WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:	Docket No. 06-2024-OSPI-02266
North Thurston School District	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER**
	Agency: Office of Superintendent of Public Instruction Program: Special Education Cause No. 2024-SE-0094

A due process hearing was held before Administrative Law Judge (ALJ) Paul Alig on October 9, 2024, and October 14, 2024, in-person at the office of the North Thurston School District (District). The Parents of the Student whose education is at issue[1] appeared and were represented by Alex Gerard, attorney at law. The Student was present for a short period of time on the first day of hearing. The District was represented by Lynette Baisch and Sharan Singh, attorneys at law. Also present for the District was Dianne Heckman, Director of Early Learning and Special Education.

Based upon the statements of the parties, the pleadings and documents on file, and rulings made by the ALJ, IT IS ORDERED:

STATEMENT OF THE CASE

Procedural History

On June 21, 2024, the Parents filed a due process hearing request. On July 24, 2024, the District filed its response to the hearing request. The ALJ issued a Prehearing Order on July 31, 2024. On September 16, 2024, the ALJ issued a second prehearing order setting forth the issues for hearing and the Parents' requests for relief.[2]

Due Date for Written Decision

As set forth in a previous order, the due date for a written decision in this case is thirty (30) days after the record of the hearing closes. The record closed on December 9, 2024, the due date for the parties' post-hearing briefs. Accordingly, the due date for a written decision is January 8, 2025.[3]

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

[2] *See* prehearing orders dated July 31, 2024, and September 16, 2024.

[3] Post-hearing Order dated October 15, 2024.

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EVIDENCE RELIED UPON

Exhibits Admitted:

District's Exhibits: D1-D41
Parents' Exhibits: P1-P9, P11-P25, P27-P32, P34-P38, P40-P44, P46, P48-P50

Witnesses Heard (in order of appearance):

- Amy Cuoio, Special Education Teacher
- Katrina Rayls, Ph.D., Psychologist
- Kelly Nichols, Former School Psychologist
- Angie DeAguiar, Principal, Meadows Elementary
- Dianne Heckman, Director, Early Learning and Special Education
- Mother
- Father

Witness Testimony Stricken:

On October 18, 2024, the District requested the testimony of Steven Phillips, M.D., be stricken. On October 25, 2024, the Parents filed their response in opposition to the District's request to strike Dr. Phillips's testimony.

Dr. Phillips was called by the Parents and appeared during the hearing by telephone on October 9, 2024. He provided testimony on direct examination in response to questions from the Parents' attorney. During cross-examination, he refused to answer questions asked by the attorney for the District. The questions the District was asking pertained to an exhibit that had been admitted. Dr. Phillips was asked repeatedly to answer the questions posed to him. He refused to do so and requested to disconnect from the hearing prior to completion of the District's cross-examination. Dr. Phillips's clear refusal to participate further in the hearing and complete cross-examination deprived the District of the opportunity to cross-examine the testimony elicited by the Parents.

Washington Administrative Code (WAC) 392-172A-05100(6) provides that the general rules applicable to administrative hearings are contained in WAC chapter 10-08 which governs the conduct of the due process hearing. WAC 10-08-200(9) authorizes the ALJ to call witnesses necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by all parties. Revised Code of Washington (RCW) 34.05.449(2) states that the ALJ shall provide all parties the opportunity to conduct cross-examination. The importance of cross-examination in administrative hearings has been affirmed by courts in Washington.[4]

[4] *See Lytle v. Dep't of Licensing*, 94 Wn. App. 357, 362 (Wa. 1999) (appellant did not receive a fair hearing due to inability to cross-examine the officers who submitted evidence against him in a license revocation case).

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The Parents argue that the ALJ has discretion to allow portions of Dr. Phillips's testimony be admitted. The Parents claim the District's questions were beyond the scope of direct, the District was able to complete partial cross-examination, and the District had ample opportunity to recall Dr. Phillips by subpoena.

The questions the District was asking of Dr. Phillips were permissible and within the scope of direct examination. Although the District was able to ask some questions on cross-examination, it was not able to complete cross-examination.

RCW 34.05.449(2) requires that parties be permitted an opportunity for cross-examination. The language of the statute directs that the ALJ "shall" provide the opportunity for cross-examination to each party. This requirement leaves no room for judicial discretion. In this case, because the District was deprived of the opportunity to fully cross-examine Dr. Phillips, his testimony should be stricken. Therefore, the District's request to strike his testimony is **GRANTED**.

ISSUES

1. The issues for the due process hearing are whether the District violated the Individuals with Disabilities Education Act ("IDEA") and denied the Student a free and appropriate public education ("FAPE") by:

a. Failing to provide adequate transportation to his transfer schools, causing the Student to miss schooling each week during the 2022-2023 and 2023-2024 school years;

b. Failing to provide related services including, but not limited to, transportation to transfer schools where the Student is first dropped off and last picked up, causing Student to miss schooling each week during the 2022-2023 and 2023-2024 school years;

c. Refusing to minimize the Student's resource depletion as recommended by medical professionals, causing the Student to miss schooling each week during the 2022-2023 and 2023-2024 school years;

d. Failing to provide a nurse on the Student's transportation to the transfer school within the District's boundaries, causing the Student to miss schooling each week during the 2022-2023 and 2023-2024 school years; and

e. Failing to provide a nurse at the Student's transfer school as required by his individualized education program (IEP), causing the Student to miss schooling each week during the 2022-2023 and 2023-2024 school years.

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

   a. An order requiring the District to provide the Student with transportation to any school he is accepted into within the District, transfer school or home school, and to have such requirements added to his IEP;

   b. An order requiring a school nurse to be present with the Student while he is using District provided transportation to transfer or home school and to have such requirements added to his IEP;

   c. An order requiring the District to provide the Student with compensatory hours equal to the hours missed;

   d. An order requiring a school nurse to be present at any school, transfer or otherwise, that the Student has been accepted into;

   e. And an order for any other equitable remedies, as deemed appropriate.

FINDINGS OF FACT

The Student

1. The Student lives in the District with his Parents and [redacted] siblings. He was [redacted] at the time of the hearing. He has a medical diagnosis of [redacted].[5]

2. The Student tires frequently due to his [redacted]. Activities which may exhaust the Student include travel, play, and social engagement.[6] The Student has had a seizure in the Parents' minivan and is at risk for a seizure after lengthy transportation.[7] Despite known triggers, the frequency and severity of the Student's seizures are unpredictable.[8] The seizures can potentially result in the Student's death, or loss of cognitive functioning.[9] For this reason the Student has a seizure management and rescue medication plan for school and his home.[10] The rescue medication requires special knowledge and experience to use effectively.[11] The

[5] D25p2; Mother T258:3, 263:10. Citations to the exhibits of record are by the party ("P" for Parent; "D" for District) and exhibit and page numbers. For example, a citation to D25p2 is to the District's' Exhibit D25 at page 2. Citations to the hearing transcript indicate who provided the testimony followed by the page number(s) and line(s) on which the testimony appears. For example, a citation to Mother T258:3 is a citation to the Mother's testimony at page 258 line 3 of the transcript.

[6] Mother T263:19-265:12.

[7] Mother T275:16-276:19, 293:18-294:9.

[8] Mother T276:25.

[9] D25p2; Mother T261:8.

[10] Mother T261:20.

[11] Mother T292:14.

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Parents support the Student consistent with the seizure action plan developed by his providers.[12] He requires three different anti-seizure medications administered twice per day by the Parents. When the Student has a seizure, he must be provided emergency rescue medication.[13]

2022-2023 School Year

3. Dianne Heckman is the District Director of Early Learning and Special Education.[14] She oversees all the developmental preschool programs in the District, including preschool special education programming and transitional Kindergarten.[15]

4. Students in the District are assigned to developmental preschools based on their residence.[16] The Student's assigned developmental preschool center (home school) for the 2022-2023 school year was Seven Oaks Elementary School (Seven Oaks).[17]

5. On October 19, 2022, the Student was initially evaluated for special education eligibility. At the time of this evaluation, the Student was [redacted]. The Student was determined eligible under the category of health impaired. The initial evaluation team determined the Student was eligible to receive specially designed instruction (SDI) in the areas of cognitive and adaptive development. The evaluation report indicated the Student would benefit from accommodations to help ensure his access to instruction when his functioning is temporarily impacted by seizure activity.[18] Vineland Adaptive Behavioral Scales, Third Edition (Vineland-III), based on Parent rating scales, showed the Student was mildly delayed in comparison to same-aged peers. This suggested a need for more support navigating daily life than typically-developing peers.[19]

6. Steven Phillips, M.D., was the Student's pediatric neurologist. He wrote a letter dated November 2, 2022, requesting a one-on-one aid at school to help the student in his medical care. The District received this letter on November 4, 2022.[20]

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[12] Mother T278:10.

[13] P11p1,2; Mother T281:9, 284:2.

[14] Dr. Heckman has been in her current position for seven years. She previously worked as a clinical and school psychologist and obtained a master's degree in both of these disciplines. She has a doctorate in educational leadership. In total, she has worked 37 years in education, working in three different states and six different districts. Heckman T211:19-212:12.

[15] Heckman T212:5.

[16] Heckman T213:10.

[17] D2p1; Cuoio T118:11, Nichols T72:2, Heckman T221:19.

[18] D1pp1-5, 10; Nichols T73:3-14.

[19] D1pp10, 11, D13p4; Nichols T92:15.

[20] D4p1, D8p22; Cuoio T122:5, Mother T284:20.

7. Amy Cuoio[21] was assigned as the Student's early childhood special education teacher for the 2022-23 school year. In early November 2022, the Mother emailed Ms. Cuoio and requested the Student be served at a location closest to their home. The Parents wanted the Student to attend the Meadows Elementary School (Meadows) as it was the developmental preschool closest to their home. Ms. Cuoio clarified that transportation was not an option at Meadows because the Student could only enroll through an intra-district transfer.

8. The travel from the Student's home to Meadows in the morning was approximately 10 minutes. The travel from Meadows to the Student's home after the morning session was approximately 15 minutes.[22] The travel from the Student's home to Seven Oaks has more traffic than the route to Meadows and takes longer with more difficulty.[23] Meadows required less travel time from the Student's home than Seven Oaks.

9. On November 18, 2022, the District convened the Student's individualized education program (IEP) team.[24] Prior to the meeting, the Parents requested a full-time nurse at school who could provide the Student with rescue medication for his seizures.[25] During the meeting, the team reviewed Dr. Phillips's letter of November 2, 2022. The Parents indicated an emergency medical plan would be provided soon from the neurologist. They stated the plan would verify when rescue medication is needed and who could administer it.[26] The IEP the team developed provided the Student would receive specialized transportation. It noted the Parents had request an intra-district transfer. The IEP team's intention was to denote that the District did not provide transportation to a transfer school.[27] The District issued a prior written notice (PWN) dated November 18, 2022. The notice indicated the Student's health plan would be updated by the nurse when additional information became available.[28]

10. At the end of the IEP meeting. Angie Deaguiar,[29] Meadows Principal, spoke with the family.[30] The Parents made Ms. Deaguiar aware of the Student's medical needs

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[21] Ms. Cuoio has been assigned to Meadows as a special education teacher for five years. Prior to this current assignment, she was a paraeducator for the Olympia School District in a developmental preschool for eight years. Ms. Cuoio obtained her bachelor's degree from Western Washington University in Business Administration. She obtained her teaching certificate from City University. Cuoio T114:7-24.

[22] D40p1; Deagular T197:2-198:2, Mother T262:19, 265:25.

[23] Mother T265:19.

[24] D7pp1-3, D8pp1-3; Cuoio T116:11, 119:25, 122:5.

[25] P1pp3-5, D5p1, D6pp1-3; Cuoio T115:9, 117:9 Mother T268:15, T297:21, Father T303:11.

[26] D8p22; Cuoio T117:23.

[27] D8p19; Cuoio T123:3-12, 269:2.

[28] D8p22, Cuoio T119:5.

[29] Ms. Deaguiar has been the Meadows Principal for 12 years. Prior to that she was the Dean of Students at Seven Oaks Elementary School in the District and also worked as a teacher at the school for 12 years. She obtained a bachelor's degree and her Administrator's credentials from St. Martin's University. She obtained a master's degree from Antioch University. In addition to her Administrator's credentials, she is certified to teach K-8 through the state of Washington. Deaguiar T192:21–193:18.

[30] Deaguiar T194:25.

and she explained to them the need for a medical order indicating his specific needs.[31]

11. On November 29, 2022, the District received the Student's emergency action plan developed by Dr. Phillips. The plan noted the Student's diagnosis of [redacted]. It provided directions regarding actions to be taken when the Student had a seizure. It noted that school healthcare staff must be notified at the beginning of the seizure, and the Student should be provided rescue medication. The plan provided that 911 should be called if the seizure lasts three minutes and rescue medication is not administered, or if the seizure does not stop a few minutes after rescue medication is administered. The plan listed multiple anti-seizure medications prescribed for the Student.[32]

12. In January 2023, the Parents applied to have the Student enrolled in Meadows through an intra-district transfer for the remainder of the 2022-2023 school year. The Parents' application indicated the Student was eligible for special education. The reason for the Parents' application was the Student had "a catastrophic medical condition and needs to be at the school closest to his home." The application noted a behavior concern that "seizure activity may cause dysregulation from typical behavior/disposition." The intra-district transfer application also stated the Parents understood they were responsible for providing transportation to Meadows at no cost to the District.[33] The Parents' application for the Student to attend Meadows was approved by the District.[34]

13. On January 5, 2023, the Student began attending morning sessions at Meadows. The length of the Student's school day was two and a half hours. Meadows was open four days per week. The Parents sent the Student to Meadows two days per week on days a nurse was scheduled to be present. Because the Student was an intra-district transfer student, the District did not offer transportation to Meadows. Rather, the District offered transportation to Seven Oaks which was his assigned home school.[35]

14. On March 13, 2023, the Mother informed Ms. Cuoio that transportation remained a barrier for the Student and would become more of a challenge as she was starting a new job and relying on a friend to bring him to school.[36]

15. On May 24, 2023, the District conducted a reevaluation at the request of the school team. The team suspected the Student required special education in the areas of social skills and fine motor skills. The reevaluation also sought to determine if the Student required additional paraeducator support for his medical needs. Based on a

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[31] Deaguiar T195:5-196:4.

[32] D9pp2-5; Cuoio T123:23-124:13, Mother T284:20.

[33] D2p2; Heckman T213:19-214:9, 215:19.

[34] Heckman T212:23, 215:25.

[35] P5p1; Nichols T80:4, 118:18, Cuoio T121:10, 126:18, 127:10, Heckman T213:13, 216:3-15, Mother T295:9.

[36] P8p1; Mother T270:19.

file review, the reevaluation team determined the Student was eligible for additional SDI in social skills and related services in occupational therapy (OT). The reevaluation team noted the Student was already receiving paraeducator support, and additional support could be added by the IEP team.[37]

16. On the same day, the District convened the Student's IEP team with Meadows staff. The IEP team added SDI services in social skills and related services in OT to the IEP. The IEP maintained the Student's need for specialized transportation. It continued to note the Student's request for an intra-district transfer to clarify that the District would not provide transportation to Meadows. The District did not add additional nursing services to the Student's IEP, noting that a school nurse was present at Meadows on the days the Student was attending. The IEP also included paraeducator support while the Student was at school.[38]

17. On July 25, 2023, the Parents emailed the District another letter from Dr. Phillips. The letter recommended that the school have a full-time nurse present in the building to provide the safest environment for the Student. The Parents email explained to the District that they had the Student at Meadows because it was the school closest to his home, had the easiest access for medical personnel should an emergency occur, and would make it easier for family to reach him in the case of emergency.[39]

2023-2024 School Year

18. The Student's assigned home school for the 2023-2024 school year was Woodland Elementary School (Woodland). The District changed the Student's home preschool from Seven Oaks to Woodland to create capacity for an increase in eligible students.[40] The travel from the Student's home to Woodland in the morning was approximately 35 minutes. The travel from Woodland to the Student's home after the morning session was complete was approximately 20 minutes. Because it required the least travel time Meadows was the closest possible developmental preschool center to the Student's home.[41] The Parents made an intra-district transfer request for the Student to continue to attend Meadows during the 2023-2024 school year.[42] Their application was approved with the same transportation restrictions as the previous year.[43] The Student was not able to attend Meadows consistently because the Parents

[37] P49pp25-27, D13pp3-20; Cuoio T128:8.

[38] D14pp25-29; Cuoio T128:11-129:7, Heckman T234:2.

[39] P11pp1, 2, D15pp1-3, D16p1; Cuoio T129:22, 130:18, Heckman T216:20, Mother T284:16.

[40] Heckman T218:6-15.

[41] P25p1, D40p1; Deagular T197:2-198:2; Mother T262:19, 265:25.

[42] Cuoio T130:21-131:24, Heckman T218:3.

[43] D17p1; Heckman T217:22.

were unable to transport him every day.[44]

19. On September 7, 2023, the District convened an IEP team meeting. During the meeting, the District explained it would only transport that Student to Woodland as that was his home school. The District explained that Woodland could provide a nurse four days per week. The Parents said they would prefer to send the Student to Meadows if transportation could be provided. The IEP team discussed having a medical professional on the bus for transportation to Woodland, and ultimately determined the District would provide a nurse on the bus to Woodland but would not provide transportation to Meadows. The IEP noted that the Student had recently experienced eight seizures in 90 minutes.[45] The District amended the Student's IEP and issued a PWN that indicated the Student required a nurse at school and required specialized transportation.[46]

20. On September 14, 2023, the Student began the school year at Meadows as it was the first day the Parents could transport him. The Student attended morning sessions.[47]

21. On October 2, 2023, the Parents emailed Ms. Cuoio and explained that they were unable to provide safe transport for the Student to attend Meadows and inquired about in-home services. The District provided the Parents with a PWN stating that the Student did not qualify for services in the home.[48]

22. On October 5, 2023, the Parents explained the Student would attend Meadows on Fridays.[49] The Student continued to attend school on Fridays during the 2023-2024 school year.[50] On days when the Student attended, the District arranged for a nurse to be present at Meadows.[51]

23. On October 24, 2023, the District received a neuropsychological screening report of the Student that had been completed by Katrina Rayls, Ph.D.[52] Dr. Rayls described her assessment as a neurological screening because it did not include all

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[44] Cuoio T132:12.

[45] P19pp3, 22-23, D18p1, D19p1, D20pp1, 9; Cuoio T131:8-22.,

[46] P25pp25, 25, D20pp24-29; Cuoio T134:21-T135:1.

[47] P22pp1-4; Cuoio T139:9, 170:1.

[48] P7p1, P23p1, D22p1, D23p3; Cuoio T140:12.

[49] D23p1; Cuoio T135:11, 141:9, 142:6-25.

[50] Cuoio T170:13.

[51] D20p1; Cuoio T134:15.

[52] Dr. Rayls has been a pediatric neurologist for 26 years. She worked for Mary Bridge Children's hospital for 20 years including 10 years as Director of Pediatric Psychology. She currently works in private practice in Gig Harbor, Washington. She received an undergraduate degree from Butler University in Indiana, and a master's degree in clinical psychology from Nova Southeastern University in Florida (Nova). Dr. Rayls received a Ph.D. from Nova. She completed a neuropsychology internship and a clinical neuropsychology fellowship at the Medical University of South Carolina in Charleston. Rayls T49:15, 54:11.

the components of a full formal neuropsychological evaluation. Dr. Rayls assessed the Student based on his prior history, interviews of the Parents, the Adaptive Behavior Assessment System – 3rd Edition (ABAS-III) ratings, a brief cognitive screening, and a Student observation. The report was completed on October 13, 2023. The Student's Global Adaptive Composite Standard Score was 58 which was in the 0.3 percentile.[53] Dr. Rayls noted that children with [redacted].[54] Dr. Rayls found the Student had some social difficulty in activities such as engaging others in play. His behavior struggled during transitions and when his expectations were unmet. Functionally, he struggled with activities of daily living (ADL), requiring assistance and supervision in activities such as toileting, and behaving safely. His [redacted] significantly delayed his adaptive and functional status to the extent that it was well below expectations. He had notable delays in all adaptive domains including communication, pre-academic learning, self-direction, leisure interests, social skills, community use, home living, health and safety awareness, and self-care.[55]

24. Dr. Rayls's report further explained that the Student should be considered as having a [redacted]. It stated that as such, he required "greater resources…to ensure optimal functioning."[56] These resources that he used to function deplete more quickly than typical for children his age, as more demands are made of him. The report detailed that when this happens his seizure threshold is lowered. He has a high need for sleep, rest, and breaks from stimulation. The report explained that rest and reduced stimulation can help to prevent the Student's seizures and increase his learning opportunities.[57] Dr. Rayls report recommended someone be with the Student at all times to ensure proper seizure safety and management. It stated that due to his limitations, a lengthy bus ride would increase the likelihood of the Student having a seizure and reduced his ability to benefit from the classroom.[58]

25. During the hearing, Dr. Rayls clarified additional factors that were not included in her report that may demonstrate the Student was experiencing "resource depletion" impacting his cognitive ability, including sleepiness, emotional reactivity, and more than usual movement such as the inability to sit still.[59] She considered extended time on the bus for the Student to be a significant health risk. According to Dr. Rayls, less than 10 minutes was ideal in terms of his travel time to school.[60] She recommended

[53] P27pp1-3, P30p1, D25pp 2-4; Rayls T49:25, 53:5, Cuoio T143:8., 145:18.

[54] P27p4, D25pp4, 5; Rayls T55:23-56:23.

[55] D25p5; Heckman T223:16, Mother T260:10-261:2.

[56] P27p5.

[57] P27pp2-5, D25pp3-6; Rayls T50:50:23-51:11.

[58] D25pp3-6; Rayls T51:14-52:10.

[59] Rayls T61:18.

[60] Rayls T53:22, T66:3.

the Student's travel to school should be as short as possible.[61]

26. On November 9, 2023, the District was unable to complete a quarterly progress report of the Student's IEP goals due to lack of data from his infrequent attendance up to that point of the school year.[62]

27. On November 14, 2023, the District received a letter from the Student's pediatrician, Ellen Passloff, M.D. The letter requested the District provide appropriate transportation since the Parents work full time and were not able to provide it. The letter stated the Student would benefit greatly from being able to attend a developmental preschool at his local elementary school.[63]

28. On December 6, 2023, Ms. Cuoio and Kelly Nichols[64] met with the Mother to discuss Dr. Passloff's letter. The Mother shared that, even with a nurse on the bus, she did not feel comfortable with the Student riding the bus for the length of time required to travel to Woodland. She requested transportation for the Student to attend Meadows. The Mother shared the Student loved school and she had seen growth in his communication skills. The District explained it could not provide transportation to Meadows as Woodland was the Student's home school.[65]

29. On January 4, 2024, the District informed the Parents that a full-time nurse had been hired and would be present at Meadows four days per week.[66]

30. In late January 2024 and early February 2024, the Mother wrote the District and requested the Student attend Meadows as part of his IEP. Her request was based on the Student's diagnosis requiring that he attend the school closest to his home and the availability of emergency services. She emphasized that the ride to Woodland was much longer than to Meadows and not consistent with the medical recommendations of the Student's providers.[67]

31. On February 2, 2024, the District was unable to provide a progress report for the Student on any of his IEP goals as he had not attended sufficiently to determine progress.[68]

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[61] Rayls T66:3.

[62] P13pp1, 2; Mother T298:23.

[63] P31p1, P32pp1-4, D27pp1-2; Cuoio T146:1, Mother T285:9, 286:15.

[64] Mr. Nichols has a bachelor's degree in Applied Developmental Psychology. He has an Education Specialist degree and is a certified school psychologist in the State of Washington. He worked for the District beginning in the 2019-2020 school year through the end of last school year. During the 2023-2024 school year he was assigned to Meadows. Nichols T71:12.

[65] D29p1; Cuoio T147:10-148:6.

[66] P35pp1, 2, D30p1; Cuoio T148:12-20.

[67] P37p1, D32pp1, 2; Heckman T221:8-16, Mother T289:4

[68] P14pp1-3, P21pp1-3; Mother T298:23.

32. On February 23, 2024, the District convened the Student's IEP team. Mr. Nichols and the Student's father attended the meeting along with special education and other school staff assigned to Meadows.[69] The District issued a PWN proposing to initiate a reevaluation to formally consider the information it received from the Student's medical providers in order to determine the Parents' request for transportation to Meadows. The PWN noted that the letters from the Student's medical providers indicated his level of functioning was different from that observed by staff at school. The District proposed the reevaluation consist of a review of existing data, updated medical information, Parent and teacher input, classroom observation, updated standardized assessments, and observation of the Student in a second session to obtain information regarding potential fatigue and resource depletion. The District intended to consider the Student's skills across the school setting, including his functional skills. It also proposed to evaluate the Student's sensory processing needs and other areas evaluated by an OT. The District believed it was important to gather this information through a reevaluation as the assessments from the providers were not conducted in a school setting. In addition to requesting consent to conduct the reevaluation, the District requested releases of information to obtain information from the Student's providers, in part to determine signs the Student would display when experiencing resource depletion. The IEP team did not consider the Parents' request for the Student to be placed at Meadows.[70]

33. The reason Mr. Nichols believed a reevaluation was necessary was to consider the school-based implications of Dr. Rayls's report, and to explore differences between what had been observed at school, in terms of the Student's adaptive functioning. The information in Dr. Rayls's report raised concerns that the Student could not participate in a full school day in Kindergarten. This was also a basis for the District to propose another reevaluation because, on its own, Dr. Rayls's report was not sufficient to "fully drive" the Student's IEP.[71] With respect to travel to school, Mr. Nichols believed the recommendation to shorten the Student's bus ride to school as much as possible was reasonable based on the information from the Student's providers.[72] On re-cross examination, he elaborated:

> Q Okay, so earlier when we were talking you said that based on your personal understanding and experience with Student that the shorter the time on the bus the better was a reasonable statement. How are you coming to that conclusion if you're also claiming that there's a lack of information for changing the IEP to reflect that?

[69] D34p1; Nichols T75:13, Cuoio T151:24.

[70] D35pp2-7; Nicols T74:5-16; 75:20, 76:7-17, 77:4, 78:1-22, 79:5, Cuoio T143:17, 152:10.

[71] D35pp2-7, D36pp2-4; Nichols T80:12-81:13, 84:1; 86:8.

[72] Nichols T102:20.

A I believe that in reading the providers -- the medical providers' screening and reports that there was enough information to say that that's a reasonable statement; however, in my opinion, I don't believe that we necessarily had the information we needed to, say, determine what kinds of adaptations might need to be made on the bus, what kinds of adaptations needed to be made in the classroom or additional goal areas and other areas of functioning that he previously maybe didn't qualify for.

Q But there was enough information to say that a shorter bus ride would be better?

A Reasonable, sure.[73]

34. On March 3, 2024, the Parents explained via email to the District that they did not object in principal to a reevaluation. However, they believed it was not necessary because the current reevaluation remained appropriate and supported approval of their request for a placement as close as possible to the Student's home, which was their primary concern and reason for requesting an IEP meeting.[74]

35. On April 17, 2024, the District issued a PWN indicating it was no longer pursuing a reevaluation because it had not received authorization to request medical information from the Student's private providers or Parental consent to conduct the reevaluation.[75]

36. On May 1, 2024, the Student's IEP team, including Mr. Nichols, met to review the Student's IEP. The team considered the Student's least restrictive environment (LRE). Options the team considered included maintaining his current placement or moving him to a full day Kindergarten setting.[76] The Parents shared that holding his bladder too long while on the bus could trigger the Student's seizures. The team developed an IEP that included specialized transportation and continued to note that the Parents had requested an intra-district transfer in order to clarify that it would not provide transportation to Meadows. The IEP provided for nursing services consisting of 150 minutes four times weekly. The IEP team identified that the Student's LRE was a developmental preschool program but did not address the Parents' request that he be placed at a school as close to home as possible.[77] The Parents believed staying at

[73] Nichols T109:9-110:3.

[74] P42p2, D36pp2, 3; Nichols T84:7, Mother T267:1-268:4, 289:13-23.

[75] D36pp5, 6; Nichols T85:5, 86:8.

[76] D37pp1, 2; Nichols T86:24.

[77] P46pp14-16, D38pp14, 15; Nichols T87:7.

Meadows provided the Student with consistency. The District also noted this through a PWN that:

- The Parents had the option of choosing Woodland with transportation because it was his home preschool center.

- The Parents had chosen for the Student to attend Meadows through an intra-district transfer where the District would not provide transportation.[78]

37. On June 11, 2024, the District notified the Parents that the preschool boundaries had changed and the Student's home preschool location for the 2024-2025 school year was Meadows. Because of this change, the District agreed to provide transportation for the Student to Meadows in accordance with this IEP.[79]

38. As of June 21, 2024, the District remained unable to report the Student's progress toward his IEP goals due to his lack of attendance.[80] Ms. Cuoio's testimony demonstrated the Student would have benefitted from attending four school days per week during the school year.[81]

39. On June 21, 2024, the Parents filed their due process hearing request.[82]

40. Dr. Rayls's testimony was based on her observation and assessment of the Student. Her observations and recommendations were consistent with those reflected in the letters from Dr. Passloff and Dr. Phillips. Her recommendation with respect to providing the Student the shortest bus ride as possible was also consistent with the opinion of Mr. Nichols. Dr. Rayls's recommendation is, therefore, credible with respect to the Student's medical needs.

41. Due to the lack of transportation to Meadows during the 2023-2024 school year, the Student could only attend on days the Parents could arrange transportation, which was generally only once or twice per week. The Student missed about half the time he would have attended if he had received transportation to school.[83] The Student would have benefited from attending four school days per week.[84] From February 23,

[78] P46pp17-18, D38pp17, 18.

[79] P50p1, D39p1; Heckman T224:17-225:5.

[80] P15p1, P48pp1, 2; Mother T298:23.

[81] Cuoio T165:13.

[82] Complaint.

[83] Mother T294:25, 298:18.

[84] Cuoio T165:13.

2024, through the end of the school year, there were 52 school days.[85]

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 District bears the burden of proof in this matter.[86] In a due process hearing, the burden of proof is a preponderance of the evidence.[87]

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."[88]

4. In *Bd. Of Educ. of Hendrick Hudson Central Sch. Dist. v. 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 IEP developed under these procedures is reasonably calculated to enable the child to receive educational benefits. As stated in *Rowley*, "[i]f these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more."[89] 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. [90]

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

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[85] D41p2.

[86] RCW 28A.155.260(1).

[87] RCW 28A.155.260(3).

[88] 458 U.S. 176, 197 n.21, 200-201 (1982).

[89] 458 U.S. at 206-07.

[90] *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001).

(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.[91]

6. In *Endrew F. v. Douglas County Sch. Dist. RE-1*, the U.S. Supreme Court stated, "[t]o 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."[92] 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.[93] The "essential function of an IEP is to set out a plan for pursuing academic and functional advancement."[94] Accordingly, an IEP team is charged with developing a comprehensive plan that is "tailored to the unique needs of a particular child."[95] Additionally, the Student's "educational program must be appropriately ambitious in light of his circumstances . . . ."[96]

7. In reviewing an IEP, "the question is whether the IEP is *reasonable*, not whether the court regards it as ideal."[97] The determination of reasonableness is made as of the time the IEP was developed. An IEP is "a snapshot, not a retrospective."[98]

Issues for Hearing

Issue A. Failing to provide adequate transportation to his transfer schools, causing the Student to miss schooling each week during the 2022-2023 and 2023-2024 school years.

8. The Parents allege in issue "a" regarding failing to provide transportation to Meadows his transfer school, that the District failed to implement the Student's IEPs by not providing transportation to Meadows during the 2022-2023 and 2023-2024 school years.[99] The Parents argue in their closing brief that "nowhere in Ch. 392-172A

[91] 20 USC §1415(f)(3)(E)(ii); WAC 392-172A-05105(2); 34 CFR § 300.513(a)(2).

[92] .

[93] *Id.*

[94] *Id.*

[95] *Id*. at 1000.

[96] *Id.*

[97] *Endrew*. at 999 (emphasis in original).

[98] *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).

[99] Parents' opening brief p. 11; Parents' Opening Statement T41:17.

WAC is there any provision allowing for [the Student's] related services of his IEP to be restricted due to his transfer to a different school closer within the same district."[100] The District argues that the Parents' chose to enroll the Student at Meadows knowing that, per District policy, the Parents were responsible for providing transportation to that school. The District further argues that it stood ready to provide transportation and fully implement the Student's IEP at his assigned developmental preschools: Seven Oaks during the 2022-2023 school year and Woodland during the 2023-2024 school year. The District maintains that, based on the information that was available to it, the Student's assigned home schools could provide him with a FAPE, and the IDEA does not require transportation to a school chosen by the Parents.[101]

9. A student's IEP must be implemented as written, including all required components and related services.[102] "Related services" are defined as transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education services to benefit from special education, including SLP and OT services and parent counseling and training.[103]

10. Transportation as a related service may be required if it is necessary for the Student to receive a FAPE.[104] An IEP team is responsible for determining if transportation is required for a student to benefit from special education and related services, and how transportation services should be implemented.[105] If transportation is identified by a student's IEP team as a related service, it must be provided at no cost to the parent.[106]

11. However, as explained in *Fick v. Sioux Falls 49-5,* parents do not have a right under the IDEA to insist on transportation to a parental choice school if the student's educational placement, and IEP services, including the related service of transportation, can be provided at the student's home school.[107] In *Fick,* the U. S. Court of Appeals for the Eighth Circuit held that a school district may apply a facially neutral transportation policy to a student whose IEP requires transportation as a related service without violating the IDEA when the request for a deviation from the policy is

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[100] *Parents' Post-Hearing Brief* p. 24. The Parents also argue that the District did not prove that providing transportation was an undue financial burden. *Parents' Post-Hearing Brief* p. 33. However, this was not listed among the issue in this case and is an argument that pertains to Section 504 of the Rehabilitation Act, not the IDEA and, therefore, is not addressed in this decision.

[101] *District Post-Hearing Brief*, p 25; District Opening Statement T38:14.

[102] WAC 392-172A-03105(2)(b), 34 C.F.R. § 300.323(c).

[103] WAC 392-172A-01155(1).

[104] WAC 392-172A-02025(2); 34 C.F.R. § 300.34(a).

[105] *Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, 53 IDELR 268 (OSERS 2009).

[106] WAC 392-172A-02095.

[107] 337 F.3d 968, 970 (8th Cir. 2003) (no IDEA violation to deny request for transportation outside of the Student's neighborhood school, where request was based on personal reasons and not required to meet student's educational needs); *see also, Seattle Public Schools*, 115 LRP 30211 (WA SEA May 21, 2015) (relying on *Fick*); *Boulder Valley Schs Dist. RE-2*, 123 LRP 24955 (SEA CO 2023) (parent selected a choice school as a matter of preference, but home school could have met student's needs).

not based on the Student's educational needs, but on the Parents' convenience or preference.[108] The Parents argue that *Fick* should not apply in this case as the District was aware the Parents chose Meadows due to the need to manage the Student's seizure disorder.[109]

12. Material failures to implement an IEP violate the IDEA.[110] Minor discrepancies in the services required by the IEP do not violate the IDEA.

> "[S]pecial education and related services" need only be provided "*in conformity with*" the IEP. [20 USC §1401(9).] There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education.
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> * * *
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> We hold that a *material* failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. *Van Duyn v. Baker Sch. Dist. 5J*. at 821-22 (italics in original).

13. In the present case, the IEPs of November 18, 2022, and September 7, 2023 included specialized transportation as a related service. At the time the Student's IEPs were developed, the District did not have information that established, as a medical need, the Student required the shortest travel time and closest school to home as possible. The medical information the District received up to that time detailed the Student's need for emergency medical care but not the need for a shortened bus ride. Therefore, when the Parents chose that the Student attend Meadows beginning January 3, 2023, the District did not have information that specialized transportation to his assigned home school would not be sufficient to provide him the with opportunity to receive a FAPE. The District was prepared to provide specialized transportation to the Student to his assigned home schools as provided in his IEPs.

14. In summary, although the Parents chose Meadows because they believed it was best for the Student's seizure disorder, the District did not have information that established a medical need for a shortened bus ride when the IEPs were developed. Therefore, the District established by a preponderance of the evidence that it did not materially fail to implement the Student's IEPs with respect to transportation services

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[108] *Fick*, 337 F.3d at 970.

[109] *Parents Post-Hearing Brief*, p. 27.

[110] *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9th Cir. 2007).

during the time periods at issue in this case, beginning January 2023 through the end of the 2023-2024 school year.

> Issue B. Failing to provide related services including, but not limited to, transportation to transfer schools where the Student is first dropped off and last picked up, causing Student to miss schooling each week during the 2022-2023 and 2023-2024 school years.

15. With respect to their issue "b" the Parents argue that that the medical evidence demonstrates the District was required to serve the Student at Meadows, the school closest his home.[111] The District argues that the information provided by the Student's medical providers was incomplete and not adequate for the IEP team to make decisions about the Student's needs to receive a FAPE at school.[112]

16. School districts have significant authority to determine the school site for providing services.[113] The IDEA includes a presumption that a student will attend their assigned home school. There is an exception to this presumption if a student needs some other arrangements, in which case their IEP shall specify placement as close as possible to the Student's home.[114]

17. The Student's IEP team met on February 23, 2024. Prior to the meeting, the Parents requested that attendance at Meadows be added to the Student's IEP. At that time, the District had sufficient information from the Student's providers to support his attending the school located as close to home as possible. Dr. Rayls recommended the reduced travel time to school. Dr. Passloff recommended placement at the Student's local elementary school. As confirmed by Mr. Nichols's testimony, shortening the Student's travel to school as much as possible was appropriate in light of the provider information that the District possessed on February 23, 2024.

18. Despite the Parents' request, and the information the District possessed, the IEP team did not consider whether the Student should be placed at a school as close to his home as possible. The District was aware the Student was unable to attend school on average two out of four days per week due to the need for transportation. Because of lack of consistent attendance, the District was unable to assess the Student's progress toward his IEP goals. Taken together with the recommendations of the Student's providers, particularly Dr. Rayls, and the opinion of Mr. Nichols, the District had documentation and knowledge that the Student required the shortest

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[111] Parents' opening brief p. 15, *Parents' Post-Hearing Brief* p. 25, 31; Parents' Opening Statement, T42:2.

[112] *District's Post-Hearing Brief* pp. 1, 13, 15; District's Opening Statement T36:1.

[113] *N.D. v. State of Hawaii, Dept. of Educ.*, 600 F.3d 1104, (9th Cir. 2010); *White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003).

[114] WAC 392-172A-0260(3).

possible transportation time to school. These considerations support the conclusion that, in order to provide the Student an opportunity to progress toward his IEP goals and benefit from the services outlined in his IEP, it was appropriate for the Student's IEP to specify a school placement as close as possible to his home. Doing so would provide the Student with a reasonably calculated and comprehensive plan tailored to his unique needs.[115] Therefore, the District did not prove that its rejection of the Parents' request for the Student to attend Meadows as of February 23, 2024 was consistent with his placement needs.[116]

19. In summary, because the District had sufficient information that the Student required a school as close to home as possible when the IEP team met on February 23, 2024, it should have amended his IEP to reflect this need and reassign him to Meadows, to which he would be entitled to transportation. The failure to do so was not reasonable and deprived the Student of a FAPE because he was unable to access school for a substantial number of days during the 2023-2024 school year. Therefore, the District did not prove by a preponderance of the evidence that the District provided the Student a FAPE beginning February 23, 2024, through the end of the 2023-2024 school year.

> Issue C. Refusing to minimize the Student's resource depletion as recommended by medical professionals, causing the Student to miss schooling each week during the 2022-2023 and 2023-2024 school years.

20. The Parents' issue "c" alleges that the District was required to amend the Student's IEP to reflect placement at Meadows, and it violated the IDEA when it refused to do so without first conducting a reevaluation.[117] As concluded above, beginning February 23, 2024, the District's failure to amend the Student IEP and place the Student at the school as close as possible to the Student's home deprived the Student of a FAPE. The District argues that it was required to conduct a reevaluation prior to determining that the Student needed placement at a school as close to his home as possible. It argues further that granting the Parents' demands piecemeal without complete data to make decisions regarding the IEP as a whole would subvert the IEP team process required by the IDEA.[118] Therefore, it must be analyzed whether the District was required to conduct a reevaluation prior to amending the Student IEP in provide placement at the school as close as possible to the Student's home.

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[115] *Endrew F.*, 137 S. Ct. at 994.

[116] WAC 392-17A-0260(3).

[117] Parents' opening brief pp 3.4.15, *Parents' Post-Hearing Brief* pp 27, 28; Parents' Opening Statement T42:8.

[118] *District's Post-Hearing Brief* p 15; District's Opening Statement T37:8.

21. A reevaluation must occur when a school district determines that the educational or related services needs of the student warrant a reevaluation.[119] A reevaluation may occur not more than once a year, unless the parent and school district agree otherwise.[120] The District reevaluated the Student on May 24, 2023. When the District proposed to reevaluate the Student on February 23, 2024, the current reevaluation was less than one year old. Therefore, the parties would have had to agree prior to conducting a reevaluation.

22. Educational placement means the general educational program of the student, not the particular school building where the program is implemented.[121] A request to change a student's placement may trigger a need to conduct a reevaluation, particularly before changing a student's placement to a more restrictive setting. on a school district's continuum of alternative placements.[122] A change in location is not generally considered a change in placement.[123] However, the determination as to whether a change in placement has occurred must be made on a case-by-case basis. If the change "substantially or materially alters" the educational program and services provided to the student, then a change in placement occurs.[124]

23. In this case, the evidence at hearing did not show that the Parents' request that the Student's IEP team add placement at the school closest to the Student's home substantially or materially altered the Student's educational program or services. The Parents did not request a change in amount, frequency, and duration of the services he received. Nor did they request a change in his IEP goals or related services, or a more restrictive setting. Therefore, the Parents were not proposing a change that would substantially or materially alter the Student's educational program thereby triggering the need for a reevaluation.[125]

24. The reason to conduct a reevaluation prior to changing a Student's placement is to ensure the IEP team has an evaluative basis that supports the change.[126] To support its argument, the District relies on cases in which courts have identified the need for reevaluation because the school district did not have enough information to

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[119] WAC 392-172A-03015(1)(a).

[120] WAC 392-172A-03015(2)(a).

[121] *N.D. v. State Dep't of Educ.*, 600 F.3d 1104, 1116 (9th Cir. 2010); *White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003).

[122]
that a continuum of alternative placements is available to meet the special education and related services needs of students eligible for special education services).

[123] *R.M. v. Gilbert Unified Sch. Dist.,* 768 Fed. Appx. 720 (9th Cir. 2019) (change in elementary school a student attends does not constitute a change in placement).

[124] *Letter to Fischer*, 21 IDELR 992 (OSEP 1994).

[125] *See Tacoma School District,* 123 LRP 6450 (WA SEA Sept. 28, 2022) (school district proposal to shift the student's education program from in-person to remote learning was not a proposed change in placement).

[126] *See, Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1032-1033 (9th Cir. 2006); *Pittsfield Public School*, 124 LRP 12594 (MA SEA 2024).

revise or establish a student's IEP.[127] In the present case, as discussed above, the providers' information that was provided to the District set out a medical basis that the Student required a placement as close to home as possible. The District school psychologist, Mr. Nichols, testified that a reevaluation was not necessary to make this particular change. Therefore, the District's argument that a reevaluation was required prior to adding that requirement to his IEP is not persuasive. The District, therefore, did not demonstrate that a reevaluation was necessary prior to adding the requirement of attending a school closest to the Student's home to his IEP.

25. The District sought a reevaluation to consider the school-based implications and differences between Dr. Rayls's report and what had been observed at school, The District felt the report on its own was not enough to "fully drive" an IEP or placement in full-time Kindergarten. However, these concerns did not prevent the District from considering the Parents' request for placement at the school closest to their home when the IEP team met on February 23, 2024. As discussed above the District had sufficient information to make this determination when the IEP team met. The District could have amended the Student's IEP to make this change while also conducting a reevaluation to address its other concerns. In failing to do so, the District deprived the Student of a FAPE because he would have received transportation services if reassigned to Meadows.

26. In summary the District did not prove by a preponderance of the evidence that a reevaluation of the Student was required prior to acting on the Parents' request that placement of the Student at a school as close as possible to his home be added to his IEP. As such, and as concluded regarding issue "b", the District failed to offer the Student a FAPE in violation of the IDEA from February 23, 2024, through the end of the 2023-2024 school year.

Issues D and E. <u>Failing to provide a nurse at school and on the bus causing the Student to miss school.</u>

27. With respect to their issues "d" and "e", the Parents allege that the District failed to provide a nurse when the Student was at school and as part of his specialized transportation during the 2022-2023 and 2023-2024 school years.[128] The District argues that it followed the medical orders of the Student's providers and amended the Student's IEP in September 2023 to include appropriate school-based nursing services which were made available to the Student, and notified the Parents a nurse would be

[127] *Johnson v. Duneland Sch. Corp.,* 92 F.3d 554, 558 (7th Cir. 1996); *Anders v. Cleveland Independent School District*, 64 F.3d 176, 178 (5th Cir. 1995); *Coronova-Norco Unified Sch. Dist.*, 123 LRP 35995 (SEA CA 2023).

[128] Parents' Opening Brief p. 18, *Parents' Post-Hearing Brief* p. 33; Parents' Opening Statement T43:13.

present on the bus when transportation was provided.[129]

28. An IEP must include a statement of the special education and related services to be provided to the student to: (1) advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum; (2) to participate in extracurricular and other nonacademic activities; and (3) to be educated and participate with other students, including nondisabled students.[130] Related services include school health services and school nurse services, social work services in schools, and parent counseling and training.[131] School health services and school nurse services means health services that are designed to enable a student eligible for special education services to receive FAPE as described in the student's IEP. School nurse services must be provided by a qualified school nurse.[132]

29. During the 2022-2023 school year, the District did not have medical information that indicated the Student required a nurse at school or on the bus. Nevertheless, during time the Student attended Meadows in the 2022-2023 school year, a nurse was present on the days the Student attended.

30. As discussed above, the Student was not entitled to transportation services to Meadows during the 2022-2023 school year as it was not his assigned home school. Therefore, the District established that it did not violate the IDEA by failing to provide the Student a nurse at Meadows or on the bus during the 2022-2023 school year.

31. In July 2023, the District received Dr. Phillip's letter that recommended the Student receive a full-time nurse in the building to provide the safest environment. In September 2023, prior to the Student beginning the school year, the District added a full-time nurse at school to the Student's IEP and notified the Parents a nurse would be available on the bus if the Student utilized District transportation to his assigned school.

32. During the 2023-2024 school year, the District arranged for a nurse to be present on the days the Student attended Meadows. Beginning in January, 2024, the District added a full-time nurse four days per week at Meadows.

33. The District established a nurse was present substantially all days the Student attended during the 2023-2024 school year and that it added nursing services to the Student's IEP after receiving verification from his providers that it was recommended.

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[129] *District's Post-Hearing Brief* p. 3, 5; District Opening Statement T33:4.

[130] WAC 392-172A-03090(1)(d); 34 CFR §300.320.

[131] WAC 392-172A-01155(1).

[132] WAC 392-172A-01155(2)(m).

34. During the 2023-2024 school year, the District was ready to provide a nurse on the bus if the Student was transported to his homeschool which remained Woodland for the entire year. Therefore, during the 2023-2024 school year, up though February 23, 2024, the District proved that it did not violate the IDEA by failing to provide a nurse on the bus.

35. Based on the conclusions above, the District proved by a preponderance of the evidence that the Student was not deprived of the opportunity to receive a FAPE due to failure to provide a nurse at school during the 2022-2023 and 2023-2024 school years. The District also proved by a preponderance of the evidence that the Student was not deprived of the opportunity to receive a FAPE due to not providing a nurse on the bus beginning January 3, 2023, through February 23, 2024. After that time, the Student was denied an opportunity to receive a FAPE as concluded in the analysis of Parents issues "b" and "c" explained above.

Parents' Requested Remedies

IEP Amendment

36. The Parents request an order directing the District to amend the Student's IEP to include placement at the school as close as possible to the Student's home.[133] The District maintains the Parents have already received this requested relief because the Student began attending Meadows and receiving transportation to and from the school at the start of the 2024-2025 school year.[134] The Student's home school has been reassigned multiple times. The Parents have requested placement of the Student at the school as close to his home as possible through his IEP multiple times. However, the IEP team has not yet reviewed this request. It is appropriate to add placement of the Student at the school as close as possible to his home to his IEP. Therefore, by January 31, 2025, the District shall convene the Student's IEP team to include language in his IEP that the Student's placement shall be as close as possible to his home.

Compensatory Education

37. The Parents request compensatory education equivalent to the time the Student missed school, or as deemed reasonable by the ALJ.[135] The District argues the Parents should not be awarded compensatory education for school days the Student missed when they did not transport him to Meadows as they chose to enroll him through an intra-district transfer.[136] Compensatory education is a remedy designed "to

[133] Parents' pre-hearing brief p. 19; Parents' Opening Statement T43:20.

[134] *District's Post-Hearing Brief* pp. 28, 29.

[135] Parents pre-hearing brief p. 19.

[136] *District's Post-Hearing Brief* p. 27.

provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place."[137] It is intended to place the student in the same position they would have occupied if the District had honored its obligation to provide FAPE.[138] Compensatory education is not a contractual remedy, but an equitable one. There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.[139] Compensatory education is a flexible remedy that requires the tribunal consider the equities existing on both sides of the case.[140] Any award of compensatory education must be based on the evidence, and that evidence must provide reasonable certainty to determine what kind and how much compensatory education a student is entitled to. Absent such reasonable certainty, there is authority supporting a denial of any compensatory education despite a demonstrable violation and denial of FAPE.[141] An award of compensatory education should not be based on the amount of services the student missed, but rather the amount of services needed to place the student in the position they would have been in if the District had fulfilled its FAPE obligations.[142]

38. In the present case, the District failed to show by a preponderance of the evidence that it provided the Student a FAPE after receiving information from the Student's providers that he required a school as close to home as possible when it convene his IEP team on February 23, 2024. The District rejected the Parents's request to review the Student's IEP and change the Student's placement to the school as close as possible to his home which was Meadows. As a result, the Student did not receive transportation and missed the opportunity to attend approximately fifty percent of the 52 school days from February 23, 2024, through the end of the 2023-2024 school year, which was 26 school days. The Student would have benefitted from the school days he did not attend. Consequently, evidence supports some amount of compensatory education being awarded. Had the Student had the opportunity to attend those days, he would have been in classes with multiple other students. On balance, the award required to place the Student in the position he would have been in if the District had amended his IEP on February 23, 2024 is based upon a formula of one hour for each day missed, totaling 26 hours. The District shall provide this compensatory education within two years of the date of this order.

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[137] *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), *cited with approval in R.P. v. Prescott Unif'd Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011).

[138] *Id.*; *Letter to Riffe*l, 34 IDELR 292 (OSEP 2000).

[139] *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994).

[140] *Reid v. District of* Columbia, 401 F.3d at 524.

[141] *See, e.g.*, *Bethel Sch. Dist*., 109 LRP 39477 (WA SEA 2009).

[142] *Smith v. District of Columbia,* 123 LRP 36051 (D.D.C. Dec. 8, 2023).

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

ORDER

1. The District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student an opportunity to receive a free appropriate public education (FAPE) as set forth above.

2. By January 31, 2025, the District shall convene the Student's IEP team and amend the Student's IEP to include language that the Student's placement shall be as close to the Student's home as possible, as described above.

3. The Parents are awarded 26 hours of compensatory education as provided above.

4. The Parents' remaining requested remedies are denied.

SERVED on the date of mailing.

Paul Alig
Administrative Law Judge
Office of Administrative Hearings

Office of Administrative Hearings
P.O. Box 42489
Olympia, WA 98504-2489
(800) 845-8830
(206) 587-5135

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:

Parent c/o Smith McBroom PLLC 16400 Southcenter Parkway STE 210 Tukwila, WA 98188	via E-mail greg@smithmcbroom.com alex@smithmcbroom.com
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Dated January 7, 2025, at Olympia, Washington.

Lan Le

Representative
Office of Administrative Hearings
P.O. Box 42489
Olympia, WA 98504-2489

cc: Administrative Resource Services, OSPI