

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Docket No. 08-2022-OSPI-01671

Seattle School District

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2022-SE-0100

A due process hearing was held before Administrative Law Judge (ALJ) Pamela Meotti on February 5, 6, 7 and 13, 2024, via videoconference. The Parent of the Student whose education is at issue¹ appeared and was represented by Shannon McMinimee, attorney at law. The Seattle School District (District) was represented by Susan Winkelman, attorney at law. Also present for the District were Nazik Youssef, Senior General Counsel, and Michael Bylsma, Director of Special Education.

STATEMENT OF THE CASE

Procedural History

On August 11, 2022, the Parent filed a Due Process Hearing Request (Complaint). The matter was assigned to ALJ Paul Alig and subsequently reassigned to ALJ Pamela Meotti. The District filed a response on August 22, 2022.

ALJ Meotti granted the District's Motion for Partial Summary Judgment on February 2, 2023. The due process hearing was set for April 24 to April 28, 2023, but was continued because the Parent was ill, and was reset for September 20 to 22, 2023. The due process hearing was then continued until October 18 to 20, 2023, and then to February 5 to 8, 2024, to permit a hearing in a related case to be conducted first.

Prehearing orders were issued: September 12, 27, November 21, 30, December 12, 15, 30, 2022; January 19, February 9, 16, 17, April 21, 25, June 14, 23, August 21, 23, 2023; February 5, 2024.

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

Due Date for Written Decision

The deadline for a written decision in this matter was extended at the Parent's request to thirty (30) days after the record of the hearing closes. The record of the hearing closed on April 4, 2024, at 5:00 p.m., when the parties timely submitted post-hearing briefs. The due date for a written decision is May 4, 2024.

EVIDENCE RELIED UPON

Exhibits Admitted:

District's Exhibits: D1-D11, D14-D15, D19-D20, D23-D30.
Parent's Exhibits: P3 through P21.²

Witnesses Heard (in order of appearance):

Christina Mastin, District special education teacher
Adam Heiner, District speech language pathologist
Ronald Howard, District assistant principal
Douglas Allison, District occupational therapist
Ryan Miyake, District special education teacher
Kelly Morgan, District speech language pathologist
The Parent
Jennifer Pelland, District special education supervisor
Kelley Couvillion, District occupational therapist
Jeffrey Lam, District principal
Dr. Lionel Enns, clinical psychologist
Ashley Burchett, District school psychologist
Lodrick Stewart, District instructional assistant.

ISSUES

Whether the District violated the Individuals with Disabilities Education Act (IDEA) by:

- i. Not providing the Student with a free appropriate public education (FAPE) from September 26, 2019, to October 2021, by never properly identifying his needs as a student eligible for special education through the evaluation and reevaluation process;

² Citations to the exhibits of record are by party (P for the Parent; D for the District) and page number. For example, a citation to P6p1, refers to page 1 of Parent's Exhibit 6. Citations to the transcript of record are to "T" followed by the page number. For example, a citation to T214, refers to page 214 of the transcript.

- ii. Not providing the Student with FAPE from September 26, 2019, to October 2021, by never offering an individualized education program (IEP) that was reasonably calculated to allow the Student to make meaningful educational progress given his unique needs;
- iii. From March 11, 2020, to the start of the 2021-2022 school year, failing to implement and materially and substantially deviating from the Student's January 2020, January 2021, and May 2021 IEPs and IEP amendments, resulting in a denial of FAPE.
- iv. Failing to provide the Student with FAPE during the 2021-2022 school year through his transfer out of the District by not providing the Student with dedicated paraeducator support to allow for him to access his education.

And, whether the Parent is entitled to her requested remedies:

- i. A determination that the statute of limitations does not apply³;
- ii. Declaratory relief that the District violated the IDEA and denied the Student FAPE;
- iii. Compensatory education and services for the Student to allow him to obtain the educational benefit that he would have received but for the District's violations of the IDEA and denial of FAPE;
- iv. Or other equitable remedies, as appropriate.

FINDINGS OF FACT

Background

1. The Student was first determined to be eligible for special education services in January 2013, when he was [REDACTED], under the health impairments disability category. D20p10.
2. In February 2019, the Seattle School District (District) reevaluated the Student, who then attended 6th grade at Aki Kurose Middle School (Aki Kurose) in the District.

³ The February 2, 2023 Order Granting Partial Summary Judgement concluded that the statute of limitations barred claims based on events that occurred on or before September 25, 2019. The Order did not grant summary judgment regarding claims based on events that occurred from September 26, 2019 to August 11, 2020.

D3pp1, 6. The reevaluation reflected that the Student had been diagnosed with autism spectrum disorder (ASD) and attention deficit hyperactivity disorder (ADHD). D3p11.

3. Based on the February 2019 reevaluation, the Student was determined to be eligible for special education services in the disability category of autism. D3p7; D20p10. The reevaluation team recommended specially designed instruction (SDI) in reading, math, written language, study/organizational skills, social/behavior, and communication, with occupational therapy as a related service. D3p1.

4. In August 2019, the Parent retained TeamChild to represent her in special education matters. D30p1. Via email to the District on August 22, 2019, the managing attorney for TeamChild stated that TeamChild was representing the Parent in special education matters and requested the Student's special education records. It further stated:

It seems like we should be having an IEP meeting as soon as possible, as last year he was in a placement that never had a special education teacher and that left [the Student] and his mom with a lot of concerns for this year.

D30p1. The Parent signed a release on August 20, 2019, permitting TeamChild to obtain educational and other records from the District. D30p2; T672. Although the Parent testified at the due process hearing that TeamChild's representation at the time was focused on an assault of the Student in 2016 (P21p2), rather than special education matters, more weight is given to documents created at the time. T696.

2019-2020 School Year (7th Grade)

5. Christina Mastin was the Student's special education teacher and case manager for his 7th grade year at Aki Kurose.⁴ T77, 89. The Student received all-day 1:1 support from an instructional assistant (IA), Lodrick Stewart.⁵ T637-38, 356. The Student and Mr. Stewart had a very good relationship. T644.

6. The Student's IEP team met on September 3, 2019. D5p3. There is little information in the record regarding the meeting and it is unclear who attended. The District issued a prior written notice (PWN) on September 3, 2019, proposing to initiate

⁴ Ms. Mastin has a master's degree in special education and is a certificated special education teacher. She has been employed as a special education teacher for approximately twenty years, with fifteen of those years as a District employee. T75-76.

⁵ Mr. Stewart attended the University of Southern California and is two classes away from completing his four-year degree. He has been employed by the District as an IA for six years. T637.

door-to-door transportation for the Student and a “safe space” compliant with District restraint and isolation policy. D5p3.

7. In November 2019, the District conducted a functional behavioral assessment (FBA) of the Student. P3p2.⁶ On November 26, 2019, the Student’s IEP team met to review the FBA, which focused on the target behavior of physical aggression toward people the Student was talking to and others around him. P3p4. The FBA recommended a behavioral intervention plan (BIP) and provided a detailed description of behaviors to replace physical aggression and steps to encourage these replacement behaviors. P3p7. The Parent participated in the review and did not voice disagreement with the FBA. T522; P3p10.

8. During the Student’s 7th grade year, Adam Heiner, a District speech language pathologist (SLP), provided the Student with the communication services in his IEP.⁷ T150. Douglas Allison, a District occupational therapist,⁸ and Patricia Jennings, a certified occupational therapy assistant (COTA), worked collaboratively to provide the Student’s occupational therapy services.⁹ T242, 246; P5pp5-7. Students working to become occupational therapy assistants also participated in occupational therapy sessions when Ms. Jennings was present. P5pp5-7; T239, 246. Under American Occupational Therapy Association rules, the occupational therapist and occupational therapy assistant roles complement each other. T207. To that end, Mr. Allison planned and designed the Student’s services and worked with Ms. Jennings on an ongoing basis to discuss what the Student required in terms of interventions, methods, and materials. T259-60. The Parent never expressed any concerns to Mr. Allison about the Student’s occupational therapy services during the time he worked with the Student. T260. At the hearing, the Parent stated she was unaware that occupational therapy services were being provided by occupational therapy assistants and students. T363.

9. On January 22, 2020, the Student’s IEP team met to develop an annual IEP and to review his BIP. D7p1. The Student was then thirteen years old. D7p3.

⁶ Exhibits D6 and P3 both contain the November 2019 FBA.

⁷ Mr. Heiner has a master’s degree in speech language pathology. He holds a certificate of clinical competency (CCC) from the American Speech-Language-Hearing Association (ASHA) and an educational staff associate (ESA) certificate for SLP in Washington state. Mr. Heiner has worked as an SLP for 24 years, including nine years in a school setting as a District employee. T146-47.

⁸ Mr. Allison has a master’s degree in occupational therapy. He holds an ESA certificate for occupational therapy in Washington state and has worked as an occupational therapist for the District for approximately twenty-one years. T204-206.

⁹ Three years are required to become a certified occupational therapy assistant or occupational therapy assistant, which are interchangeable, whereas an occupational therapist has a four-year degree and often has a master’s degree. T207.

10. The team discussed the Student's present levels of performance and created annual goals in communication, math, reading, social/behavior, study/organizational skills, and written language. D7p10-12, 14-20.

11. The January 2020 IEP provided the following special education and related services:

Services 01/23/2020 - 01/21/2021

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
Yes	Occupational Therapy	OT	OT	20 Minutes / 2 Times Monthly	Special Education	01/23/2020	01/21/2021
Special Education							
No	SOCIAL/BEHAVIOR	Special Education Staff	Special Education Teacher	40 Minutes / 5 Times Weekly	General Education	01/23/2020	01/21/2021
No	MATH	Special Education Teacher	Special Education Teacher	50 Minutes / 5 Times Weekly	Special Education	01/23/2020	01/21/2021
No	READING	Special Education Teacher	Special Education Teacher	50 Minutes / 5 Times Weekly	Special Education	01/23/2020	01/21/2021
No	SOCIAL/BEHAVIOR	Special Education Staff	Special Education Teacher	600 Minutes / Weekly	Special Education	01/23/2020	01/21/2021
No	STUDY/ORGANIZATION SKILLS	Special Education Staff	Special Education Teacher	50 Minutes / 5 Times Weekly	Special Education	01/23/2020	01/21/2021
No	WRITTEN LANGUAGE	Special Education Staff	Special Education Teacher	50 Minutes / 5 Times Weekly	Special Education	01/23/2020	01/21/2021
No	COMMUNICATION	SLP	SLP	90 Minutes / Monthly	Special Education	01/23/2020	01/21/2021
Total minutes per week student spends in school:				<u>1825 minutes per week</u>			
Total minutes per week student is served in a special education setting:				<u>1622.5 minutes per week</u>			
Percent of time in general education settings:				11.1% in General Education Setting			

D7p24. The IEP also provided 1:1 support from an IA as a supplementary aid and service. D7p22. The IEP placed the Student in a self-contained classroom. T523; D7p25.

12. The IEP stated that occupational therapy would focus on improving handwriting and on-task attention. D7p14. It explained that occupational therapy provided as a related service included both direct and indirect services. Direct service could include "1:1, small group, or whole class intervention," whereas indirect service could include "collaboration with the educational team, program development, equipment/materials development and management, implementation or recommendation for accommodations or modifications, skills observation and consultation, and/or other necessary services" for the Student. D7p13. Because the Student had difficulty with handwriting accuracy and with staying on-task, occupational therapy would focus on collaborating with the team to provide support in these areas. D7pp13-14.

13. The District used a program called "IEP online" as a template for developing IEPs. T220. IEP online did not have an option to reflect that services were being

provided by both an occupational therapist (OT) and by an assistant (OTA or COTA). T220, 223. Accordingly, in preparing the service matrix, Mr. Allison chose “OT” as the “service provider for delivering services” and as “monitor,” which is his general practice. D7p24. Mr. Allison believed the matrix reflected that he was responsible for monitoring the Student’s occupational therapy services and for delivering services in collaboration with an occupational therapy assistant. T221. He felt that choosing “OTA” or “COTA” would indicate that an occupational therapist was not involved. T221. Mr. Allison did not specifically tell the Parent that Ms. Jennings would provide some of the Student’s service minutes. T266-67.

14. No one on the IEP team expressed any disagreement with any components of the Student’s IEP. T523, 542, 649-50.

15. The team also reviewed the Student’s BIP and updated it to reflect his present levels of performance. D8p9. The Parent participated in the meeting and did not voice disagreement with the BIP. T526-27; D8pp1,3,9.

16. The District issued two PWNs on January 22, 2020. Both PWNs stated that the Parent had been given notice of procedural safeguards. D7p28; D8p9. The Parent offered no evidence to contradict these statements at the hearing.

17. Prior to March 2020, the Parent retained Ms. McMinimee, her current attorney, who was then affiliated with Cedar Law. T672, 678, 683. At one point, the Parent testified this representation was limited to an assault of the Student (P21p2) and did not include special education matters until later. T678-79. She subsequently acknowledged that Cedar attorneys were working on special education matters throughout their representation of her. T680. The inconsistencies in the Parent’s testimony undermine its reliability, especially because her testimony that TeamChild did not represent her in special education matters in August 2019 was inconsistent with documents expressly stating that they did. Given that Ms. McMinimee is a special education attorney currently representing the Parent in this special education matter, it is found to be more likely than not that her representation of the Parent prior to March 2020 was not expressly limited to the assault of the Student.

COVID-19

18. On March 12, 2020, the District closed all of its school facilities in response to the COVID-19 pandemic. Stipulation 1.

19. Ms. Mastin developed a continuous learning plan (CLP) that set out the services the Student would receive. D10p2. Ms. Mastin discussed the plan with the Parent. T527-289; D10p1. The CLP provided a weekly check-in with the Parent, a weekly

packet with functional academics, a weekly schedule, and instructions for accessing online activities. The CLP also included a weekly check in with the Student's SLP, weekly occupational therapy collaboration with team members, and remote access to SLP and occupational therapy services as needed by scheduling video or phone meetings. D10-pp2-3.

20. On March 25, 2020, Ms. Mastin sent the Parent an email inquiring whether the Student had internet access, and asking if she could send a work packet. D23p1. The Parent, who was using her cell phone to communicate, responded that the Student did not have internet access and would not do the work packet, but she agreed to receive it. D23pp1, 2. On March 30, 2020, Ms. Mastin sent the Parent a link to access internet options and sought to set up a weekly check in with the Student using applications that were available on a cell phone. D23p2.

21. Via email, Ms. Mastin checked in with the Parent on April 8, 9, 13, and 19, 2020, to discuss weekly packets that could be picked up at school and Ms. Mastin's efforts to enable the Student to receive a laptop from the District. D23pp3-4. It is unclear precisely when the Student received a laptop.

22. Via email to the Parent on May 1, 2020, Ms. Mastin asked for times that the Student could check in with Mr. Stewart. D23pp6-7; T528. In the email exchange, the Parent stated that the Student "is doing pleasantly really well during this pandemic. I really haven't had any kind of issues with him. He has been pretty much laid back watching his Spongebob, Teen Titans, and listening to his music." D23p6. The Student was scheduled to participate in weekly sessions with Mr. Stewart, but he was unwilling to participate and rarely did so. T644; D23p8; D10pp6-7.

23. In addition to providing curriculum materials for students to work on at home, Ms. Mastin held morning meetings on Teams with all students and with IAs participating as well. T102. The Student rarely attended the remote meetings, despite many attempts by the Parent to get him to log on. T107, 529, 553. He had a strong resistance to attending school virtually; he "did not want to do school at home." T556, 103, 105-106, 114, 529. When the Parent tried to get the Student to engage in remote learning, the Student would yell and scream, become aggressive with the Parent, and damage property. T354, 581. According to Ms. Mastin, the only time the Student participated online was from the backseat of the car, which he resisted doing. T553, 529. He would kick the backseat and hit the Parent from his seat. T581. Ms. Mastin worked with school counselors to try to encourage the Student to participate online. T106.

24. Although the Parent received the curriculum packets from Ms. Mastin, she was unable to use them with the Student because he reacted in the same way as he did when asked to participate in remote learning. T650-51.

25. Ms. Mastin checked in with the Parent on May 8 and 18, 2020. D10p6; D23pp9, 11.

26. From March 2020 through the end of the 2020 school year, the Student did not receive any occupational therapy services. P5p5; T239.

27. After the COVID closure through the end of the school year, the Student's communication SDI was provided solely via online asynchronous speech activities that families were encouraged to access from home from a District website. As discussed above, the Parent was unable to engage the Student in this type of learning due to his behaviors. T158, 160; P4p2.

28. All District school facilities remained closed through June 18, 2020, the last day of the 2019-2020 school year. Stipulation 2.

29. As of June 19, 2020, the Student's progress report contained an entry of "NA," meaning "Not applicable this grading period," for all of the Student's IEP goals. P6pp1-9. For each goal, the progress report included a comment that the team was not able to obtain measurable data due to the COVID-19 school closure resulting in remote learning. P6pp1-9.

30. There is no evidence in the record that the Parent or District teachers or staff requested a reevaluation of the Student during the 2019-2020 school year or believed he had needs that required assessment.

2020-2021 School Year (8th Grade)

31. The District began the 2020-2021 school year implementing a remote learning model for all students. Stipulation 3.

32. Ms. Mastin was the Student's special education teacher and case manager. T77. She continued to hold morning meetings on Teams. D25p6.

33. On September 3, 2020, Ms. Mastin sent the Parent an email with a username and password to sign on to the internet, and stated she was planning to stop by the family's residence that day to show her how to log on. D25p1. Between September 4 and September 11, Ms. Mastin sent the Parent several emails containing the link for the Student to join the morning meetings. D25pp1-5. The meetings were held from

9:00 a.m. to 10:30 a.m., each weekday except Wednesday. D25pp10-11. The Student participated a “handful of times.” T531.

34. On September 9, 2020, the District issued a PWN stating that the Student’s IEP team had met to discuss the Student’s services. The Parent was unable to attend and gave the team permission to proceed without her. D11p2. On September 8, 2020, the Parent had notified District staff that the Student would not be participating in remote instruction until further notice because his grandmother had had a massive stroke and had been taken off life support. D11p3.

35. The PWN indicated that the team considered providing in-person services but determined that it would continue with remote instruction, meaning a combination of synchronous and asynchronous learning. D11p3. The team chose this option because it was consistent with District policies on remote learning for all students and because the Parent did not want in-person services for health reasons. D11p3. The PWN also noted that in the spring, the Student had stated he would not do schoolwork if he was not at school. D11p3. It further noted the Student had directed behaviors at the Parent in the past but was doing well and no behaviors had been reported. D11p3.

36. On September 21 and 28, and October 7, 13, and 23, 2020, Ms. Mastin sent emails checking in with the Parent and encouraging the Student to join the class meeting and to participate in a program called “Kingmakers.” D25pp6, 7, 9-18. Ms. Mastin asked if she could drop off some materials for the Student on September 29, 2020, but the Parent declined. D25p9.

37. Via email on September 25, 2020, the Parent advised the registrar at Aki Kurose that her mother had passed away and that she had not had time to get the Student online for class. The registrar agreed to excuse the Student’s absence. D25p8.

38. Mr. Heiner was responsible for providing the Student’s communication services during his 8th grade year. T150. Group SLP services were delivered two times weekly, during ten to fifteen minutes of the morning meeting, which were devoted to speech activities for the class. T161. Between September 21 through December 14, 2020, the Student was present during class for speech therapy on only two dates – November 2 and 16, 2020. P7pp3-5. On those dates, he “was able to respond to questions and use appropriate sentence structure in 75% of his attempts.” P7p4. During remote instruction, Mr. Heiner did not provide any 1:1 SLP services to the Student or group SLP services aside from during morning meetings. T161-62, 178.

39. Mr. Allison and Ms. Jennings continued to collaborate in providing the Student’s occupational therapy services during 8th grade. T259-60. The Student’s occupational therapy service logs indicate that the Student was absent and not available from

September 17 through October 27, 2020. P5pp3-4. Mr. Allison provided twenty minutes of consultation services twice monthly during November and December 2020, when the Student was in attendance. P5p3. Consultation services consisted of collaborating with the Student's teacher and SLP to create visual materials for task attention and self-management. P5p3.

40. As of November 12, 2020, the Student's progress report reflected he had made "little or no progress" toward his communication goals, as indicated by the code "1." P6pp6-7. Progress report comments stated the Student's attendance had been "limited so far this year. There is no new progress to report." P6p7. For all other goals, the progress report contained the code "NA," with a comment that the Student was sporadically attending remote classes, that the team was not able to collect measurable data due to the COVID-19 closure resulting in remote learning, and that progress would be updated when schools re-opened. P6pp1-5, 7-8.

41. Via email on November 18, 2020, Ms. Mastin sent IEP team members a link to an IEP meeting to "listen and brainstorm ways to support [the Student] during Remote Learning." D26p3. It is unclear if this meeting took place.

January 2021 IEP

42. On January 20, 2021, the Student's IEP team met to review his IEP, BIP and emergency response protocol (ERP). P9p1; P10p1; P11p1; D14p1. Participants included the Parent; Ms. Mastin; Mr. Howard, a District assistant principal; a general education teacher; a school nurse; Mr. Allison; a program specialist; Mr. Heiner; and Mr. Stewart. D15p1. P9p3; P10p1; P11p3; T661.

43. The IEP team considered the Student's behaviors, noting that he had a history of physical aggression towards others, had a BIP, required 1:1 assistance due to aggressive behaviors, and required a high level of prompting and reinforcement to stay engaged in individual and group learning. P9p5.

44. The IEP noted that because the Student had attended classes infrequently following the school closure due to COVID-19, there was limited progress to report toward any of the Student's IEP goals. P9pp7-9, 13, 14, 16, 18. The IEP reflected that the Student had "no participation" from March to June 2020 and "16% attendance" since September 2020. *Id.*; T123.

45. Mr. Heiner discussed that during the handful of remote sessions that the Student attended, he was friendly and was reasonably attentive and engaged without significant behavior concerns. The Student continued to require support for more difficult questions and to provide appropriate detail during explanations. P9p8.

46. The team developed annual goals for the Student in communication, math, reading, social/behavior, study/organizational skills, and written language. P9pp8-10, 12-19. The communication goals focused on expressive language skills, comprehension, and retelling a passage or story. P9pp8-9. The Student did not have a goal specifically focused on articulation. T167. At hearing, Mr. Heiner explained that the Student tended to mumble, and that Mr. Heiner and the Student had worked on this issue when the Student first came to Aki Kurose. During an earlier IEP meeting, the team had agreed that this was not an ideal use of time and that this concern was best addressed informally by reminding the Student to speak up and use appropriate volume. T167.

47. The Student's occupational therapy services continued to focus on improving handwriting and on-task attention. P9p12. Due to the Student's infrequent participation in remote learning, the school team and the Parent planned to collaborate to increase online participation and asynchronous activities. P9p12. The team agreed that occupational therapy as a related service would include direct and indirect services provided within a collaborative service model. p9p11-12; T258. Mr. Allison did not specifically discuss that Ms. Jennings would provide some of the Student's occupational therapy services. T266-67.

48. The January 2021 IEP provided the following SDI, related services, and supplementary aids and services:

Services 01/21/2021 - 01/20/2022

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Occupational Therapy	OT	OT	40 Minutes / Monthly	Special Education	01/21/2021	01/20/2022
Special Education							
No	COMMUNICATION	SLP	SLP	90 Minutes / Monthly	Special Education	01/21/2021	01/20/2022
No	MATH	Special Education Staff	Special Education Teacher	49 Minutes / 5 Times Weekly	Special Education	01/21/2021	01/20/2022
No	READING	Special Education Staff	Special Education Teacher	49 Minutes / 5 Times Weekly	Special Education	01/21/2021	01/20/2022
No	SOCIAL/BEHAVIOR	Special Education Staff	Special Education Teacher	49 Minutes / 5 Times Weekly	Special Education	01/21/2021	01/20/2022
No	STUDY/ORGANIZATION SKILLS	Special Education Staff	Special Education Teacher	49 Minutes / 5 Times Weekly	Special Education	01/21/2021	01/20/2022
No	WRITTEN LANGUAGE	Special Education Staff	Special Education Teacher	49 Minutes / 5 Times Weekly	Special Education	01/21/2021	01/20/2022
Total minutes per week student spends in school:				1825 minutes per week			
Total minutes per week student is served in a special education setting:				1257.5 minutes per week			
Percent of time in general education setting:				31.1% in General Education Setting			

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	1:1 Instructional Assistant	Instructional Assistant	Special Education Teacher	1258 Minutes / Weekly	Special Education	01/21/2021	01/20/2022
No	1:1 Instructional Assistant	Instructional Assistant	Special Education Teacher	717 Minutes / Weekly	General Education	01/21/2021	01/20/2022

P9p23.

49. The team placed the Student in a self-contained special education classroom with all SDI and related services delivered in the special education setting. P9p24. The team also provided multiple accommodations and modifications. P9pp20-21.

50. No one on the IEP team expressed disagreement with any components of the IEP. T177, 258, 533-34, 543, 661-62.

51. The team also reviewed the Student's BIP, which continued to focus on the target behavior of physical aggression and provide intervention strategies. P11pp3-7. The Parent participated in the meeting to discuss the BIP and did not express any disagreement with it or request that additional behaviors be addressed. T534.

52. The Student's attendance remained sporadic from January through March 12, 2021. P15pp2-4. The Student was not present in class for speech therapy between January 4 and March 8, 2021. P7pp1-2, 3. Mr. Allison provided twenty minutes of consultation services to develop visual supports and materials for the Student twice monthly January through March 2021. P5pp2-3.

Return to In Person Services

53. On or about April 1, 2021, the Student returned to school in person each weekday, except Wednesday, from 1:00 p.m. to 3:00 p.m. The precise date of his return to school in person is unclear. Compare P14p1; D27p1; P8pp1, 3.

54. On April 5, 2021, the District began implementing a hybrid learning model for all students that included in-person instruction. Stipulation 4.

55. Mr. Stewart provided 1:1 support to the Student when he returned to in-person learning. T645.

56. The Student regularly attended his in-person classes between April through the end of the school year, in contrast to his sporadic attendance from September 2020 through March 2021. P15pp1-8.

57. Between April 22 and May 27, 2021, the Student attended six individual therapy sessions with Mr. Heiner. Each session was in person and lasted thirty minutes. P7pp2-3. The Student was not present for therapy on June 10, 2021. P7p3.

58. The Student made little progress toward his IEP goals in communication until after he returned to school in person. T165. When the Student returned to in-person learning, he had not regressed on his communication goals. He was able to start work at the point where he had been prior to remote learning and progress from there. T176.

59. Mr. Allison provided twenty minutes of consultation services twice monthly from April through June 2021. P5pp1-3. Consultation services consisted of collaborating with the Student's teacher, SLP, and/or IA to provide materials and support for the Student such as developing strategies to sustain attention and increase time on task, to increase volume and decrease speed in reading aloud, and to provide reading support. P5pp1-3; T263-64.

60. By mid-June 2021, the Student was making significant progress (code "3") toward one of his communication goals, and toward his written language, social/behavior, and study/organizational goals. P8pp2, 4-7. The Student had made some progress (code "2") toward two communication goals, and toward his math and reading goals. P8pp1-4.

61. The Parent and the Student moved out of the District and into the Renton School District at some point between May and July of 2021. T654, 662. The Parent did not notify the District that the Student no longer resided in Seattle. T654.

Extended School Year Services / Recovery Services

62. On May 12, 2021, the Student's IEP was amended to provide extended school year (ESY) services for the Student. P12p1; P13pp1, 26; T546. The Parent gave permission to amend the IEP without a meeting. P13p2. An ESY IEP was developed; it provided SDI in reading, math, and written language (30 minutes/3 times weekly in each area) and in social/behavior (150 minutes/3 times weekly). P12pp3-4. The ESY IEP noted the Student required ESY due to regression and lack of access to SDI during the COVID-19 school closure. P12p3; T126. The District issued a PWN on May 12, 2021, proposing to initiate ESY with an action date of July 6, 2021. The PWN stated that the Student required 1:1 IA support and had a BIP and ERP. P12p5.

63. On May 12, 2021, the Student's IEP was also amended to reflect the special education services he would receive through January 20, 2022:

Services 05/17/2021 - 01/20/2022							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Occupational Therapy	OT	OT	40 Minutes / Monthly	Special Education	05/17/2021	01/20/2022
Special Education							
No	COMMUNICATION	SLP	SLP	90 Minutes / Monthly	Special Education	05/17/2021	01/20/2022
No	MATH	Special Education Staff	Special Education Teacher	49 Minutes / 5 Times Weekly	Special Education	05/17/2021	01/20/2022
No	READING	Special Education Staff	Special Education Teacher	49 Minutes / 5 Times Weekly	Special Education	05/17/2021	01/20/2022
No	SOCIAL/BEHAVIOR	Special Education Staff	Special Education Teacher	49 Minutes / 5 Times Weekly	Special Education	05/17/2021	01/20/2022
No	STUDY/ORGANIZATION SKILLS	Special Education Staff	Special Education Teacher	49 Minutes / 5 Times Weekly	Special Education	05/17/2021	01/20/2022
No	WRITTEN LANGUAGE	Special Education Staff	Special Education Teacher	49 Minutes / 5 Times Weekly	Special Education	05/17/2021	01/20/2022
Total minutes per week student spends in school:				1825 minutes per week			
Total minutes per week student is served in a special education setting:				1257.5 minutes per week			
Percent of time in general education setting:				31.1% in General Education Setting			
Supplementary Aids and Services:							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	1:1 Instructional Assistant	Instructional Assistant	Special Education Teacher	1258 Minutes / Weekly	Special Education	05/17/2021	01/20/2022
No	1:1 Instructional Assistant	Instructional Assistant	Special Education Teacher	717 Minutes / Weekly	General Education	05/17/2021	01/20/2022

P13p23.

64. On or about May 25, 2021, Ms. Mastin prepared a “Recovery Services Planning and Communication Tool (PWN).” P14. Recovery services were provided to students with disabilities to address the impact of the COVID-19 closure and were designed to address lack of appropriate progress on IEP goals due to missed or limited special education or related services. P14p1. The recovery services plan stated that the Student “did not attend online classes,” but did attend in-person instruction. P14p1. It further stated that the Student’s social/behavior, study/organizational skills, and academic goals “showed either regression or little to no improvement.” P14p2. Accordingly, the plan stated the Student required recovery services in reading, math, written language, study/organizational skills, and social/emotional. P14p2.

65. There is no evidence that the Student’s IEP team ever discussed recovery services for the Student. T365, 559-60, 579-80. Additionally, there is no evidence that the Student’s IEP team ever discussed whether he required ESY and/or recovery services in communication or occupational therapy. T165-66, 179, 255; T430-31.

66. On June 11, 2021, Ms. Mastin sent an email to families in her special education classroom about a special needs summer camp, known as Community Cares, that provided 1:1 staffing. D28p1. Ms. Mastin noted summer camp would “take the place of ESY.” D28p1. The Parent responded that the Student was interested in attending summer camp. D28p1.

67. The Student’s recovery services plan indicated he would receive recovery services during summer camp from June 28 through August 27, 2021, Monday through Friday from 8:30 a.m. to 3:30 p.m., or approximately 315 hours. It stated he would also receive recovery services during winter and mid-winter breaks. P14p3.

68. Ultimately, however, the Student did not attend summer camp because the Parent did not want him to be vaccinated as required by the camp. T406, 658-59. The Parent considered ESY to be a “no go,” because the Student would likely go for a week and then refuse to attend, complain about other students staring at him and touching his things, and become agitated. T659. There is insufficient evidence in the record to determine the extent to which ESY services were offered after the Parent determined the Student would not attend summer camp. T561-62, 578-79.

69. There is no evidence in the record that the Student ever received any recovery services. Nor is there evidence the Student received ESY services the summer of 2021.

2021-2022 School Year (9th Grade)

70. At the start of the 2021-2022 school year, the District was still unaware that the Student resided in Renton. The Student remained enrolled in the District at Franklin High School (Franklin). T406, 664.

71. Ryan Miyake was the Student's special education teacher and case manager at Franklin.¹⁰ T291. The Parent drove the Student to school. T661. The Student attended school at Franklin less than five times, and not enough to receive the services and SDI minutes in his IEP. T298-300. On several occasions, Mr. Miyake spoke with the Parent about how to best serve the Student. T295. The Parent stated the Student did not want to go to school. T291. Mr. Miyake created online content for the Student—a social/emotional check in—to encourage participation. T292-94.

72. Mr. Stewart worked with the Student as his 1:1 IA until he went on paternity leave around November 2021. T646. The Parent believed Mr. Stewart was not present at school consistently, which affected the Student's attendance because he did not want to go to school if he did not know Mr. Stewart would be there. T664. The record does not contain sufficient evidence to determine the extent to which Mr. Stewart was or was not present at school in September and October 2021.

73. Kelly Morgan, a District SLP, was assigned to deliver the Student's communication SDI.¹¹ Due to the Student's absences, however, she only met him on one morning and was unable to work with him toward his IEP goals. T315-16.

74. Kelley Couvillion, a District occupational therapist, provided occupational therapy services to the Student only a few times because he was frequently absent.¹² T428. She was uncertain whether she provided the Student with his 40 minutes of monthly service in September and October 2021. T446.

75. Jennifer Pelland, a District special education supervisor, addressed concerns about the Student's school refusal by first looking into whether the Student had

¹⁰ Mr. Miyake has a master's degree in education and has worked at Franklin for seven years. He is certificated in special education and K through 8 general education. T288.

¹¹ Ms. Morgan has a master's degree in speech language pathology and has been employed by the District as an SLP for approximately eighteen years. She holds ESA certification from the State of Washington and CCC certification from ASHA. T311-12.

¹² Ms. Couvillion has a master's degree in occupational therapy. She holds ESA certification for occupational therapy in Washington state and has worked as an occupational therapist in school and hospital settings for approximately twenty-three years. She has worked for the District as an occupational therapist since 2009. T426-28, T439.

consistent transportation to school.¹³ She planned to work through additional concerns after any transportation issues were resolved. T395-96.

76. On or about October 11, 2021, Ms. Pelland discovered the Student no longer resided in the District. T406. She then provided the Parent with information to apply for the Student to attend school in the District as a nonresident. T394. The Parent never submitted the application. T408. After a grace period to allow the Parent to apply, the Student was disenrolled from the District. T408, 665.

Reevaluation

77. On August 30, 2021, the Parent consented to a reevaluation of the Student in the following areas: age-appropriate transition assessment; general background; math; motor; review of existing data; study/organizational skills; written language; special education; general education teacher report; adaptive/life skills; cognitive; communication; medical-physical; reading; social/behavior. D19pp1, 3. The Parent requested the reevaluation to obtain updated information regarding the Student's educational needs and did not identify any other areas for consideration on the consent form. *Id.*

78. Ashley Burchett, a District school psychologist,¹⁴ reviewed the Student's educational records, including his initial special education eligibility evaluation in 2013 and reevaluations in 2016 and 2019. She also reviewed the Student's educational history and attendance data, which revealed concerns about chronic absenteeism, or less than 90% attendance per school year. P16p11.¹⁵ The Student's attendance rate for the 2021-2022 school year through October 20, 2021, was only 39.9 percent. The Parent's attorney reported to Ms. Burchett that the Student consistently engaged in school refusals. T621. Ms. Burchett noted that transportation, the family's relocation outside of the District, and staffing changes could be impacting attendance. P16p11.

79. Ms. Burchett observed the Student in math class and obtained input from a long-term substitute special education teacher, Ms. Ford. P16pp13, 16; T614. Ms. Ford reported the Student appeared happy at school, followed classroom routines and directions with minimal verbal redirections, was able to stay on task for twenty-five

¹³ Ms. Pelland has a master's degree in education and has been certificated in special education and K through 8 general education since 2006. T369-70. She holds an administrative credential as a program manager and has been employed by the District for eleven years. T370-71.

¹⁴ Ms. Burchett has a master's degree in counseling and human services, and an education specialist in psychology. She holds an ESA certificate in Washington state. Ms. Burchett has been a school psychologist for fourteen years, with ten years as a District employee. T595-96.

¹⁵ Exhibits P16 and D20 both contain the reevaluation report. Exhibit P16 contains highlighting added by Ms. Burchett to mark substantial changes to the initial draft of the reevaluation report. T599.

minutes and independently request a break, and had not exhibited unsafe behaviors. P16p13.

80. Ms. Burchett made multiple attempts to conduct direct assessments of the Student by going to his classroom, but each time he was not in school. T604. The only standardized assessment Ms. Burchett administered was the Adaptive Behavior Assessment System – Third Edition (ABAS-3), which assessed the Student’s adaptive behavior skills. T601.

81. The Parent completed the ABAS-3 Parent form. P16p12. No one from Franklin completed forms because the Student was new to the school and had not attended often; best practice is to have at least a month of student interaction. T601, 602. Results of the ABAS-3 indicated the Student’s overall adaptive behavioral functions fell within the extremely low range as compared to same age peers. Scores in the three composite areas (conceptual, social, practical) and in the general adaptive composite, were all in the extremely low range. The Student struggled with working independently on assigned tasks, remaining in his assigned area, regulating emotional responses, developing friendships, following adult directives, understanding the perspective of others, and demonstrating independence with personal hygiene. P16p12; T609. Ms. Burchett recommended adding special education services in adaptive skills. T608-09.

82. The reevaluation report included a section titled “Age-Appropriate Transition Assessment,” which contained links to agencies such as the Developmental Disabilities Administration (DDA). There are no recommendations in this section. P16p10.

83. The cognitive section of the report did not include any new information; it noted that no cognitive scores had been reported on the assessment administered in the 2016 reevaluation and did not refer to the 2019 reevaluation. P16p13.

84. In the area of social/behavior, Mr. Burchett reviewed the Student’s scores on the Behavior Assessment System for Children (BASC) from the Student’s initial evaluation in 2013 and the 2016 and 2019 reevaluations.¹⁶ P16p21. She considered a description of functional performance from the January 2021 IEP, which noted the Student’s need for 1:1 support due to aggressive behaviors, and progress toward the Student’s IEP goal. P16p21. Ms. Burchett recommended that the Student continue to receive SDI in social/behavior skills. P16p21.

85. With respect to study/organizational skills, Ms. Burchett reviewed the results of the Behavior Rating Inventory of Executive Function – Second Edition (BRIEF-2),

¹⁶ These evaluations contained different editions of the BASC. T605.

administered as part of the 2019 reevaluation. P16p22. Ms. Burchett also considered a description of the Student's functional class performance from the January 2021 IEP and progress toward his IEP goal. P16p22. It is unclear whether Ms. Burchett recommended continued SDI in study/organizational skills in the reevaluation report.¹⁷ P16p22.

86. Ms. Burchett also assessed the Student in math, reading, and written language. In each area, she considered her observation of the Student, scores on assessments administered during the 2016 and 2019 reevaluations, scores on state assessments from 4th through 6th grade, a description of the Student's functional classroom performance in the January 2021 IEP, progress toward IEP goals, and Parent input. P16pp14-16. Ms. Burchett recommended that the Student continue to receive SDI in each area. P16pp16, 20, 23.

87. The medical-physical section of the reevaluation report included written input from a private adolescent psychiatric nurse practitioner indicating that the Student had been diagnosed with ASD, ADHD, and posttraumatic stress disorder. The input noted that the Student "exhibits severe aggression towards adults and occasionally towards peers." P16pp16.

88. Ms. Morgan conducted the speech/language portion of the reevaluation. T318, 322; P16p13. She went to the Student's classroom at least three times in an attempt to do formal standardized testing, but he was not in school. T322, 331. Ms. Morgan reviewed the Student's educational records, including the 2019 reevaluation and the Student's IEP. She informally observed the Student in his classroom for approximately 30 to 45 minutes and considered Ms. Ford's input. Ms. Morgan also considered the Student's progress toward his IEP goals, which had improved since he returned to in-person instruction. P16pp13-14. Ms. Morgan recommended that the Student continue to receive SDI in communication to address receptive and expressive language deficits and reduced speech intelligibility. P16p14; T325.

89. Ms. Couvillion conducted the motor assessment of the Student. She reviewed the Student's educational records and briefly interviewed the Student and the Parent. P16p17; T432, 434. The Student had a hard time answering questions because he was focused on telling a story about alligators. He was able to share some personal information and stated he enjoyed being at school and seeing friends and teachers. Areas of challenge included getting stuck on an idea, difficulty changing plans, and

¹⁷ The study/organizational skills section of the reevaluation report refers to a continued need for SDI in the area of social/behavior skills, which appears to be a typographical error. P16p22. This is unclear, however, because the overall recommendation to the IEP team does not include SDI in study/organizational skills. P16p8.

communication challenges. The Parent stated she did not have specific fine motor or writing concerns. P16pp17-18; T434.

90. Ms. Couvillion noted the Student's attendance had been limited due to a variety of factors, one of which was "school refusal based on staffing changes (ex when 1:2 assigned IA is not at school)." p16p17. Ms. Couvillion observed the Student during two class periods and conducted a functional skills assessment of writing and typing skills. T431; P16p18.

91. Ms. Couvillion did not observe obvious sensory process differences related to sensory seeking behaviors during the functional assessment or her observations of the Student. The Student's special education teacher had not had sufficient opportunity for regular observation of the Student and therefore could not provide reliable information about the Student's sensory processing needs. Ms. Couvillion determined accommodations and modifications might be helpful to support the Student's sensory needs, and noted the IEP team might also consider occupational therapy services to meet these needs. P16pp18-19.

92. Ms. Couvillion recommended that the IEP team consider occupational therapy services as a support for school personnel, which could include collaboration with the IEP team, skilled observation and consultation, program development, teacher/staff training, and recommendations for accommodations and modifications. The recommendation to provide services as a support for school personnel rather than as a related service meant that all support would be indirect. T448-49; P16pp18-19.

93. On October 21, 2021, the District held a meeting to review the reevaluation and the draft reevaluation report. P16p1. The Parent received the draft report in advance of the meeting and had an opportunity to provide feedback. T669. Ms. Burchett made changes and additions to the draft report based on feedback from the Parent's counsel. T617. The Parent did not ask the District to administer additional standardized assessments during the reevaluation meeting or in her feedback. T632.

94. The team recommended changing the Student's eligibility category from autism to multiple disabilities. P16pp5, 24. The team also recommended SDI in adaptive/life skills, math, reading, written language, social/behavior, and communication. The recommendations did not include any related services or supplementary aids and services. P16p8. The Parent proposed adding transportation and parent counseling and training as related services and adding support from a dedicated paraeducator as a supplementary aid and service. P16p24.

95. On November 2, 2021, the Parent enrolled the Student in the Renton School District. P21p1; T667. After his enrollment there, the Student's physical aggression

toward the Parent and property destruction increased significantly and the Student had to be hospitalized on and off for months. T586-87.

Independent Educational Evaluation

96. In June and July 2022, Dr. Lionel Enns conducted an independent educational evaluation (IEE) of the Student.¹⁸ The District paid for the IEE. T481; 392.

97. The Student was admitted to Seattle Children's Hospital (Seattle Children's) from May 27 to June 13, 2022, because he was engaging in unsafe behaviors at home, including aggression, property destruction, guarding items, and hoarding behaviors. P17pp1, 10-11. The Student was admitted to the emergency room (ER) because there were not enough beds in the psychiatric and behavioral unit. P17pp10; T482.

98. On June 5, 2022, Dr. Enns observed the Student in the ER at Seattle Children's. P17pp10-11. He entered the Student's room and left after about a minute because the Student became agitated. T482, 486; P17p11.

99. While in the ER, the Student was observed at all times through an observation window to ensure he did not harm himself. T509. Dr. Enns observed the Student through the observation window for approximately one hour and forty minutes. T508; P17p10.

100. Dr. Enns also reviewed the Student's medical, developmental, and educational history, including the 2016, 2019, and 2021 reevaluations, the November 2019 FBA, and the January and May 2021 IEP and IEP amendment. P17pp2-9; T507. Dr. Enns interviewed the Parent and two board certified behavior analysts (BCBAs), one from the Renton School District and one from Seattle Children's. P17pp9-10, 12-14; T509-10. He also considered a written report prepared by the Renton School District BCBA. P17pp14-15.

101. Dr. Enns was unable to do any direct assessments of the Student. T514; P17pp17-18. He asked the Parent to complete the parent form of the BASC-3 to gauge the Student's social emotional functioning. P17p15. Parent responses suggested clinically significant levels of behavior related to hyperactivity, withdrawal, and functional communication, and at-risk levels of behavior related to atypicality, social skills, leadership, and activities of daily living. P17pp15, 28-29.

¹⁸ Dr. Enns has a Ph.D. in school psychology. He is a licensed clinical child psychologist in Washington state and is also a board-certified behavior analyst. T478. As part of his practice, he conducts evaluations. He is on the list of evaluators approved by the District for providing IEEs. T480.

102. Dr. Enns noted the Student previously had been diagnosed with autism with accompanying intellectual impairment, post-traumatic stress disorder, attention deficit hyperactivity disorder, and anxiety. P17p18. To these diagnoses, he added obsessive compulsive disorder (OCD), specific learning disability (SLD) with impairment in mathematics, and SLD with impairment in written expression. P17p21.

103. The Student's IEP team in the Renton School District met in September 2022 to discuss his placement and determined that he required a residential placement. P18pp1, 24; P19p3. The Student is currently enrolled in a residential facility recommended by Dr. Enns. T493.

104. Programming at the residential placement is twenty-four hours a day, seven days a week, due to the intensive needs of the students who attend. T493-94. The Student is doing well but the Parent does not know when he will be discharged. T582-83.

105. Dr. Enns described the extensive services the Student will require after he is discharged from the residential facility, including applied behavioral analysis (ABA) support and Parent training, along with SLP and occupational therapy services, social skills support, functional academics, and services for transitioning from the residential facility to his home and community. T498-99.

106. The Renton School District reevaluated the Student in May 2023. P21. The reevaluation frequently referred to data and discussion from Dr. Enns' IEE report. P21pp2, 4-5, 13-14, 19, 23.

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. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The Parent is seeking relief and bears the burden of proof in this case. The U.S. Supreme Court and Washington courts have generally held that the burden of proof in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 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 Parent's burden of proof in this matter is preponderance of the evidence.

The IDEA and FAPE

3. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 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." *Id.* at 206-07.

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

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

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

6. "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas County Sch. Dist. RE-1*, 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.*

7. 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.*

Statute of Limitations

8. The Parent filed her Complaint on August 11, 2022. The District’s Motion for Partial Summary Judgment was granted with respect to claims based on events that occurred on or prior to September 25, 2019, but was denied with respect to claims based on events that occurred between September 26, 2019, and August 11, 2020. *Order Granting Partial Summary Judgment, February 2, 2023.*

9. The Parent now seeks an order that the statute of limitations does not apply to claims as early as September 26, 2019. The District contends the statute of limitations bars claims prior to August 11, 2020.

10. The Washington regulation concerning the IDEA statute of limitations provides in relevant part:

The due process hearing request must be made within two years of, and allege a violation that occurred not more than two years before, the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint except the timeline does not apply to a parent if the parent was prevented from filing a due process hearing request due to:

(a) Specific misrepresentations by the school district that it had resolved the problem forming the basis of the due process hearing request; or

(b) The school district withheld information from the parent that was required under this chapter to be provided to the parent.

WAC 392-172A-05080(2). The Washington regulation is substantially similar to the statute of limitations in the IDEA. See 20 USC §1415(b)(6)(B) and §1415(f)(3)(C); 34 CFR §300.507.

11. In *Avila v. Spokane School District 81*, 852 F.3d 936 (9th Cir. 2017), the Ninth Circuit Court of Appeals interpreted the statute of limitations set forth in the IDEA. In *Avila*, the court held that “the IDEA’s statute of limitations requires courts to bar only claims brought more than two years after the parents... knew or should have known’ [KOSHK] about the actions forming the basis of the complaint.” *Id.* at 937.

12. Determining the KOSHK date, or the date when the two-year statute of limitations begins to run, is a fact-specific inquiry. The inquiry focuses on when a parent comes to believe, or reasonably should have come to believe, that their child has been hurt *and that the school is responsible for the injury*, regardless of whether the parent yet knows that the injury is legally actionable. *Vandell v. Lake Wash. Sch. Dist.*, 2019 U.S. Dist. LEXIS 39747, at *11-12 (W.D. Wash., March 12, 2019) (by late August 2014, Parents knew or should have known that Students were not receiving FAPes for the 2013-14 school year and that the District could be faulted for that failure).

13. In *Vandell*, the parents filed their complaint on December 6, 2016. *Id.* at *6. However, at the end of the 2012-2013 school year, the district had held the two students in kindergarten because “the [d]istrict did not have the first-grade resources that were necessary to assist the Students.” *Id.* at *2. By the end of the 2014 school year, “the Vandells became increasingly aware that the [d]istrict did not have the tools or resources to provide the [s]tudents with FAPes.” *Id.* at *3-*4. As a result, because the parents knew about the district’s failure to provide the students with FAPE more than two years before they filed their complaint, the district court concluded that there was not an exception to the two-year statutory bar for the school years of 2012–2013 and 2013–2014. *Id.* at *13.

14. The Parent claims that the statute of limitations should not apply because she did not know the Student was not receiving all of his occupational therapy services from an occupational therapist until 2023. *Parent’s Brief p. 9*. This argument relates to the claim that the District failed to implement the Student’s IEPs. The Parent has not explained why she believes the statute of limitations should not apply to claims related to the identification of the Student’s needs and the development of the Student’s IEPs; nor does a review of the record offer a clear basis for not applying the statute of limitations to these claims. Accordingly, the sole question is whether the statute of limitations applies to the Parent’s issue alleging that the District violated the IDEA by:

From March 11, 2020, to the start of the 2021-2022 school year, failing to implement and materially and substantially deviating from the Student’s January 2020, January 2021, and May 2021 IEP and IEP Amendments, resulting in a denial of FAPE.

15. The evidence clearly establishes that the Parent was aware of the facts that form the basis for her implementation claim more than two years before she filed her Complaint. In January 2020, the Parent attended a meeting to develop the Student's annual IEP. Prior to March 2020, the Parent had retained her current special education attorney. Thus, when District schools closed on March 12, 2020, due to the COVID-19 pandemic, the Parent was already represented by an attorney with knowledge of special education matters. Following the closure, the Parent was home with the Student and was acutely aware of his refusal to engage in remote learning. She was aware that the Student received very limited services following the closure and had not received any occupational therapy services. She knew how that impacted him between March 12 and June 18, 2020. It is therefore concluded that on or before June 18, 2020, the Parent knew or should have known that the District's failure to implement the Student's IEP denied the Student a FAPE.

16. Additionally, the Parent has not established that an exception to the statute of limitations applies. See *J.K. & J.C. v. Missoula Cty. Pub. Schs*, 2016 U.S. Dist. LEXIS 99579 (D. Mont. July 29, 2016) (parent bears burden of demonstrating exception to IDEA statute of limitations applies), *aff'd* 713 F. App'x 666 (9th Cir. 2018); see also *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 246 (3rd Cir. 2012). The Parent offered no evidence of "specific misrepresentations" by the District that it had resolved the issues that form the basis for her complaint. WAC 392-172A-05080(2)(a). She also offered no evidence that the District withheld information from the Parent that it was required to provide to her, such as the Notice of Procedural Safeguards. WAC 392-172A-05080(2)(b).

17. The "majority view is that the alleged misrepresentation or withholding of information must be intentional or flagrant." *Evan H. by Costa H. and Laura H. v. Unionville-Chads Ford School District*, 51 IDELR 157 (E.D. Pa. 2008); *Seattle School Dist.*, 113 LRP 8150 (WA SEA 2012). The District did not intentionally or flagrantly withhold information in this case. It appears the Parent is contending that the District withheld information it was required to provide by not informing her that occupational therapy services would be provided by occupational therapy assistants and students as well as an occupational therapist. However, this cannot be considered intentional or flagrant withholding of information. To the contrary, the January 2020 IEP expressly stated that occupational therapy services would be provided directly and indirectly using a collaborative service model, indicating others would be involved in providing occupational therapy to the Student. Even if Mr. Allison did not expressly state that occupational therapy assistants or students might provide services, the Parent knew or should have known that not all services would be provided by Mr. Allison. Additionally, Mr. Allison credibly explained at hearing that IEP online did not have an option for indicating that both a COTA and an occupational therapist would be

collaborating in providing services to a student. His practice of choosing “OT” rather than “COTA” or “OTA” as the service provider cannot be considered an intentional or flagrant misrepresentation or withholding of information. The Parent has not met her burden to show an exception to the statute of limitations.

18. Because the KOSK date is June 18, 2020, or before, and no exception applies, the Parent has not met her burden to show that the statute of limitations period should be extended beyond two years prior to August 11, 2022. Accordingly, events that precede August 11, 2020, are not at issue in this case and are not considered.

(Issue i) Whether the District violated the IDEA and denied the Student a FAPE from August 11, 2020, to October 2021, by never properly identifying his needs as a student eligible for special education through the evaluation and reevaluation process.

19. The Parent first contends that the District failed to appropriately identify the Student’s needs through the evaluation and reevaluation process. As discussed above, the February 2019 reevaluation is outside the applicable timeframe for this matter. Accordingly, the first question is whether the reevaluation conducted in October 2021 failed to properly identify the Student’s needs.

20. A school district must reevaluate a student eligible for special education services at least every three years unless the parent and the district agree that a reevaluation is unnecessary. A reevaluation is also required if the district determines that the student's educational or related services needs, including improved academic achievement and functional performance, warrant reevaluation, or if the student’s parent or teacher request a reevaluation. WAC 392-172A-03015.

21. Evaluations and reevaluations must comply with the requirements set out in WAC 392-172A-03020 to 03080. If the parent of a student eligible for special education disagrees with a school district’s evaluation, the parent has the right to obtain an IEE, which is an evaluation conducted by a qualified examiner who is not employed by the school district. When a parent requests an IEE at public expense, the district must provide the parent with information on obtaining IEEs. Additionally, the district must either initiate a due process hearing within 15 days to defend the appropriateness of its evaluation or ensure a publicly funded IEE is provided without unnecessary delay. If the district initiates a hearing, and the final decision is that the district’s evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. WAC 392-172A-05005.

22. In this case, the Parent has not articulated why she believes the October 2021 reevaluation was inappropriate. However, even if a preponderance of the evidence were to demonstrate that the reevaluation was flawed, it is undisputed that the District

has already paid for an IEE by Dr. Enns following the October 2021 reevaluation. In other words, the Parent has already received the specific relief set out by the IDEA to remedy her disagreement with the October 2021 reevaluation. Moreover, the Student's IEP team at the Renton School District considered Dr. Enns' IEE report in developing an IEP and determining that the Student required a residential placement. In addition, the Renton School District reevaluated the Student in May 2023.

23. Because the Parent has already received an IEE at public expense following the October 2021 reevaluation to remedy the Parent's disagreement with it, no further remedy is warranted or appropriate. Accordingly, it is unnecessary to reach the Parent's claim that the District's October 2021 reevaluation was inappropriate.

24. The next question is whether a reevaluation should have been conducted at any other time between August 11, 2020, and October 2021. There is no evidence that District teachers or staff requested a reevaluation of the Student or believed the Student's needs warranted reevaluation at any point during this timeframe.

25. There is no evidence that the Parent, who was represented by counsel throughout this period, requested a reevaluation besides the October 2021 reevaluation. The Parent now contends that a reevaluation was required before the Student's articulation goal could be removed from his January 2021 IEP. There is simply no merit to the assertion that a reevaluation was required before the Student's IEP team could change his communication goals. Moreover, Mr. Heiner credibly explained the Student's tendency to mumble had been addressed when Mr. Heiner first worked with the Student at Aki Kurose, and that the IEP team had decided at an earlier meeting that this concern was best addressed informally.

26. A preponderance of the evidence does not establish that the Student had needs that required a reevaluation at any time other than October 2021. The Parent has not met her burden to prove this claim.

(Issue ii) Whether the District violated the IDEA and denied the Student a FAPE from August 11, 2020, to October 2021, by never offering an IEP that was reasonably calculated to allow the Student to make meaningful educational progress given his unique needs.

27. The Parent contends that the District never offered the Student an IEP that was reasonably calculated to enable him to make meaningful educational progress in light of his circumstances. Given the timeframe at issue in this case, only the January 2021 IEP and the May 2021 IEP amendment are at issue.

28. The Parent's brief focuses mainly on implementation of the Student's IEPs. With respect to development of the January 2021 IEP, the Parent contends that it should have included an articulation goal based on past reevaluations.

29. An IEP need not contain every goal requested by a parent or recommended by the parent's experts. See *G.D. v. Torrance Unified Sch. Dist.*, 112 LRP 12078 (C.D. Cal. 2012) (IEP goals not inappropriate where the district included goals addressing the student's significant needs while excluding those it deemed unnecessary or not age appropriate). Additionally, 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).

30. In this case, the IEP team considered the Student's present levels of performance and formulated annual goals. The team set communication goals focused on expressive language skills, comprehension, and retelling a passage or story. Neither the Parent nor any other team members disagreed with these or any other goals or requested an articulation goal. Moreover, as Mr. Heiner explained, the Student's tendency to mumble was best addressed informally based on a previous IEP team decision.

31. Additionally, the evidence does not establish that the Student required more SDI in any area than his IEP provided, or that he required SDI in additional areas. Likewise, there is no evidence that the Student required additional SLP or occupational therapy services. The IEP provided the Student with 1:1 IA services throughout his school day, and there is no evidence that this was not appropriate to meet his needs. There is no evidence that the Student required a different placement than his IEP provided or that he required different or additional accommodations or modifications.

32. In conclusion, the Parent has not met her burden to prove that the January 2021 IEP was not reasonably calculated to allow the Student to make meaningful progress in light of his circumstances.

33. The next issue is whether the May 2021 IEP amendment was reasonably calculated to meet the Student's needs. The Parent's brief does not address this claim.

34. The evidence demonstrates that the Parent agreed to allow the amendment without an IEP team meeting. Based on regression and lack of progress, the ESY IEP provided SDI in reading, math, written language, and social/behavior. There is no evidence that the Student required a different amount of SDI in these areas. Nor does

the evidence support a conclusion that the Student required SDI in communication during ESY. Mr. Heiner credibly testified that the Student did not demonstrate regression with respect to communication goals. When in-person learning resumed, the Student was able to pick up where he had left off and make progress from there. There is no evidence that the Student required occupational therapy services during ESY.

35. In May 2021, the Student's IEP was also amended to reflect the special education services he would receive through January 20, 2022. The amendment provided the Student with SDI in communication, math, reading, social/behavior, study/organizational skills, and written language. It provided occupational therapy as a related service and 1:1 assistance by an IA throughout the day. There is no evidence that the Student required a different amount of SDI or that he required SDI in any additional areas.

36. In conclusion, the Parent has not met her burden to show that the District failed to provide the Student with IEPs that were reasonably calculated to allow him to make meaningful progress in light of his circumstances.

(Issue iii) Whether the District denied the Student a FAPE from August 11, 2020, to the start of the 2021-2022 school year by failing to implement and materially and substantially deviating from the Student's January 2020, January 2021, and May 2021 IEP and IEP amendments, resulting in a denial of FAPE.

37. The Parent first argues that the District failed to implement the Student's IEP from March 11, 2020, through the end of the 2019-2020 school year. This claim is outside the relevant timeframe for the hearing and is not considered. The only issue is whether the District failed to implement the Student's IEP during the 2020-2021 school year to the start of 2021-2022 school year.

38. The Parent contends that the District failed to implement the Student's IEP from September 2020 through June 2021 because the Student was not provided all the SDI, related services, and 1:1 IA support required by his IEP. She argues that even after the Student returned to school in person in April 2021, only half days were provided, and he only received half of his special education services. The District argues that any discrepancy was minor and did not constitute a material failure to implement the IEP resulting in a denial of FAPE.

39. The District was ordered to stop all in-person educational programs on March 13, 2020, by proclamation from the Governor of Washington State. Governor Proclamation 20-08, 20-09. The U.S. Department of Education (DOE) Office of Special Education and Rehabilitative Services (OSERS) issued guidance that same day stating,

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

OSERS, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (March 2020) at 2.

40. The Washington Office of Superintendent of Public Instruction also issued guidance stating, "There remains an expectation that individualized education program (IEP) services will be delivered to the maximum extent possible during the pandemic while adjusting delivery methods to comply with state and local health/safety restrictions." OSPI, *Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in the 2020-21 School Year* (originally released 3/24/20), Question A-1. This guidance further recognized that there had been no changes made to the IDEA or its implementing regulations, thus, school districts were not relieved of their obligation to comply with those laws. *Id.*

41. Under the guidance from OSERS, the District was required to provide special education services to the Student during the COVID-19 school closure. The issue in this case is whether the District's services to the Student satisfied its obligation to implement the Student's IEP, and if not, whether any failure to implement the IEP was a material failure. See *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 822 (9th Cir. 2007).

42. The Student's January 2020 IEP called for 1,622.5 minutes of special education services per week. This IEP was in place from September 2, 2020, through January 20, 2021 (approximately 18 weeks). The Student was absent for approximately five weeks following the death of his grandmother. Throughout this period, services were provided through asynchronous materials and morning meetings totaling 360 minutes per week. The Student was highly resistant to participating in remote learning and asynchronous learning. He yelled and screamed and became aggressive toward the Parent and engaged in property damage when she tried to get him to participate. Excluding the weeks that the Student was absent due to his grandmother's death, the Student missed at least 16,412 minutes (1,262.5 X 13) of the special education services provided by his IEP.

43. The Student's January 2021 IEP called for 1257.5 minutes of special education services per week. This IEP was in place from January 21, 2021, through June 18, 2021 (approximately 18 weeks). The Student's services were still being provided

remotely from January 21 through March 2021, and the Student's resistance to online participation did not change. Accordingly, even assuming full participation in all of the offered morning meetings, the Student missed at least 16,155 minutes (897.5 X 18).

44. Between April and June 18, 2021 (approximately 10 weeks), the Student received in-person services four half-days per week. Although the Student responded well to the return to in-person learning, the half-day schedule meant he was only receiving half of the SDI provided by his IEP during this timeframe. Accordingly, he missed 6,287 minutes (628.75 X 10).

45. In total, the Student missed at least 38,854 minutes (rounded up to 650 hours) of his special education services during the 2020-2021 school year. At no point did he receive more than half of the special education services provided by his IEP. In addition, the Student made very limited progress toward his IEP goals throughout the entire period of remote learning. Considering the extensive reduction in service and the effect on the Student's progress, there is no question that this constitutes a material failure to implement the Student's IEP.

46. The District points to its offer of 315 hours of recovery services through summer camp held during the summer of 2021. It is important to note that this offer was not limited to the 2020-2021 school year but was intended to address the impact of the COVID-closure, which started in March 2020. The offer of recovery services, while meaningful, cannot be considered sufficient to address the full impact of the COVID-19 closure on the Student.

47. The Parent has proven that the District's material failure to implement the Student's IEPs during the 2020-2021 school year denied the Student FAPE.

48. The Parent next contends that the District denied the Student a FAPE to the start of the 2021-2022 school year by failing to implement the May 2021 IEP amendment, which provided the Student with ESY services. The Parent has not met her burden to prove this claim. The Parent's testimony established that she was not interested in ESY services because the Student would likely go for a week and then refuse to attend, complain about other students staring at him and touching his things, and become agitated. Likewise, the Parent has not shown that the District failed to implement the recovery services plan during the summer of 2021, which called for the Student to receive 315 hours during summer camp. It is clear that the Parent declined to send the Student to summer camp because she did not want him to be vaccinated.

49. Accordingly, the Parent has not met her burden to demonstrate that the District failed to implement the Student's May 2021 IEP amendment to the start of the 2021-2022 school year.

50. In conclusion, the Parent has demonstrated that the District failed to implement the Student's IEP during the 2020-2021 school year, resulting in a denial of FAPE. A remedy is discussed below.

(Issue iv) The Parent has not Shown that the District failed to provide the Student with FAPE during the 2021-2022 school year by not providing a 1:1 IA.

51. The Parent contends that the District failed to provide the Student with a 1:1 IA during the 2021-2022 school year, as required by his IEP. The Parent has not met her burden to prove this claim.

52. The Parent believed Mr. Stewart was not attending school consistently starting in September 2021, and that the Student did not want to go to school if he did not know whether Mr. Stewart would be there. The Parent mentioned these concerns to Ms. Couvillion. There is no evidence in the record, however, regarding the extent to which Mr. Stewart was or was not attending school. Nor is there evidence that no IA was available if Mr. Stewart was absent. Additionally, the evidence demonstrates that other factors were impeding the Student's attendance, including the fact that the Student resided in Renton throughout the 2021-2022 school year.

53. On balance, it is concluded that the evidence is not sufficient to prove by a preponderance of the evidence that the District was not providing the Student with 1:1 IA support consistent with his IEP during the 2021-2022 school year. The Parent has not met her burden to prove this claim.

Summary of Violations

54. The District violated the IDEA and denied the Student a FAPE by failing to implement his IEP during the 2020-2021 school year.

55. The Parent has not otherwise proven a denial of FAPE.

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

Remedies

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

58. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school

district should have supplied in the first place.” *Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), cited with approval in *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011). “There is no obligation to provide day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994). Flexibility rather than rigidity is called for. *Reid v. Dist. of Columbia*, 401 F.3d 523-24. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Id.* at 524.

59. A hearing officer may fashion individualized relief for students seeking compensatory education. As noted in *R.P. v. Prescott*:

Courts have been creative in fashioning the amount and type of compensatory education services to award. See, e.g., *Ferren C. v. Sch. Dist. of Phila.*, 612 F.3d 712, 718-19 (3d Cir. 2010) (court can order school to provide annual IEPs to student who had aged out of a statutory right to a FAPE); *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 324-26 (4th Cir. 2009) (court can order that private school tuition be reimbursed); *Park, ex rel. Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1034 (9th Cir. 2006) (court can order additional training for a child's teachers).

R.P. v. Prescott, 631 F.3d at 1126.

60. The Parent has shown that when the Student is discharged from his residential placement, he will require extensive services. At this point, it is unclear when the Student will be discharged from the residential facility or what his precise needs will be at that time. Dr. Enns’ testimony establishes, however, that required services will include ABA support and Parent training, SLP and occupational therapy services, social skills support, functional academics, and services for transitioning from the residential facility to his home and community.

61. As compensatory education for the services the Student missed during the 2020-2021 school year, it is appropriate to provide the Student with the services he will require when he is discharged from the residential facility. Because the Student no longer resides in the District, it is appropriate to award these services through private providers. Therefore, within 30 days of this order, the District shall compile and provide to the Parent a list of approved providers in the areas of: ABA therapy, SLP services, occupational therapy services, social skills support, and services for transitioning from a residential facility to home and community. The District shall pay for 435 hours of services by a provider, or providers selected by the Parent from the District’s list of

approved providers. The District shall contract with the chosen provider(s), so long as the provider is available and willing to provide the service, and the services shall be available to the Student within 10 days after the Parent notifies the District that the Student is ready to receive services from the selected provider(s). The services will be delivered at any time during the three calendar years following the date of the Student's discharge from the residential facility at the duration and frequency determined appropriate between the Parent and the provider(s). If the provider bills the District for time the Student failed to appear for scheduled sessions under the provider's billing policy, that time shall count toward this compensatory education award.

62. The award of 435 hours is calculated as follows. The 650 hours of missed services is reduced by one third to account for the fact that the services would have been provided in a group setting and students generally progress more rapidly with 1:1 instruction as opposed to instruction in a classroom. This reduction also takes into account the Parent's lengthy delay in notifying the District that the Student had moved out of the District. (650 - 216 = 434, rounded up to 435).

63. Nothing in this order precludes the Parent and the District from agreeing to an alternative method for delivering the Student's compensatory education award.

ORDER

1. The District violated the Individuals with Disabilities Education Act and denied the Student a free appropriate public education as set forth in Conclusions of Law 47 and 50.
2. The Parent has not otherwise established that the District denied the Student a free appropriate public education.
3. The District is ordered to provide compensatory education as set forth in Conclusions of Law 61-63.
4. The Parent's remaining requested remedies are denied.

SERVED on the date of mailing.



Pamela Meotti
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed 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.

DECLARATION OF SERVICE

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

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Dated May 1, 2024, at Olympia, Washington.

Representative
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cc: Administrative Resource Services, OSPI