setting, and so that he can demonstrate positive academic growth.

Description of any other options considered and rejected:

[Caregivers'] request to defer implementation of the new IEP until another IEP meeting is held was considered.

The reasons we rejected those options were:

The option of holding another IEP meeting was rejected as the team has addressed the major parent concerns with the IEP as written. The team has already held an IEP meeting on 3/20/2024 to discuss the new IEP and the team would like to move forward with implementation of the updated IEP goals. An IEP team meeting is not necessary at this time. Another IEP meeting will be convened in May to discuss data

collected under the new IEP and make any further revisions that may be indicated. Should changes need to be made, the team will open an amendment.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

In order to draft this IEP, the team considered and used, parent reporting, teacher reporting, teacher collected data, graded student work samples, progress monitoring data, a review of past student work, a review of past student educational and assessment records, and a review of past student health records.

Email 3/15/2024: Mrs. Foster emailed draft of proposed IEP to family (Draft #1)

Email 3/17/2024: [Caregiver] provided feedback on initial IEP draft.

Email 3/20/2024: [Caregiver] requested advanced copy of IEP draft #2, sent by Mrs. Foster before the meeting.

Meeting 3/20/2024: The IEP Team did not reject any options, and feedback was received by the team and updated made by Mrs. Foster.

Email 3/21/2024: Updated Draft #3 send to family via email.

Email 3/25/2024: [Caregiver] provided feedback on draft #3 of IEP.

Email 3/29/2024: Mrs. Foster updated student IEP and sent draft #4 via email to family.

Email 4/1/2024: [Caregiver] provided feedback on draft #4 via email to Mrs. Foster.

Email 4/10/2024: Mrs. Foster updated student IEP and sent draft #5 (proposing a final draft) via email to family.

Email 4/10/2024: [Caregiver] provided feedback on draft #5 via email to Mrs. Foster

Email 4/17/2024: Mrs. Foster updated student IEP and sent the final copy home to family via email.

(D11, pp.26-27; Tr., pp.135-136 (Foster).) The PWN included information about the IDEA procedural safeguards, where the Caregivers could obtain information about the safeguards, and sources for obtaining assistance (*Id.*) Also, the PWN stated that the April 17, 2024, IEP would be implemented on April 22, 2024. (*Id.*)

63. The Caregivers reviewed the PWN and believed it did not reflect that they did not agree with the April 17, 2024, IEP or account for the agreements and activities of the IEP team. (Tr., pp.432-435 (Ms. Caregiver).)

64. The Caregivers filed the April 18, 2024, Due Process Hearing Request the following day.

65. The District has not implemented the April 17, 2024, IEP and has not held a subsequent IEP meeting. (Tr., p.136 (Foster).)

## CONCLUSIONS OF LAW

### **Jurisdiction and Burden of Proof**

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

2. As per RCW 28A.155 (SB 5883), the burden of proof in this case is on the District. 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, 102 (1981); *Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 797 (1999); *Hardee v. Dep't of Social & Health Services*, 172 Wn.2d 1, 4 (2011). Therefore, the District's burden of proof in this matter is preponderance of the evidence.

### **The IDEA and FAPE**

3. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

4. In *Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the individualized education program developed under these procedures is reasonably calculated to enable the child to receive educational benefits. "If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." *Rowley*, 458 U.S. at 206-07.

### **Issues Presented**

5. During the due process hearing, the Caregivers testified that they believed that their right to parental participation in the IEP development process and the IEP meeting process was infringed because the District did not hold a second IEP meeting before issuing the April 17, 2024, IEP. The Caregivers also presented testimony that they did

not have additional opportunities after April 17, 2024, to provide input regarding the goals, accommodations, and recommendations, or come to mutual agreement on the IEP with the District. The Caregivers repeat these claims in their closing brief.

6. The District argues in its closing brief that the issue of parental participation was not identified as an issue for hearing and should not be considered by the tribunal.

7. 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 (9th Cir. 2001).

8. 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).

9. 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).

10. However, a party may not raise new issues during a due process hearing that were not raised in the due process hearing request unless the other party agrees. WAC 392-172A-05100(3); 20 U.S.C. § 1415(f)(3)(B). “Administrative and judicial review in IDEA cases is specifically limited to the issues raised in the due process [hearing request], unless the parties agree otherwise.” *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 \*34-35 (W.D. Wash. May 8, 2019), *aff'd sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022) (upholding ALJ's refusal

to address claims raised for first time in post-hearing brief where parents cited no evidence that parties agreed to expand scope of due process hearing).

11. This is consistent with the Washington Administrative Procedures Act (“APA”) requiring that a notice of hearing include a statement of the issues (RCW 34.05.434) and that prehearing orders identify all issues for resolution and provide an opportunity for the parties to object. WAC 10-80-130.

12. An exception to this rule is when an issue was actually tried by consent of the parties at an administrative hearing. *M.C. v. Antelope Valley Union High School Dist.*, 858 F.3d at 1196; *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 \*15-16 (E.D. Cal. Mar. 7, 2019), *aff’d* 810 Fed. Appx. 588 (9th Cir. 2020); see also *Issaquah Sch. Dist.*, at \*37 (holding that parents failed to show any of claims not considered by ALJ were tried by consent, contrasting with *Antelope Valley*: “[b]oth sides in *Antelope Valley* ‘presented extensive evidence,’ including witness testimony, regarding the omitted claim”).

13. During the May 16, 2024, prehearing conference the parties agreed that the tribunal would issue proposed issue statements in the First Prehearing Order, and that each party may object to the proposed issue statements within ten (10) days. The May 17, 2024, First Prehearing Order set forth the proposed issue statements based on the Caregivers’ Due Process Hearing Request. The District filed an objection to the proposed issue statements on May 20, 2024, and the Caregivers’ filed an objection to the proposed issue statements on May 28, 2024.

14. After review of the April 18, 2024, Due Process Hearing Request and the parties’ objections, the tribunal set forth the issues for the due process hearing in the Second Prehearing Order dated May 29, 2024. The issue statements noticed for hearing did not include any alleged violation of WAC 392-172A-03100 for failure to allow the Caregivers to participate in the IEP development process or any IEP meetings.

15. Given that parental participation was not an issue included in the April 18, 2024, Due Process Hearing Request or the May 28, 2024, Second Prehearing Order, and there is no indication in the record that the parties agreed to a trial of these allegations, it is concluded that the issue of parental participation or a violation of WAC 392-172A-03100 will not be addressed.

**The April 17, 2024, IEP Goals are Reasonably Calculated to Ensure the Student Makes Appropriate Progress Given His Unique Circumstances, but One of the Two Goals is Not Measurable as Written**

16. “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.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017). The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry. 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. *Id.* The “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Id.* Accordingly, an IEP team is charged with developing a comprehensive plan that is “tailored to the unique needs of a particular child.” *Id.* at 1000. Additionally, the Student’s “educational program must be appropriately ambitious in light of his circumstances . . .” *Id.*

17. In reviewing an IEP, “the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” *Id.* at 999 (emphasis in original). The determination of reasonableness is made as of the time the IEP was developed. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is “a snapshot, not a retrospective.” *Id.*

18. 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.*

19. Parents do not have veto power over individual provisions or the right to dictate any particular educational program. *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). 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).

**A. The April 17, 2024, IEP “Social Skills: Social Management Goal” is Reasonably Calculated to Enable the Student to Make Appropriate Progress Given His Unique Circumstances But is Not Measurable as Written.**

20. An IEP must contain a statement of annual goals, including academic and functional goals designed to meet the student’s needs that result from their disability to enable them 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).

21. 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.*) But there is no specific form of measurement required by statute of caselaw. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1122 (9<sup>th</sup> Cir. 2011) (“teacher observations” can be the basis of measurement). Goals can be measured in a number of subjective ways as well as quantitatively. *Capistrano Unified Sch. Dist. v. S.W.* 21 F.4<sup>th</sup> 1125, 1134-1135 (9<sup>th</sup> Cir 2021).

22. The IDEA does not specify the number of goals that must be included in an IEP, but there should typically be at least one goal for each area of need. See, e.g., *Bellflower Unified Sch. Dist.*, 54 IDELR 66 (SEA CA 2010) (IEP deficient because it did not contain goals to address student's deficits in attending to group instruction); *Flagstaff Arts and Leadership Academy*, 113 LRP 27180 (SEA AZ 2013) (IEP deficient because it failed to provide goals to properly address basic reading, reading fluency, life skills, and other areas of need). An IEP need not contain every goal requested by a parent or recommended by the parent's experts. See *G.D. v. Torrance Unified Sch. Dist.*, 112 LRP 12078 (C.D. Cal. 2012). The IDEA does not require “that each identifiable need, deficit, or area of struggle or challenge be addressed in a separate goal. Nor does it require subdividing a student's needs into smaller components of need and addressing each component in a separate goal.” *Palo Alto Unified School Dist.*, 118 LRP 21969 (CA 2018).

23. The Caregivers have argued that the “Social Skills: Social Management Goal” in the April 17, 2024, IEP is not understandable, and that the description of how the Student's progress will be measured lacks specificity. (Caregiver's Closing Brief, pp.1-22.) The Caregivers testified repeatedly that the goal as written is a grammatically incorrect run-on sentence and does not effectively communicate a measurement method because of typographical errors. (*Id.*) The Caregivers have also argued that the goal should be constructed with prosocial language and the Student should be able to read and understand the goal he is to achieve. (*Id.*)

24. The District argues that the April 17, 2024, IEP's “Social Skills: Social Management Goal” is reasonably calculated to ensure that the Student will make appropriate progress given his unique circumstances and is measurable as written. (District's Post-Hearing Brief, pp.9-14.)

25. It is certainly aspirational to write IEP goals in a way that the student who is expected to meet the goal could understand the challenge they face and how their progress will be measured. However, there is no legal requirement that a goal must be written in a manner such that the student can read and understand it, and in some cases a student's disability may prevent reading and understanding an IEP goal. Therefore, it is concluded that the District did not have an obligation to write the April 17, 2024, IEP goals such that the Student could read and understand the goal and the progress measurement.

26. Also, the District is correct that the substance of the "Social Skills: Social Management Goal" is reasonably calculated to ensure that the Student will make appropriate progress given his unique circumstances, because it is based on present levels of performance that demonstrate that the Student mastered his previous "Social Skills: Social Management Goal," from the May 22, 2023, IEP, and he is ready to progress to a new goal. Additionally, the "Social Skills: Social Management Goal" is written using prosocial language and examples proposed by the Caregivers. A comparison between the First Draft IEP from March 20, 2024, and the April 17, 2024, IEP shows that the District adopted the Caregiver's philosophy and desire for prosocial language, and drafted the "Social Skills: Social Management Goal" in a manner that focuses on the target behavior, not the problem behavior.

27. Further, the goal is supported by data. Ms. Nelson testified, she collected data over a period of four weeks to determine the number of adult prompts (4 to 5 prompts) the Student needed and constructed a new goal of using fewer prompts from adults (1 or less prompts). Ms. Nelsen and Ms. Foster also created Fidelity Charts and Behavior Charts to track the Student's progress towards meeting the goal. Also, the use of the SEL.SOCIAL-MANAGEMENT. BENCHMARK 2A standards, coupled with the Fidelity Charts and Behavior Charts, are sufficient to track the Student's progress towards the "Social Skills: Social Management Goal."

28. The District also correctly asserts that the "Social Skills: Social Management Goal" "includes measurement criteria that address [the Caregivers'] request to define prosocial behaviors within the goals." (District's Post-Hearing Brief, pp.12-14.) The District focuses on the goal's criteria for subjective measurement as proposed by the Caregivers, for example "walking away, asking for help to solve, talk through the incident with an adult." (*Id.*)

29. However, the District has not carried its burden and has not shown that the "Social Skills: Social Management Goal" accurately communicates the frequency of prompts that the Student must achieve to demonstrate mastery of the goal. This is because a portion of the last four lines of the goal is missing a word and potentially commas:



*. . . . from using prosocial strategies, and communication needing 4-5 from adults using prosocial strategies and communication independently with 1 or less prompts / reminders from adult as measured by teacher observations and data collection. (SEL.SOCIAL-MANAGEMENT.BENCHMARK 2A).*

(D11, pp.11-12 (Emphasis Added).) This is supported by Ms. Packard’s testimony that the word “prompts” is missing from this goal.

30. The Caregivers are correct that the way the last four lines of the “Social Skills: Social Management Goal” are written more likely than not fails to set forth the frequency of prompts that the Student must meet to achieve mastery of the goal. As a result, it is concluded that the District has not met its burden and has not shown that the “Social Skills: Social Management Goal” in the April 17, 2024, is measurable as written. As a result, the District substantively violated WAC 392-172A-03090. This substantive violation denied the Student a FAPE because if the frequency of prompts and is not set forth in the IEP, then the District cannot determine whether the Student is progressing towards the goal and the Student may be deprived of an educational benefit. The Caregivers, then, are entitled to relief as a result.

31. In their closing brief, the Caregivers have proposed an alternate goal. (Caregivers’ Closing Brief, p.4.) However, the substance of the Caregiver’s argument regarding this goal is confusing because it requires assignment of a trusted supervisor while requiring the Student to improve his peer interactions independently and appears to omit the Student’s need to communicate and use strategies. Further, the Caregivers have proposed a method of measuring the Student’s progress that does not relate to the present levels of performance data (which shows he needs 4-5 prompts).

32. Thus, Caregivers’ proposed goal is not reasonably calculated to ensure that the Student will appropriately progress given his unique circumstances because it requires him to remain at the skill level he has already mastered, and the measurement proposed is not supported by data or present levels of performance.

33. On the other hand, even though the District’s goal is not measurable as written, it is reasonably calculated to ensure that the Student will appropriately progress given his unique circumstances. For this reason, the tribunal will not order as relief that the District accept the Caregivers’ goal in place of the “Social Skills: Social Management Goal” in the April 17, 2024, IEP. Instead, the relief ordered is set forth below and tailored to address the issue of frequency of prompts and measurability.

**B. The April 17, 2024, IEP “Social Skills: Social Management: Peer Interactions” Goal is Reasonable, Appropriate, and Measurable.**

34. The Caregivers have asserted that the “Social Skills: Social Management: Peer Interactions Goal” is also unclear, unreasonable, and inappropriate. The Caregivers make the same arguments regarding the “Social Skills: Social Management: Peer Interactions Goal,” as they have made above in regard to the “Social Skills: Social Management Goal.”

35. The District argues that the April 17, 2024, IEP’s “Social Skills: Social Management: Peer Interactions Goal” is reasonably calculated to ensure that the Student will make appropriate progress given his unique circumstances. (District’s Post-Hearing Brief, pp.9-14.)

36. The District is correct that the substance of the “Social Skills: Social Management: Peer Interactions Goal” is reasonably calculated to ensure that the Student will make appropriate progress given his unique circumstances, because it is based on present levels of performance that demonstrate that the Student mastered his previous “Related Service Goal: Social Awareness”: from the May 22, 2023, IEP, and he is ready to progress to a new goal. (*Id.*)

37. The District also asserts that it used the prosocial language and examples proposed by the Caregivers to construct the goal. A comparison between the First Draft IEP from March 20, 2024, and the April 17, 2024, IEP shows that the District adopted the Caregiver’s philosophy and desire for prosocial language, and drafted the “Social Skills: Social Management: Peer Interactions Goal” using the Caregiver’s proposed language that focuses on the target behavior, not the problem behavior.

38. The District also correctly points out that the “Social Skills: Social Management: Peer Interactions Goal” is measurable as written because it “includes measurement criteria that address [the Caregivers’] request to define prosocial behaviors within the goals.” (District’s Post-Hearing Brief, pp.12-14.) The District focuses on the goal’s criteria for subjective measurement as proposed by the Caregivers, for example “lessons, role play, and in real time,” and “when / how to ask peer to play participate in two-way conversation, and to gain positive peer attention.”

39. As Ms. Nelson testified, she collected data over a period of four weeks to determine the number of adult prompts (4 to 5 prompts) the Student needed and constructed the new goal of using fewer prompts from adults (1 or less prompts). Ms. Nelsen and Ms. Foster also created Fidelity Charts and Behavior Charts to track the Student’s progress towards meeting the goal. Also, the use of the SEL.SOCIAL-

MANAGEMENT.BENCHMARK 5A standards, coupled with the Fidelity Charts and Behavior Charts, are sufficient to track the Student's progress towards the "Social Skills: Social Management: Peer Interactions Goal."

40. Unlike the "Social Skills: Social Management Goal," the District has clearly and accurately communicated the measurement of the Student's progress by identifying the frequency of adult prompts in the "Social Skills: Social Management: Peer Interactions Goal." The Caregivers are correct that this goal is a lengthy, run on sentence, but there are no typographical errors or missing words that impede the communication of the measurability of the goal.

41. Therefore, based on the record and the parties' arguments, it is concluded that the District has carried its burden and has shown that the "Social Skills: Social Management: Peer Interactions Goal" in the April 17, 2024, IEP is reasonably calculated to ensure the Student makes appropriate progress in light of his unique circumstances, and that the goal is measurable as written. The District, then, has not substantively violated WAC 392-172A-03090 and has met the *Endrew F.* standard.

42. The Caregivers have proposed a goal in their closing brief. (Caregiver's Closing Brief, p.4.) However, the substance of the Caregiver's argument regarding this goal is confusing because they have advocated for a goal where the Student acts independently to identify social expectations and cues," but the proposal also requires the assignment of a trusted adult to the Student.

43. The Caregivers' proposed goal is not reasonable and appropriate because it is not based on the Student's present levels of performance and the measurement standard is not supported by the available data. Further, the Caregivers have proposed a method of measuring the Student's progress that does not relate to the present levels of performance data (which shows he needs 4-5 prompts). Regardless, because the District has met its burden and shown that the "Social Skills: Social Management: Peer Interactions Goal" is reasonable and appropriate, there is not a basis to order the Caregivers' requested relief.

**The April 17, 2024, IEP Accommodations and Modifications Meet the Criteria of WAC 392-172A-03090(1)(d) and (f).**

44. An IEP must include a statement of the program modifications and accommodations 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, 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)(d) and (f). Specifically, the IEP must include:

*(d) A statement of the special education and related services and supplementary aids and services, . . . and a statement of the program modifications or supports for school personnel that will be provided to enable the student:*

*(i) To advance appropriately toward attaining the annual goals;*

*(ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and*

*(iii) To be educated and participate with other students including nondisabled students in the activities described in this section;*

*. . . .*

*(f)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-wide assessments; and*

*(ii) If the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why:*

*(A) The student cannot participate in the regular assessment; and*

*(B) The particular alternate assessment selected is appropriate for the student;*

45. An accommodation is the provision of adaptations and / or modifications to the learning environment that support students with disabilities, and a student that receives accommodations may not have an active IEP but may have a Section 504 Rehabilitation Act Plan because they have an impairment that “substantially limits one or more major life activities,” such as learning, reading or communicating. 42.U.S.C. Section 12102. A modification is when an assignment, test, or classroom standard is actually changed such that it is no longer the same assignment, test, or standard that other students are taking or meeting.

46. The Caregivers make several arguments regarding the April 17, 2024, IEP accommodations and modifications. First, the Caregivers assert that the following

accommodations from the May 22, 2023, IEP were improperly removed and should be included in the April 17, 2024, IEP:

Assistance with organization strategies for belongings and academic work	For desk area, help w/ managing supplies, only give a few items needed for project at a time	General & Special Education	05/22/2023 To 05/21/2024
Chunking Assignments into smaller parts	All longer assignments	General & Special Education	05/22/2023 To 05/21/2024
Place with a trusted recess supervisor (i.e. recess para in classroom assigned area, resource para, teacher) May change based on area of classroom assignment and paraeducators available	Recess	Playground / Outside	05/22/2023 To 05/21/2024

47. Next, the Caregivers assert that the following accommodations set forth in the modification table, and the modifications, are inappropriate:

Accommodations - Classroom: Keep classroom door closed when possible, to limit distractions, noise, & JH Absconding	CLASSROOM	Classroom	04/22/2024 to 04/21/2025
Accommodations - Classroom: Verbal coaching, before & after unstructured time, to identify location of a trusted supervising adults (sic) in area	Unstructured areas	Unstructured Areas	04/22/2024 to 04/21/2025
Modification: Reminders on organization strategies for belongings / academic work (limit materials given / on desk)	AS NEEDED BY STUDENT	Classroom	04/22/2024 to 04/21/2025
Modification: Given one assignment at time (limited visual stimuli when possible, half sheets not print on back)	AS NEEDED BY STUDENT	Classroom	04/22/2024 to 04/21/2025

48. The District argues that the “Students’ IEP includes two pages of accommodations and modifications” that meet the criteria of WAC 392-172A-03090, that the location of the two accommodations in the modifications table is permissible, and that the Caregivers’ requested accommodations from the May 22, 2023, IEP would stagnate the Student’s progress.

49. The District adopted the Caregivers’ requests regarding all accommodations and modifications, except as to the accommodations and modifications listed above in paragraphs 46 and 47. Therefore, these accommodations will not be addressed, and it is concluded that they meet the standards of WAC 392-172A-03090(1)(d) and (f).

## **A. Organizational Strategies**

50. Regarding the modification addressing organizational strategies, the Caregivers wish to retain the accommodation that provides the Student with “assistance,” instead of “reminders,” because the Student still struggles in this area and has dumped the contents of his desk on the floor to find items. The Caregivers, Ms. Foster, and Ms. Nelson have all testified that the Student had instances of dumping his desk on the floor to find items, and it is understandable that the Caregivers seek to continue addressing this behavior.

51. However, the evidence in the record shows that Student received direct SDI on organizational strategies for his desk and academic work, and that the Student has learned this skill. Also, the District has provided sufficient testimony from Ms. Foster and Ms. Nelsen that the Student has progressed to the intermediate level where he needs reminders maintain the skill so that he can continue to progress to the point where he can maintain the skill on his own. The District’s argument that continuing an accommodation of “assistance” in this area would not allow the Student to progress is well taken. Also, the District is correct that the Student’s organizational struggles, if they regress, can be addressed through delivery of SDI coupled with the accommodation of providing him with reminders. Thus, the District has shown that this accommodation meets the criteria of WAC 392-172A-03090(1)(d).

## **B. Assignment Limitation**

52. It is unclear as to why the Caregivers challenge the modification that addresses limiting visual stimuli caused by the Student’s assignments. A side-by-side comparison of the May 22, 2023, IEP accommodation with the April 17, 2024, IEP modification shows that the Student will still receive one assignment at a time and that his visual stimuli will be limited. Also, the fact that the Student’s assignments will not be separated into “chunks,” but will be given in a limited half-sheet allows the Student gradual exposure to more visual stimuli per assignment, while still only being required to focus on one assignment at a time. Given the vague nature of the Caregivers challenge to the modification and the fact that the modification allows the Student to progress while attending to his need for limited visual stimuli, it is concluded that this modification meets the criteria of WAC 392-172A-03090(1)(d).

## **C. Supervision by a Trusted Adult**

53. The parties heavily dispute the change to the accommodation regarding “placement with a trusted supervisor at recess” in the May 22, 2023, IEP. The Caregivers have repeatedly asserted that the Student needs to be closely supervised

by an adult he trusts to communicate, use strategies, and interact with his peers during unstructured time. Essentially, the Caregivers argue for an expansion of the supervision accommodation.

54. Conversely the District argues that the Student's present levels of performance and the April 17, 2024, IEP social skill goals require that the May 22, 2023, IEP accommodation be changed to reflect that the Student is progressing to act more independently of adults.

55. It is important to note that the May 22, 2023, IEP only required that a trusted adult be assigned to supervise the Student during recess; the Student has never been placed with a trusted adult during unstructured time except for recess. The District's witnesses, particularly Ms. Packard and Ms. Foster, provided credible testimony that the Student, like all students, is supervised at all times, structured or unstructured, while at school, and that the Student has never required additional supervision. Further, as Ms. DeWitt testified, the February 27, 2024, FBA reflected that the Student does not need additional supervision or a BIP. Thus, the record does not support the Caregivers argument that the Student needs supervision beyond what other students require in order to access his education.

56. The District has carried its burden and has shown that the two social skills goals in the April 17, 2024, IEP require the Student to progress to acting independently of prompting by adults. Assigning an adult to the Student as an accommodation will not assist him in beginning to act independently of prompting by an adult and will stagnate the Student's progress. The District has also carried its burden and has shown that the accommodation to coach the Student on the adults available to assist during unstructured time is commensurate with the two social skills goals in the April 17, 2024, IEP, because he will know who to seek assistance from if needed, while still independently engaging in targeted behaviors and progressing towards his goals. Thus, the District has shown that this accommodation meets the criteria of WAC 392-172A-03090(1)(d).

#### **D. Location of Accommodations and Modifications**

57. The Caregivers also argue that including the two accommodations in the modification table is inappropriate because they are not modifications, they are accommodations. The District is correct that the law only requires that the accommodations be identified as such and included in the IEP; the law does not specify or require where the information about a modification and accommodation be located in the IEP document.

58. Ms. Foster thoroughly explained that she identified the accommodations using the word “accommodation” at the beginning of the sentence, and then placed the two accommodations in the modification table to provide a high level of detail as the Caregivers’ requested. This ministerial, organizational act of utilizing a cell in a form that allowed for more characters improved the communication about the accommodations, and the Caregivers’ have not identified any deficiency resulting from Ms. Foster’s ministerial and organizational decision. Thus, the District has met its burden and has shown that it did not violate the IDEA or WAC 392-172A-03090 by relocating two of the accommodations into the modification table.

59. Given the evidentiary record presented, it is concluded that the District carried its burden and has shown that the April 17, 2024, IEP includes a statement of the program modifications and accommodations that will be provided to enable the Student to advance appropriately toward attaining the April 17, 2024, IEP’s two annual goals, to 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)(d) and (f). The District has carried its burden and has shown that it did not violate the IDEA or WAC 392-172A-03090.

**The March 22, 2024, and April 17, 2024, Prior Written Notices Meet the Requirements of WAC 392-172A-05010.**

60. A school district must provide a PWN to the parents of a child eligible for special education within a reasonable time before it initiates or changes, or refuses to initiate or change, the educational placement of the Student or the provision of FAPE. WAC 392-172-05010. “The purpose of the notice is to provide sufficient information to protect the parents’ rights under the [IDEA].” *Kroot v. District of Columbia*, 800 F. Supp. 976, 982 (D.D.C. 1992).

61. To meet the requirements of WAC 392-172A-05010(2), the PWN must be in writing, and 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.*

62. The U.S. Court of Appeals for the Ninth Circuit addressed the importance of the PWN requirement in *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9<sup>th</sup> Cir. 1994), stating:

*We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any. Furthermore, a formal, specific offer from a school district will greatly assist parents in 'presenting complaints with respect to any matter relating to the ... educational placement of the child.'*

(Citation omitted.) *Union* involved a school district's failure to make any formal written offer of placement, but courts have relied on *Union* to find that an unclear IEP or PWN does not permit parents to make an intelligent decision whether to agree, disagree, or seek relief through a due process hearing. *S.H. v. Mount Diablo Unified Sch. Dist.*, 263 F. Supp. 3d 746, 761 (N.D. Cal. 2017).

63. Failure to provide a PWN that meets the requirements of WAC 392-172A-05010 is a procedural violation, but a school district must also show that the procedural violation amounted to a denial of FAPE. First, it must be determined whether the District complied with the procedures established by the IDEA. *Rowley*, 458 U.S. at 206-07. Procedural flaws do not automatically require a finding of a denial of a FAPE. However, "procedural inadequacies that result in the loss of educational opportunity, *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4<sup>th</sup> Cir. 1990), or seriously infringe the parents' opportunity to participate in the IEP formulation process, *Roland M.*, 910 F.2d at 994; *Hall*, 774 F.2d at 635, clearly result in the denial of a FAPE." *W.G. v. Bd. of Trustees of Target Range School Dist.*, 960 F.2d 1479, 8 IDELR 1019 (9<sup>th</sup> Cir. 1992.)

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

*(i) impeded the child's right to a free appropriate public education;*

*(ii) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or*

*(iii) caused a deprivation of educational benefits.*

WAC 392-172A-05105(2).

65. The Caregivers did not assert that the District violated WAC 392-172A-05010, but instead argued that the March 22, 2024, PWN and the April 17, 2024, PWN did not "accurately reflect the activities and agreements of the IEP team at meetings." More specifically, the Caregivers argue that in the two PWNs at issue, Ms. Foster did not recite in specific detail the differences between the five drafts of the April 17, 2024, IEP or the specific events of the March 20, 2024, IEP team meeting. A review of the two PWNs at issue shows that the Caregivers are correct; the March 22, 2024, PWN and April 17, 2024, PWN do not specifically detail all the activities and agreements of the IEP team at meetings.

66. However, as the District correctly argues, the purpose of the PWN is not to accurately record and reflect specific events, statements, agreements, or other activities; the purpose of the PWN is to give parents notice of a proposed or refused action, what the action or refused action is, and the basis for the decision, as well as to provide information to parents about how to challenge the District's action. Thus, the issue is whether the March 22, 2024, PWN and April 17, 2024, PWN meet the requirements of WAC 392-172A-05010.

67. The District argues that the March 22, 2024, PWN and April 17, 2024, PWN meet the requirements of WAC 392-172A-05010, and in its closing brief describes exactly how and why the PWN addresses the required criteria. A review of the March 22, 2024, PWN and April 17, 2024, PWN in relation to the District's closing brief shows that the District has correctly identified how each PWN meets the criteria of WAC 392-172A-05010. (District's Closing Brief, pp.22-26.) The District's analysis of this issue is adopted here. As a result, it is concluded that the District has carried its burden and has shown that it did not violate WAC 392-172A-05010 by issuing either the March 22, 2024, PWN or the April 17, 2024, PWN.

68. Even if the March 22, 2024, PWN and the April 17, 2024, PWN were deficient in some fashion, there is not sufficient evidence that the Student was denied a FAPE as a result. There is no evidence that the Student was denied an educational

opportunity as a result of the contents of the PWNs at issue, and there is no evidence that the contents of the two PWNs at issue impeded the Caregivers ability to participate in the decision-making progress. In fact, the record reflects the opposite: that the Caregivers were provided with ample opportunities to participate in the decision-making process by reviewing and commenting on the five draft IEPs and the March 22, 2024, PWN. Finally, there is no evidence that demonstrates any relationship between the two PWNs at issue and a deprivation of an educational benefit to the Student.

69. Given the issue presented, the evidence in the record, and the nature of the parties' arguments, it is concluded that the District has carried its burden and has shown that the March 22, 2024, PWN and the April 17, 2024, PWN meet the requirements of WAC 392-172A-05010. Therefore, it is concluded that no violation of the IDEA occurred.

### **Requests for Relief**

70. As found and concluded above, the District substantively violated WAC 392-172A-03090 because the "Social Skills: Social Management Goal" is not measurable as written and the Caregivers are entitled to relief.

71. Therefore, it is ordered that within thirty (30) days of the date of this order, the District will redraft the "Social Skills: Social Management Goal" to describe specifically and understandably how the goal will be measured and the frequency of prompts from adults. However, given that the "Social Skills: Social Management Goal" is otherwise reasonable and appropriate, as well as measurable with Fidelity Charts, Behavior Charts, and the SEL.SOCIAL-MANAGEMENT.BENCHMARK 2A standard, there does not appear to be a need for an IEP meeting to further address the substance of this goal.

### **ORDER**

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

1. The District met its burden and has shown that it met the requirements of WAC 392-172A-03090 because the "Social Skills: Social Management" goal is reasonable calculated to ensure that the Student will make appropriate progress given his unique circumstances. and appropriate. The District did not meet its burden and has not shown that it met the requirements of WAC 392-172A-03090 because the "Social Skills: Social Management" goal is not measurable as written. The District substantively violated the IDEA and WAC 392-172A-03090 and the Student was denied a FAPE.

2. The District has shown that it did not substantively violate the IDEA or deny the Student a FAPE because the April 17, 2024, “Social Skills: Social Management: Peer Interactions Goal” is reasonably calculated to allow the Student to make appropriate progress in light of his unique circumstances.
3. The District has shown that it did not violate the IDEA or deny the Student a FAPE because the April 27, 2024, IEP’s accommodations and modifications are reasonably calculated to allow the Student to make appropriate progress in light of his unique circumstances.
4. The District has shown that it did not procedurally violate the IDEA or deny the Student a FAPE because the March 22, 2024, and April 17, 2024, Prior Written Notices meet the requirements of WAC 392-172A-05010.
5. The Caregiver’s request for relief is GRANTED IN PART. The District is ordered to redraft the “Social Skills: Social Management” goal within thirty (30) days of the date of this order to describe specifically and understandably how the goal will be measured and the frequency of prompts from adults.

SERVED on the date of mailing.



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Courtney 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, Legal Services, PO Box 47200, Olympia, WA 98504-7200. To request the administrative record, contact OSPI at [appeals@k12.wa.us](mailto:appeals@k12.wa.us).

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:

Parent

[REDACTED]

via E-mail

[REDACTED]

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Dated July 19, 2024, at Olympia, Washington.

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cc: Administrative Resource Services, OSPI