

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Tahoma School District

Docket No. 11-2023-OSPI-02094

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2023-SE-0188

A due process hearing was held before Administrative Law Judge (ALJ) Jacqueline Becker on February 9, 12, 13, and 14, 2024, via videoconference. The Parents of the Student whose education is at issue¹ appeared and were represented by Lara Hruska and Luke Hackenberg, attorneys at law. Also present was Kent Halvorson, the Student's grandfather. The Tahoma School District (District) was represented by Lynette Baisch and Chase Bonwell, attorneys at law. Also present for the District were Annette Whittlesey, Director of Special Services, and Marianne Nafezi, Assistant Director of Special Services.

STATEMENT OF THE CASE

Procedural History

The Parents filed a due process hearing request (Complaint) on November 9, 2023. The matter was assigned to ALJ Paul Alig. ALJ Alig conducted two prehearing conferences, and set the matter for hearing on February 9, 12, 13 and 14, 2024. The matter was reassigned to ALJ Becker on February 1, 2024. A readiness conference was held by ALJ Becker on February 8, 2024, and the matter proceeded to hearing as scheduled.

Due Date for Written Decision

The due date for a written decision is May 4, 2024.

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

EVIDENCE RELIED UPON

Exhibits Admitted:

District's Exhibits: D1, D3, D5-17²

Parents' Exhibits: P1-8, P10-14

Joint Exhibits: J1-8

Witnesses Heard:

The Student's Mother (Ms. Parent)

Dr. Nicole Conlon, neurodevelopment psychologist

Naomi Fenton, Special Education Director at Embrace Learning Institute (ELI)

Alyssa Meehan, District special education teacher

Sara Emerson, District general education teacher

Dr. Vanessa Tucker, Board Certified Behavior Analyst (BCBA)

Alison Querro, District speech language pathologist (SLP) via deposition

ISSUES

The issues heard at the due process hearing are:

- a. Beginning January 12, 2023, through the time the Student withdrew from the District and was placed at Embrace Learning Institute (ELI), whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:
 - i. Failing to provide an Individualized Education Program (IEP) that was reasonably calculated to provide the Student with a FAPE and failing to include all of the specially designed instruction, related services, and supplementary aids and services to which the Student should be entitled, including the recommendations contained in the Student's private evaluations;
 - ii. Developing the Student's IEP in reliance upon false and/or inaccurate progress monitoring data; and

² D17 is the transcript of the deposition of Alison Querro which was taken on January 17, 2024. The transcript was entered into evidence due to Ms. Querro's unavailability at the due process hearing.

- iii. Denying the Parents meaningful participation in the Student's special education when the District provided them with false and/or inaccurate progress monitoring data.
- b. And, whether the Parents are entitled to their requested remedies:
- i. Declaratory relief finding that the District violated the IDEA;
 - ii. Declaratory relief finding that the Student was denied FAPE by the District's actions;
 - iii. Compensatory special education and related 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, consistent with 20 U.S.C. § 1415(i)(2)(c)(iii);
 - iv. Reimbursement for tuition payments at ELI to date, as well as any other private evaluations and services for the Student from January 13, 2023, to the present;
 - v. A prospective placement at ELI or a similar Non-Public Agency ("NPA") for the Student that includes the specific recommendations contained in the evaluation report created by the Student's medical provider; and
 - vi. Other equitable remedies, as appropriate.

FINDINGS OF FACT

Background

1. The Student is currently [REDACTED] and is in the third grade. J1 p.6.³ The Student attended school in the District at Rock Creek Elementary (Rock Creek) until April 28, 2023, at which time he began attending Embrace Learning Institute (ELI). J7.

³ The hearing transcript is cited as "Tr." with references to the page of the cited testimony. For example, a citation to "Tr. 80" is to the testimony at page 80 of the transcript. Exhibits are cited by party ("P" for Parents, "D" for District, "J" for Joint), exhibit number, and page number. For example, a citation to "D1 p.5" is to the District's Exhibit 1 at page 5.

2. The Student underwent a reevaluation by the District in December 2022, when he was [REDACTED] and in second grade. J1. The reevaluation noted that the Student has autism spectrum disorder and Attention Deficit Hyperactivity Disorder (ADHD). *Id.* at 13. The Student also has an intellectual disability. *Id.* at 7.

3. The Student has been eligible for special education since March 2018, when he was 2.5 years old, under the category of developmental delay.⁴ D3 p.1. He attended the District's early childhood education program up until he started kindergarten at Rock Creek. *Id.* The Student has received specially designed instruction (SDI) in reading, written language, math, social-emotional-behavioral, adaptive behavior, fine motor, gross motor, and communication. J1 pp. 6, 18.

4. The Student has a [REDACTED] who also has autism spectrum disorder and ADHD. J1 p.13. Ms. Parent described the [REDACTED] as being overactive, destructive at times, and unpredictable. *Id.*

5. The Student's Parents placed him on a reduced attendance schedule at Rock Creek to accommodate private Applied Behavior Analysis (ABA) therapy services on or about October of 2022. J1 p.47. The reduced schedule consisted of the Student attending Rock Creek from 9:00 to 10:30 AM, then leaving to go to ABA therapy, and returning from 2:15 to 3:50 PM. *Id.* at 6, 48.

6. The Parents and the District entered into a settlement agreement on January 12, 2023. Consequently, claims prior to that time are not at issue in this action. See Tr. 112; Complaint at 2.

The Functional Behavior Assessment

7. A functional behavioral assessment (FBA) of the Student was conducted in the fall of 2022 in conjunction with the reevaluation. Dr. Vanessa Tucker conducted the FBA, which was submitted to the District on November 9, 2022. J1 pp. 35, 47. Dr. Tucker is a Board Certified Behavior Analyst (BCBA). She has a bachelor's degree in special education, and a Ph.D. in low incidence disabilities, autism, and ABA. D15. Dr. Tucker is an associate professor of special education at Pacific Lutheran University and an adjunct lecturer at the University of Washington. She is the owner of Tucker Consulting, LLC. *Id.*

8. As part of the FBA, Dr. Tucker observed the Student at Rock Creek and at his ABA clinical therapy. Tr. 341-42. She observed the Student transition from his

⁴ The Student's eligibility category was later changed to "multiple disabilities." J2 p.5.

general education classroom at Rock Creek to the special education setting without difficulty. *Id.* at 343. The Student responded well to the structure of the special education classroom in that the space was organized and calm, and instructional materials were prepared in advance. The transition from academic instruction to social skills SDI in the special education setting consisted of moving from one table to another table approximately eight feet away. The Student had no difficulty doing this. *Id.* at 344-45.

9. Dr. Tucker described the Student's special education teacher, Alyssa Meehan,⁵ as "impressive." Ms. Meehan worked directly with the Student and his brother who was in the special education classroom at the same time. Ms. Meehan redirected the Student appropriately as needed. Dr. Tucker opined that the Student appeared to feel safe in the special education setting, knew what was expected of him, and understood how to transition from one task to the next. Tr. 346-47.

10. Dr. Tucker also observed the Student when he returned to Rock Creek from ABA therapy in the middle of the school day. This transition was initially difficult, and a staff member had to assist the Student to get to his classroom. When he got there, the Student jumped on the classroom trampoline for approximately five minutes to "center" himself and was then able to go to his occupational therapy (OT) session. Tr. 348-49.

11. Dr. Tucker's FBA of the Student identified two sets of "target" behaviors: swearing, "potty talk" and threats toward others; and hitting, kicking, biting punching, spitting, throwing objects, and flipping chairs and desks. J1 pp. 35-37. The FBA noted that transitions are very difficult for the Student and tend to cause him to exhibit increased impulsivity, "lack of motor planning," and challenging behaviors. *Id.* at 43. The FBA noted that the private ABA therapy was difficult for the Student and took away from learning opportunities and SDI at school. *Id.* at 17, 45. Dr. Tucker "strongly" suggested that the Student's ABA therapy be moved to the afternoon in the home setting to assist with behavioral support at home. *Id.* at 45.

12. As part of the FBA, the Parents reported that the Student's behaviors were "more involved" at home and that he and his brother routinely caused property damage. J1 p.49. Ms. Meehan reported that the Student's problematic behaviors at school were much less intense and less frequent than they had been in previous school years. *Id.* at 48.

⁵ Ms. Meehan has a bachelor's degree in elementary education and special education, and a master's degree in health and physical education. She is a certificated special education teacher. Tr. 217. Ms. Meehan had taught special education for ten years as of the 2022-23 school year. *Id.* at 190.

13. Dr. Tucker opined at the due process hearing that the Student was able to learn effectively at Rock Creek. She felt it was important for him to be presented with the distractions that exist in an elementary school in order to learn how to function in environments with distractions, and to learn to control his body and his impulses. Tr. 350, 354.

14. Dr. Tucker's FBA report contains three pages of recommendations. J1 pp. 43-45. Among other things, Dr Tucker recommended that transition skills be taught to the Student via modeling, priming in advance, and other interventions. Tr. 352-54. She also recommended that the Student work with multiple staff members in order to avoid "prompt dependence" that can arise when a child becomes dependent on one person. Dr. Tucker stated, "We want to make sure that a student, whatever their age, is able to do things with a variety of people in a variety of settings across a variety of materials." *Id.* at 355.

15. Dr. Tucker attended the Student's January 2023 IEP meeting and felt that the IEP that was developed was consistent with her recommendations for the Student. Tr. 360. She was able to observe the Student remotely after the IEP was implemented, and observed the Rock Creek staff to implement the IEP in accordance with her recommendations, including providing high levels of structure, systematic instruction regarding expectations and procedures, and high levels of reinforcement. *Id.* at 361. Dr. Tucker also observed the Student in his physical education (P.E.) class where he engaged with peers, followed directions, and did not need support from his paraeducator. *Id.* at 362-63.

16. Dr. Tucker opined that the benefits to the Student of being in a general education setting with typically developing peers outweighs the potential negative impact of undergoing multiple transition throughout the day. Tr. 364. She also opined that having the Student's [REDACTED] with him so regularly impacted the Student's behavior because they "feed off each other." *Id.* at 369.

17. Dr. Tucker further opined that the Student's behavior of [REDACTED], are behaviors that need to be dealt with "just like any other behavior." Tr. 387.

The January 2023 IEP and the time period that followed

18. A new IEP was developed for the Student on January 13, 2023; the IEP took effect on January 16, 2023. J2 p.5. Ms. Parent attended the IEP team meeting, as did one of her attorneys. *Id.*

19. The January 2023 IEP contained 16 goals, which were:

Social/Emotional/Behavioral: Emotional Regulation: By 01/12/2024, when given a moment when he is upset [Student] will engage in pro-social coping strategies (ex: taking deep breaths, hugging stuffed animal, asking for a break, etc.) improving Emotional Regulation Skills from 2/5 times to 4/5 times as measured by classroom data and teacher observation.

Adaptive Behavior: Participation: By 01/12/2024, when given the school environment [Student] will increase participation (class activities, input in class discussions, etc.) improving Participation Skills from a level 2 on the Behavior Rubric (level 3 meeting standard) to a level 3 on the Behavior Rubric (level 3 meeting standard) as measured by classroom data, teacher observation.

Math: Single Digit Addition: By 01/12/2024, when given single digit addition problems [Student] will solve the problems improving single digit addition skills from 45% accuracy to 80% accuracy as measured by classroom data and teacher observation.

Math: Single Digit Subtraction: By 01/12/2024, when given single digit subtraction problems [Student] will solve the problems improving single digit subtraction skills from 0% accuracy to 80% accuracy as measured by classroom data and teacher observation.

Reading: Sight Word Identification: By 01/12/2024, when given sight words [Student] will identify the sight words improving sight word identification skills from 86/160 sight words to 110/160 sight words as measured by classroom data and teacher observation.

Reading: Decoding: By 01/12/2024, when given CVC words⁶ [Student] will use phonemic awareness to sound out CVC words improving Decoding Skills from 0% accuracy to 80% accuracy as measured by classroom data and teacher observation.

⁶ "CVC words" are words made up of a consonant-vowel-consonant combination, such as cat, dog, and map. Tr. 232.

Reading: Reading Level: By 01/12/2024, when given a DRA text⁷ [Student] will read the text improving reading level skills from a DRA level A to a DRA level 3 as measured by classroom data and teacher observation.

Written Language: Capital Letter Writing: By 01/12/2024, when given a letter dictated to him [Student] will write the capital letter improving capital letter writing from 17/26 letters to 26/26 letters as measured by classroom data, teacher observation and work samples.

Written Language: Lowercase Letter Writing: By 01/12/2024, when given a letter dictated to him [Student] will write the lowercase letter improving lowercase letter writing from 11/26 letters to 26/26 letters as measured by classroom data, teacher observation and work samples.

Communication: Expressive/Receptive Language: By 01/12/2024, when given groups of objects or items [Student] will identify the label for category groups improving expressive/receptive language skills from 40% accuracy to 80% accuracy as measured by SLP data.

Communication: Expressive/Receptive Language: By 01/12/2024, when given verbally and visually presented sequences [Student] will can [sic] identify the first step and/or last step in a sequence improving expressive/receptive language skills from 67% accuracy to 80% accuracy as measured by SLP data.

Communication: Expressive/Receptive Language: By 01/12/2024, when given picture prompts [Student] will respond to simple orally presented WH?'s (who, what, where and when) questions improving expressive/receptive language skills from 70% accuracy to 80% accuracy as measured by SLP data.

Communication: Articulation: By 01/12/2024, when given picture prompts [Student] will produce the target phonemes: /v/, /j/, /s/, /z/ and /s-blends/ in word positions using clearly audible voicing improving articulation skills from 20% accuracy to 60% accuracy as measured by SLP data.

Fine Motor: sizing, formation and orientation: By 01/12/2024, when given age appropriate writing utensil, three lined paper, verbal cues, and

⁷ "DRA texts" are leveled reading assessments the District uses to assess students' reading proficiency. Tr. 232.

an opportunity to produce a simple sentence [Student] will complete a simple word sentence with appropriate letter size, formation, and orientation improving fine motor skills from 0/5 trials to 3/5 trials as measured by therapy data, work samples, and observation.

Gross Motor: Bilateral Coordination: By 01/12/2024, when given a playground ball or gator skin ball [Student] will complete a drop kick improving bilateral coordination and balance from 1 time to 5 times as measured by observation and PT data.

Gross Motor: Motor planning: By 01/12/2024, when given the opportunity [Student] will complete a coordinated jumping jack without a model improving motor planning from 2 jumping jacks to 4 jumping jacks as measured by observation and PT data.

J2 pp. 9-16.

20. The January 2023 IEP also contained numerous accommodations for the Student including visual supports, frequent breaks, preferential seating, and small group instruction. J2 p. 17.

21. The SDI service matrix in the January 2023 IEP provided the following:

Services 01/16/2023 - 01/12/2024

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Adaptive Behavior	Special Education Teacher	Special Education Teacher	30 Minutes / 5 Times Weekly	Special Education	01/16/2023	01/12/2024
No	Social/Emotional/Behavioral	1:1 Paraeducator	Special Education Teacher	45 Minutes / 5 Times Weekly	General Education	01/16/2023	01/12/2024
No	Social/Emotional/Behavioral	Special Education Teacher	Special Education Teacher	30 Minutes / 5 Times Weekly	Special Education	01/16/2023	01/12/2024
No	Math	Special Education Teacher	Special Education Teacher	45 Minutes / 5 Times Weekly	Special Education	01/16/2023	01/12/2024
No	Reading	Special Education Teacher	Special Education Teacher	45 Minutes / 5 Times Weekly	Special Education	01/16/2023	01/12/2024
No	Written Language	Special Education Teacher	Special Education Teacher	45 Minutes / 5 Times Weekly	Special Education	01/16/2023	01/12/2024
No	Fine Motor	Occupational Therapist	OT	30 Minutes / Weekly	Special Education	01/16/2023	01/12/2024
No	Gross Motor	Physical Therapist	PT	30 Minutes / Weekly	Special Education	01/16/2023	01/12/2024
Yes	Communication	SLP	SLP	30 Minutes / Weekly	Special Education	01/16/2023	01/12/2024

Total minutes per week of building instructional time available for this student (excluding lunch):

1780 minutes per week

Total minutes per week student is served in a special education setting:

1035 minutes per week

Percent of time in general education setting:

41.85% 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	1:2 para educator (1 para, 2 students)	1:2 Paraeducator (1 Para, 2 Stu)	Special Ed Teacher	15 Minutes / 5 Times Weekly	Special Education	01/16/2023	01/12/2024
No	1:1 Paraeducator	1:1 Paraeducator	Special Ed Teacher	620 Minutes / Weekly	General Education	01/16/2023	01/12/2024
No	Board Certified Behavior Analyst Consultation	BCBA	Special Ed Teacher	60 Minutes / Monthly	Special Education	01/16/2023	01/12/2024
No	Board Certified Behavior Analyst Consultation	BCBA	Special Ed Teacher	30 Minutes / 2 Times Monthly	Special Education	01/16/2023	01/12/2024

Description of Services:

█████ requires a 1:1 paraeducator in the general education setting including lunch and recess due to his inability to independently

follow some school routines, some self care routines, emotional regulation, and occasional eloping.

█████ requires special transportation to/from school and 1:2 para-educator to ensure he safely navigates to/from the bus/classroom daily (75 minutes per week).

█████ will receive his speech language services concurrently with social emotional behavioral and/or motor therapy groups.

A Board Certified Behavior Analyst Consultation will be provided for 60 minutes monthly with the IEP team and 30 minutes two times a month with parents.

J2 pp. 20-21.

22. Notably, the January 2023 IEP provided a 1:1 paraeducator for the Student while he was in the general education setting. It also provided his IEP team with 60 minutes monthly of BCBA consultation, and provided the Parents BCBA consultation for 30 minutes twice per month. J2 pp. 20-21. The January 2023 IEP also provided the Student with Extended School Year (ESY) services. *Id.* at 23.

23. The input provided by Ms. Parent at the IEP meeting was that she "would really like to work on getting him caught up as much as possible." J2 p.7. She also requested extended school year services. *Id.* Neither the January IEP nor the prior written notice (PWN) that proposes to implement it mention that the Parents had concerns about the data used to determine the Student's present levels of performance on which the IEP was partially based.

24. Dr. Tucker provided the BCBA consultation for the Student's IEP team by supporting the Rock Creek staff. She reviewed the Student's behavior with staff, and provided feedback and suggestions. Tr. 196. She did not work directly with the Student. *Id.*

25. A Behavior Intervention Plan (BIP) was considered but was not created for the Student because the FBA determined a BIP was not needed. J3 p.1. The IEP team

was open to revisiting this issue, however, and decided to closely monitor the Student's behavior data to see if a BIP became necessary. *Id.*

26. Ms. Meehan wrote the new social/emotional/behavioral goal in the IEP because the Student had met his previous social/emotional/behavioral goals. He was able to manage his emotions and his body more independently, so the new goal focused on managing his behavior when he was becoming upset. Tr. 225-26.

27. Ms. Meehan also wrote the goal related to reading DRA text. The Student was ready for this goal because he was able to read some sight words and was beginning to sound out words. Tr. 233.

28. The Student returned to full-time attendance at Rock Creek on January 26, 2023. J5. However, in late February 2023, the Parents again put the Student on a part-time attendance schedule to accommodate new outside ABA therapy that became available. Tr. 118, 149; J6. The Student attended ABA therapy from 8:00 a.m. until noon each day, and Ms. Parent then transported him to Rock Creek, which he attended until school was dismissed at 3:50 p.m. Tr. 149-50.

29. The District declined to change the January 2023 IEP service matrix when the reduced schedule was put in place, and continued to offer full-day services to the Student. J6.

30. After the January 2023 IEP was in place, the Parent received phone calls once or twice per week from the school reporting the Student's problematic behavior. The behavior included hitting, kicking, biting, swearing and "sexually assaulting"⁸ one of his teachers. Tr. 114. The Student's behavior was documented by the District, but Ms. Parent contends that the documentation does not include all the incidents about which she received phone calls. *Id.* at 115; D13.

31. The behavior data documented by the District includes incidents of elopement, screaming, hitting, slapping staff members, ripping a blanket and other items, licking furniture, swearing, kicking and stomping feet, climbing on tables, throwing chairs, and running into the outdoor bus lane. D13. On March 2, 2023, the [REDACTED]. *Id.* at 4. This is not behavior in which the Student had engaged previously, and it was very alarming to the Parents. Tr. 19-120.

⁸ No finding or legal conclusion is made as to whether the Student's behavior constituted a "sexual assault" as that term is defined in RCW 70.125.030(7). However, it is undisputed that the Student [REDACTED]

on April 4, 2023. This is the behavior that is referred to by use of this term. See D13 p.8.

32. On April 4, 2023, the Student attempted to [REDACTED] D13 p.8; Tr. 179-80, 203-04. This was new behavior. Tr. 123. Ms. Parent testified that this incident was “a breaking point” for her and at that point she “was done.” *Id.* at 140.

33. During this time period, the Parents observed the Student to lick tables, floors and other items, climb on furniture, and use swear words at home. Tr. 116, 212.

34. Ms. Meehan observed the Student’s behavior improve over time in that he had fewer episodes of problematic behaviors in second grade as compared with kindergarten and first grade. Tr. 268. She did not observe his behavior with staff to become more aggressive over time. *Id.* at 269-70.

35. Ms. Meehan observed that the Student needed time to become comfortable working with new people. Tr. 272. She would avoid putting him with substitute staff members unless they were regular substitutes who “had been around a while and knew him.” *Id.*

36. Sara Emerson was the Student’s general education teacher during the 2022-23 school year. Tr. 164-65. As part of general education, the Student attended classes with six specialist teachers throughout the week, for music, P.E., art, STEM, library, and “future ready skills.” *Id.* at 166. The Student’s school day (when he attended full time) required approximately ten transitions. *Id.* at 169.

37. Ms. Emerson had 22 students in her classroom that year. Tr. 175. The Student would greet her in the morning. He interacted with other students in the class through conversations and science investigations. *Id.* at 184. He appeared to enjoy being in class, and when he was no longer present, his classmates asked about him. *Id.* at 185.

38. Ms. Emerson observed the Student to take deep breaths and hug his stuffed animal, with prompting from his paraeducator, when he became overwhelmed. She also observed him beginning to advocate for himself when he needed a break. Tr. 185-86.

39. Ms. Emerson estimated that the Student could stay engaged in a general education activity for five to ten minutes on a difficult day, and up to 30 minutes on a good day. Tr. 173. The Student engaged in screaming and profanity very rarely in general education. *Id.* at 173-75. He did not have conflict with his general education peers, and did not engage in physical aggression, furniture climbing, clothing pulling or chair throwing in Ms. Emerson’s class. *Id.* at 176-79.

Progress data

40. Ms. Meehan was the Student's case manager and special education teacher the entire time he attended Rock Creek. Tr. 191.

41. Ms. Meehan typically met the Student and his brother in the morning when they got off the bus. She took them to their general education classrooms, then met them to go to special education after the general education morning routine. Tr. 195-96. During the 2022-23 school year, the Student usually received 1:1 SDI, although sometimes instruction occurred in small groups. *Id.* at 193-94.

42. As of March 8, 2021, when the District evaluated the Student, he could identify 18 of 26 upper case letters when given a field of three letters and asked to point to the particular letter. D3 p.13; Tr. 218. This is a lower-level skill than identifying a sight word. Tr. 219.

43. Progress monitoring data pertaining to the Student's ability to identify sight words, one of his IEP goals, was collected by Ms. Meehan. Tr. 206; J4 p.6. As of June 2022, the Student could identify 103 out of 160 sight words from a field of three words when prompted to point to a particular word. J4 p.6. In January 2023, regression was noted in that the Student was only able to identify 86 sight words. *Id.* But in April 2023 the Student was able to identify 110 sight words when presented with three words and asked to point to a particular word. At that point, he was deemed to have mastered this IEP goal. J8 p.5.

44. Ms. Meehan opined that this was adequate progress. She felt that the regression noted in January 2023 could have been due to the Student leaving school in the middle of the day and having only a "small chunk of time to work on academics." Tr. 206-08. She observed that the Student's attendance for only partial days slowed down his progress, in part because he was often upset when he came back to school after his ABA therapy and required time to de-escalate. *Id.* at 208. 220-21, 229.

45. Progress data pertaining to the Student's math goals was also collected by Ms. Meehan. As of March 8, 2021, the Student could identify five out of the ten numbers 1 through 10, from a field of three when asked to point to the number. Tr. 219. D3 p.13.

46. In June 2022, the Student mastered his goal of single digit addition without “touch points,”⁹ and began working on double digit addition without regrouping. Tr. 209; J4 p.8. By January 2023, however, the Student had regressed and needed to use touch points in order to perform single digit addition. *Id.* Consequently, his IEP goals continued to pertain to single digit addition and subtraction. Ms. Meehan attributed the regression to the summer break and the Student’s partial school day. Tr. 209. The same regression was noted as to the Student’s subtraction skills. Tr. 209-210; J4 pp. 8-9; J8 p.6.

47. The legibility of the Student’s written upper-case letters from dictation increased significantly over time. Tr. 262-65; D11.

48. In January 2023, the Student demonstrated mastery of his gross motor “ball skills” goal by bouncing and catching a tennis ball with one hand 3 out of 4 times, after starting at a baseline of zero out of four times. J4 p.2. This progress was measured by physical therapist Shelley Vessey. Ms. Vessey reported that the Student also made progress on his bilateral coordination and motor planning goals between June 2022 and January 2023. *Id.* at 3-4.

49. Between March 2022 and January 2023, the Student increased his self-control skills (managing hands, feet, body, voice, and personal items) from a level 2 on the social/emotional/behavior rubric to a level 3. See J2 pp. 26-27. In so doing, he met his March 2022 self-control goal. J4 p.1. He made similar progress on his goal of managing emotions and met his March 2022 goal. *Id.* at 1-2.

50. The Student’s behavior data was collected by Ms. Meehan and, at times, others who worked with the Student. Tr. 199; D13. Based on the behavior data kept by the District and her recollection, Ms. Meehan estimated the Student eloped from the classroom, and exhibited screaming behavior, less than once per week during the January through April 2023 time period. Tr. 199-200. He licked furniture infrequently. His most common problematic behavior was verbal aggression. *Id.* at 200. On one occasion, the Student attempted to pull the fire alarm, but Ms. Meehan was able to block his access to it. *Id.*

51. As of April 2023, the Student was participating in general education activities and instruction for longer periods of time than he had been when the IEP was

⁹ “Touch points” is a math strategy used for simple addition and subtraction. Each digit, 0 through 9, has correlating touch points. When a student is adding numbers, they can touch and count the touch points on each digit in order to perform the addition. For example, a student would touch the number 1 once, and the number 2 twice, for a total of 3 touches, when adding 1 plus 2. Tr. 252-2253.

drafted. He was making less use of a “go box” which contained an independent activity he could do with his paraeducator instead of participating in the general education activity. He was able to participate independently in general education on three out of five opportunities, which represented growth from his previous participation. Tr. 238-39. The Student was also asking for a break in general education if he needed one, rather than engaging in problematic behaviors, more often than he had done previously. *Id.* at 239.

52. Ms. Meehan does not think the Student requires a private placement or that such a placement would be his least restrictive environment. Tr. 274. In her opinion, he was making progress and doing well at school, and was growing in all areas. *Id.*

53. Ms. Meehan is found to be a credible and well-informed witness. She explained the various exhibits that document the Student’s performance and progress thoroughly and knowledgeably. Ms. Meehan’s recollections and testimony are consistent with the written records pertaining to the Student. There is no evidence in the record that Ms. Meehan relied on false or inaccurate data in determining the Student’s progress on his IEP goals or when developing sections of the January 2023 IEP.

54. Progress data pertaining to the January 2023 IEP goals was also collected by Alison Querro.¹⁰ Ms. Querro is an SLP in the District. She has been an SLP for almost 30 years. D17 pp.7-8. Ms. Querro began working with the Student in September 2020, when he was in kindergarten, and continued to work with him the entire time he attended Rock Creek. *Id.* at 8. She typically met with him once per week for 30 minutes.

55. When the Student started elementary school, his speech was very difficult to understand, and he had difficulty following directions. D17 p. 9. By the time he left Rock Creek, the Student was much more communicative and could remain on topic with Ms. Querro for a 30-minute session. He was talkative and his articulation had improved such that he was much easier to understand. *Id.* at 9-10.

56. Ms. Querro wrote the Student’s four communication goals in his March 2, 2022 IEP. The goals pertained to expressive/receptive language and articulation. J4 pp.3-5; D17 pp. 10-11. During the course of this IEP, the Student improved his ability to identify objects by category from 25% accuracy to over 80% accuracy. J4 p. 3; D17 pp. 12-13. He met his IEP goal pertaining to this skill. *Id.*

¹⁰ Ms. Querro has bachelor’s and master’s degrees in communication disorders. D17 p.8.

57. Ms. Querro noted that the Student's progress toward his goals was impacted by his decreased attendance at Rock Creek when he began leaving school to go to ABA therapy. She noted that the Student was "incredibly tired" when he returned to school from therapy, and was lethargic and withdrawn at times upon his return. D17 p. 13; J2 p.12. It was sometimes difficult for Ms. Querro to schedule therapy sessions for the Student due to his absences. D17 pp. 27-28.

58. The Student made progress on his March 2022 IEP communication goal pertaining to identifying steps in a sequence. J4 p.4; D17 pp. 14-15. His accuracy increased from 20% to 40%, but his progress was impacted by decreased attendance at Rock Creek. Ms. Querro opined that the Student would likely have continued to make progress on this goal had he remained at Rock Creek. *Id.*

59. The Student made "excellent" progress on his March 2022 IEP communication goal pertaining to what/who questions. J4 p.4; D17 pp. 15-17.

60. The Student also made progress on his March 2022 IEP communication goal pertaining to target phonemes, such as "k", "g", "sn" and "sk". J4 p. 5; D17 pp. 17-18.

61. During her time working with the Student, Ms. Querro observed him to improve his ability to manage his emotions and his body. She observed, "[Student] went from needing assistance for managing his body, staying in the group, taking care of his items, to the majority of the time doing it by himself. And he went from not responding or interacting appropriately to interacting and responding to peers and others." D17 p. 30. She also observed that his fine motor skill of holding a pencil improved, which enabled him to draw lines and circle items on a worksheet. *Id.* at 44.

62. Ms. Querro saw the Student direct aggressive behavior toward his brother at times, and the presence of his brother sometimes caused him to be off task. She also noted that the Student "needs to have an attachment and a level of trust [with the person he is working with] for the best performance." D17 pp. 36-40.

63. Ms. Querro is found to be a credible and well-informed witness. Her testimony is consistent with the written records pertaining to the Student. There is no evidence in the record that Ms. Querro relied on false or inaccurate data in determining the Student's progress on his communication goals.

64. Ms. Querro does not think the Student requires placement at a private school in order to make progress. She noted that, while at Rock Creek, the Student "was

making good progress, was enjoying school, was beginning to really interact with peers, and was more independent.” D17 pp. 30-31.

The Student is unilaterally placed at ELI

65. On April 5, 2023, the day after the Student attempted to [REDACTED], the Parents informed the District that they would be moving the Student and his brother to ELI as of April 24, 2023. In their email message to Ms. Meehan, the Parents stated, “[A]t this time we do not feel the boys can be safely and adequately educated at their school so we are placing them unilaterally at embrace learning institute (an OSPI approved NPA) and providing reimbursement notice here.” P13.

66. Ms. Parent testified that she and the Student’s father made the decision to remove the Student and his brother from the District because she did not see the learning that was indicated on the January 2023 IEP. The Parents did not feel the District was helping the Student at all. Tr. 124. Ms. Parent stated:

I was not seeing the learning at home, and I knew it, it was making me feel crazy. I've known - like I had felt this way for a couple years; and, you know, this was solidifying it for me. And I was just done. I was done with the District and frustrated.

Id. at 124-25.

67. On April 28, 2023, the Student’s IEP team met to discuss the Parents’ request that the Student be placed at ELI at District expense. J7. The team determined the Student was making progress toward his IEP goals at Rock Creek. As of April 28, 2023, the Student had made progress toward his gross motor goals, three of his communication goals, his fine motor goal, his adaptive behavior goal, his social/emotional/behavioral goal, his decoding goal and reading level goals, and his math goals, and his written language goal. And, he had mastered his sight word identification goal. J8.

68. The IEP team also determined that a private placement would not be the Student’s least restrictive environment (LRE) and they declined to place him at ELI. J7.

69. Ms. Parent is very skeptical about the accuracy of the District’s data. According to her observations at home:

There was no way that Student was doing most of what they were saying. I mean maybe a few words that - sight words that he could do, maybe like two or three at that time. And that was maybe stretching it.

He was not reading. He was not writing well. He could write his name. That was about it, and he could not do CVC decoding.

Tr. 126.

70. According to Ms. Parent, she quizzed the Student at home and “there was no way” the Student knew 110 sight words. Tr.127. He did not demonstrate knowledge of all the letters at home. He never exhibited the ability to perform single addition or subtraction at home and was not able to count past 10. According to Ms. Parent, he could write some letters, but they were not legible. *Id.* at 126-28.

Dr. Conlon’s evaluation and observations

71. The Student underwent a neuropsychological evaluation by Dr. Nicole Conlon on August 22 and 25, 2023. Dr. Conlon is a neurodevelopment psychologist. P4. She has a Ph.D. in school psychology and is a nationally certified school psychologist. P1. Dr. Conlon completed a two-year postdoctoral fellowship in neurodevelopmental disabilities in 2009 and is the owner of Evergreen Neurodevelopmental Center. *Id.* The Student’s evaluation took five to six hours spread over two days. Tr. 29.

72. Dr. Conlon’s evaluation report notes that Ms. Parent identified concerns that the District’s data regarding the Student appeared to be “inflated” compared with his actual skill level. P4 p.1. Ms. Parent testified that the Parents engaged Dr. Conlon in part “to prove that Rock Creek was inflating their information” and for Ms. Parent’s “own sanity” in that she wanted to know that she was not “going crazy.” Tr. 134. Ms. Parent feels the District had been exaggerating the Student’s progress for at least two years. *Id.* at 143-44.

73. Dr. Conlon administered eleven assessments, including rating scales completed by the Parents and teachers at ELI. P4 p.3. Dr. Conlon determined that the Student’s overall full-scale IQ is in the “extremely low” range at 63. *Id.* at 17. His processing speed is slow, and he exhibited significant difficulty across all areas of reading, math, and written expressions. *Id.* The Student scored in the very low range on all the reading assessments administered by Dr. Conlon. Tr. 35. The Student had difficulty sustaining his attention. He struggled with “facial affect” and social skills, and his adaptive skills were significantly delayed. Doctor Conlin opined that the Student’s autism spectrum disorder, ADHD, learning disabilities in academic areas, and intermittent explosive disorder were having a “profound impact on his ability to learn new skills academically and adaptively.” P4 p.17.

74. Notably, Dr. Conlon testified that the results of the Student's academic testing showed that he was performing within his cognitive range, based on the similarity between his cognitive and academic levels. Tr. 33. He was, however, performing well below his same age peers. *Id.*

75. Dr. Conlon's evaluation notes that the Student was assessed, in part, on his ability to "read" words, sound out nonsense words, and read a paragraph. P4 p.8. Dr. Conlon's opined that her assessment results did not align with the District's progress monitoring data. She reported that the Student could not identify the number of sight words indicated by the District's data and could not decode the number of CVC words that were indicated by the District's data. Tr. 37-38. The Student did not utilize the "touchpoint" system to solve math problems during Dr. Conlon's evaluation. *Id.* at 38. He could not identify letter sounds and could not write lower case letters as well as was indicated by the District's data. *Id.* at 40-41. Dr. Conlon opined that the District's data seemed to be inflated and elevated in most areas. *Id.* at 38-39.

76. Dr. Conlon recommended that intense interventions be put in place to reduce the Student's dysregulated behaviors. P4 p.17. She further recommended that the Parents access resources available from the Washington Developmental Disabilities Administration (DDA) for support in the home. *Id.* at 19.

77. Dr. Conlon's report sets forth numerous recommendations regarding the Student's education, including intensive 1:1 or small group instruction with positive feedback, repetitive and guided learning of new skills, scaffolded support for and direct teaching of social skills, a visual schedule, and reduced sensory overload (such as a quiet classroom with reduced lighting). P4 p.19.

78. Ms. Parent testified that Dr. Conlon's report "proved exactly what she [Ms. Parent] knew all along" and that the Student was nowhere near what his IEP data indicated. Tr. 134.

79. On November 9, 2023, the Parents filed the complaint in this action.

80. Dr. Conlon performed an updated assessment of the Student's academic, phonological processing, and fine motor skills on January 25, 2024. P3. She determined that he had made gains in most academic areas since August 2023, and the most notable difference was in his behavior and willingness to complete work. P3 p.4.

81. During her January 2024 update, Dr. Conlon documented that the Student was able to write 6 letters. P3 p.2. At that time, ELI's monthly progress data indicated that the Student could write 21 letters. P10 p.3. When asked about this at

the due process hearing, Dr. Conlon felt ELI's data regarding the Student's ability to write letters was inaccurate based on her assessment of his fine motor control. Tr. 73.

82. Dr. Conlon observed the Student at ELI on January 26, 2024. P2. She opined that ELI is a "very appropriate" placement for the Student. Tr. 54.

83. Dr. Conlon never observed the Student at Rock Creek. She opined at the due process hearing that the January 2023 IEP, which was in place for the Student at the time he was withdrawn from the District, was not appropriate. In her opinion, it had "a lot of transitions," broken up minutes, and different providers throughout the day. Tr. 20-21. She also opined that the percentage of time the Student spent in the general education setting seemed to be "a lot" based on his sensory sensitivities and his behaviors. *Id.*

84. Dr. Conlon also opined that the behavior data collected by the District exhibited "fight or flight" behavior on the part of the Student. Tr. 23; D13. Such behavior included eloping, punching, kicking and foul language. This behavior indicated that the Student was overwhelmed, and his executive functioning was shutting down. Tr. 25.

Embrace Learning Institute

85. Naomi Fenton is the special education director at ELI. P8. She has a bachelor's degree in language arts, and a Master of Education degree in secondary education and special education. *Id.* She is a certificated special education teacher in Washington and works remotely from Montana. Tr. 295, 322-33.

86. At the due process hearing, Ms. Fenton described the Student's program at ELI. His classes contain 5-6 students, and three educators are present – two paraeducators and one teacher. Tr. 298-99. The Student transitions to a new subject every 30 minutes, which entails moving to a different but adjacent room. *Id.* at 299.

87. ELI does not take a summer break, so the Student went to school through the summer of 2023. Tr 152. The Student got a new teacher in June 2023. *Id.* at 321.

88. The Student continued to receive ABA services, but in the home, after he left the District. Tr. 145-46.

89. The Student's [REDACTED] has received the same therapy and has been on the same schooling schedule as the Student throughout the time period relevant to this action. Tr. 152-54.

90. The Student has demonstrated academic and behavioral progress at ELI. Tr. 135-37, 300. His problematic behaviors while at ELI have declined in frequency as well as severity. *Id.* at 306. The Parents have observed that the Student's reading, writing and math skills have improved greatly. *Id.* at 135-37. Ms. Parent reports that the Student is thriving. *Id.*

91. Ms. Parent testified that the progress monitoring data from ELI has been much more consistent with her observations of the Student. Tr. 133.

92. Tuition at ELI appears to be \$10,270 per month. The Parents currently receive a 5% "sibling discount" for having two children at the school and a "scholarship discount" of \$8,275 per month. P11. Ms. Parent was not able to explain the nature of the scholarship discount or why the Student receives it. Tr. 156-57.

Relief sought

93. The Parents are seeking relief in the amount of \$29,464 for tuition reimbursement for ELI through the end of the 2023-24 school year.¹¹ They also seek reimbursement for the cost of transporting the Student to and from ELI through the end of the 2023-24 school year in the amount of \$18,500 (based two 52-mile roundtrips per day). P11; P14; Tr. 140-42, 155.

94. The Parents also seek reimbursement for Dr. Conlon's evaluations and reports in the amount of \$5,750. Tr. 142.

95. The Parents seek, as prospective relief, placement of the Student at ELI at public expense, as well as transportation costs. Tr. 142.

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

¹¹ Ms. Parent does not understand portions of the invoices she receive from ELI. Tr. 156-57. The accuracy of the \$29,464 tuition figure has not been examined by the undersigned and no finding is made as to its accuracy.

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 Parents are seeking relief and bear 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 Parents' burden of proof in this matter is preponderance of the evidence.

The IDEA and FAPE

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

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

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).

Whether the January 2023 IEP was developed in reliance on false and/or inaccurate progress monitoring data.¹²

6. The Parents contend that the January 2023 IEP was developed in reliance on inaccurate progress monitoring data, and was therefore inappropriate. The Parents argue the data's inaccuracy is demonstrated, in part, by "internal irregularities and inconsistencies" as well as by its "highly erratic and atypical trends." Parents' Post-Hearing Brief (Parents' Brief) at 27. They further contend that the evidence in the record "supports the inference that a lack of progress [by the Student] is attributable to the litany of well-documented, disruptive and escalatory behaviors that were occurring daily." *Id.* at 28.

7. The Parents first argue, essentially, that the Student's up and down progress on IEP goals, such as his progress on the ability to identify sight words, means that the District's data was inaccurate. Parent's Brief at 8-10. Although Dr. Conlon compared the District's data to her own assessment data obtained later, neither she nor any other witness provided the expert testimony that would be required to support a conclusion that the progress monitoring data's up and down nature, as to only some IEP goals, demonstrates that the data was inaccurate.

8. The evidence establishes that the District staff members who collected progress monitoring data did so in a reliable fashion. The progress monitoring data is documented clearly and was explained thoroughly at the hearing by Ms. Meehan, and in deposition testimony by Ms. Querro. Data showing progress on goals was also documented by a third person, the District's physical therapist. While the Student's progress may have been inconsistent, regressive at times, impacted by his behavior, impacted by his daily absence for part of the school day, and potentially impacted by myriad other factors, none of this demonstrates by a preponderance of the evidence that the District's progress data was false or inaccurate.

9. The Parents also argue that the Student's disruptive behavior incidents were escalating and resulted in lack of progress. The evidence does not support this assertion. Rather, Ms. Meehan observed the Student's behavior at school to improve over time. His general education teacher observed the Student to engage in disruptive

¹² For clarity of analysis, the issues are discussed in a different sequence than they were listed in the relevant prehearing order, and they have been rephrased slightly.

behavior only very rarely, and noted that he was learning to advocate for himself when he needed a break. Ms. Querro observed the Student's ability to manage his emotions and his body improve over time, as well. It is evident, however, that the Student's new, sexualized behaviors - [REDACTED] - was extremely upsetting to Ms. Parent. She described the [REDACTED] incident as a "breaking point" that caused her "to be done" with the District, and she sent notice the following day that the Parents were withdrawing both of their sons from Rock Creek.

10. It is evident that the Parents and Dr. Conlon did not observe the Student to exhibit the same level of progress as the District's data demonstrates. This discrepancy may be the result of numerous variables, including the Parent "quizzing" the Student at home in a way that differed from how the District monitored progress and gathered data. For example, the District monitored the Student's ability to identify letters by presenting him with a field of three letters and asking him to point to a particular letter. Sight word identification was evaluated similarly, by presenting a field of three words. The Student used a "touchpoint" strategy during much of his addition and subtraction work at school. The Parent did not fully explain how she quizzed the Student or otherwise measured his progress at home, but she did not establish that she was presenting the Student with same task or asking him to demonstrate the same skills as was the District.

11. Similarly, Dr. Conlon's evaluation explains that the Student was assessed, in part, on his ability to "read" words, sound out nonsense words, and read a paragraph. This does not establish that Dr. Conlon was presenting the Student with the same task or asking him to demonstrate the same skills as was the District.

12. Moreover, even if the Student's ability to demonstrate progress on his IEP goal skills was weaker at home and with Dr. Conlon than it was while he was in school, this does not establish that the data collected by the District was false or inaccurate. At best, it establishes that the Student performed differently at home and with Dr Conlon that he did at Rock Creek. And, notably, Dr Conlon also questioned the accuracy of some of ELI's data, appearing to hold the position that data which differed significantly from her own assessment data must be unreliable. This is inadequately persuasive to meet the Parents' burden as to this claim.

13. For all these reasons, it is concluded that the Parents have not met their burden to prove that the January 2023 IEP was developed in reliance on false or inaccurate progress monitoring data.

Whether the District failed to provide an IEP that was reasonably calculated to provide the Student with FAPE, and whether the District failed to include all the specially designed instruction, related services, and supplementary aids and services to which the Student was entitled, including the recommendations contained in the Student's private evaluations.

14. “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 399, 137 S. Ct. 988, 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. 580 U.S. at 400. The “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Id.* at 399. Accordingly, an IEP team is charged with developing a comprehensive plan that is “tailored to the unique needs of a particular child.” *Id.* at 391. Additionally, the Student’s “educational program must be appropriately ambitious in light of his circumstances” *Id.* at 402.

15. The IDEA “cannot and does not promise any particular educational outcome.” *Endrew F.*, 580 U.S. at 398 (citations omitted). In reviewing an IEP, “the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” *Id.* at 399 (emphasis in original) (citation omitted). 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.*

16. In the present case, the Parents contend that the January 2023 IEP did not provide the Student with FAPE. They argue that the District should have provided direct ABA services to the Student and should have developed a BIP. They contend that the District’s failures to do so led to “a disastrous spell” of behavioral episodes that “entirely prevented the [S]tudent from making academic progress.” Parents’ Brief at 3, 39-40. They further contend that the Student’s program contained too many transitions throughout the school day. The Parents rely extensively on assessments and data pertaining to the Student that were obtained well after the January 2023 IEP was developed, such as the August 2023 evaluation by Dr. Conlon, behavioral data from February through April of 2023, and data from ELLI.

17. The evidence in the record does not support the Parents’ contentions. The IEP contained 16 goals that were measurable, appropriately ambitious, and addressed the Student’s unique needs. The IEP provided for SDI in adaptive behavior, social/emotional/behavioral, math, reading, and written language. Related

services included OT, PT, and SLP services for 30 minutes per week, each. Supplementary aids and services in the IEP included a 1:2 paraeducator in the special education setting, a 1:1 paraeducator in the general education setting, BCBA consultation services for the Student, and BCBA consultation services for the Parents. As to the assertion that the IEP should have provided ABA services to the Student to a greater degree than it did, a preponderance of the evidence does not show that additional ABA services were necessary. The FBA did not recommend them, and the IEP team agreed to monitor the Student's behavior to determine if a BIP became necessary in the future. This was an appropriate course of action at the time the IEP was developed. As described above, the Student's behavior was improving with time, and he was making academic progress.

18. It is unclear what recommendations from the Student's private evaluations the Parents contend should have been in the January 2023 IEP. The recommendations cited in their briefing came from Dr. Conlon well after the Student had been withdrawn from the District. Parents' Brief at 20.

19. With respect to the number of transitions required in the Student's program at Rock Creek, the evidence shows that transitions were often difficult for the Student. Dr. Conlin opined that the number of transitions in the Student's program seemed excessive ("a lot," in her words). Dr. Tucker opined that the benefits to the Student of participating in general education outweighed the potential negative impact of multiple daily transitions. The Student generally did well in general education settings. Ms. Meehan observed the transition that consistently caused the Student to escalate was returning to school from his private ABA therapy, which was not part of the IEP and was a choice made unilaterally by the Parents. After examining the evidence as to the transitions necessitated by the January 2023 IEP and their impact on the Student, it is determined that a preponderance of the evidence does not support a conclusion that the program's structure, and the required transitions, denied the Student FAPE.

20. The Parents argue in their briefing that they "repeatedly" confronted the District with concerns about the Student's academic and behavioral skills, and expressed "frequent disagreement" that was dismissed by the District. Parents' Brief at 35. The evidence does not support this contention. Rather, Ms. Parent asked that the Student "get caught up as much as possible," and that he receive ESY services (which were then incorporated into the IEP). While it is clear that the Parents were not satisfied with the progress the Student was making at Rock Creek as of April 2023, "a student is not denied FAPE simply because the district's proposed educational plan provides less educational benefit than what a student's parent might prefer." *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 *21-

22 (E.D. Cal., March 7, 2019). Moreover, the fact that a student's disruptive behaviors have not been eliminated does not demonstrate that the student was denied FAPE. *Id.*

21. The Parents further contend that the use of inaccurate data in the creation of the January 2023 IEP resulted in inappropriate goals, inappropriate SDI, and possibly inappropriate placement of the Student. Parent's Brief at 37. As concluded above, the evidence does not support a conclusion that the District provided the Parents with inaccurate data or relied on inaccurate data when developing the Student's IEP.

22. For these reasons, it is concluded that the Parents have not met their burden to prove that the January 2023 IEP was not reasonably calculated to provide the Student with FAPE.

Whether the District denied the Parents meaningful participation in the Student's special education when the District provided them with false and/or inaccurate progress monitoring data.

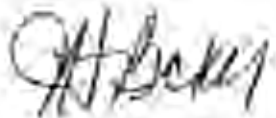
23. As set forth above, the evidence does not establish that the District provided the Parents with false and/or inaccurate progress monitoring data regarding the Student. This claim is premised on inaccurate assertions. The evidence does not support a conclusion that the Student's right to FAPE was impaired by the progress monitoring data relied on by the District, or that the Parents were denied meaningful participation in the Student's special education by the progress monitoring data that was provided to them by the District

24. Accordingly, the Parents have not met their burden to prove this claim.

ORDER

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

SERVED on the date of mailing.



Jacqueline Becker
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

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Dated April 24, 2024, at Olympia, Washington.

Representative
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cc: Administrative Resource Services, OSPI