

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Sumner-Bonney Lake School
District

Docket No. 09-2024-OSPI-02356

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2024-SE-0129

A due process hearing was held before Administrative Law Judge (ALJ) Jacqueline H. Becker on March 17 through 21, 2025, via videoconference. The Parents of the Student whose education is at issue¹ appeared and were represented by Nicholle Mineiro and Jenna Schuenemann, attorneys at law. The Sumner-Bonney Lake School District (District) was represented by Susan Winkelman, attorney at law. Also present for the District were Karen Finigan, Executive Director of Special Services, and Abigail Westbrook, General Counsel.

STATEMENT OF THE CASE

Procedural History

The Parents filed a due process hearing request (Complaint) on September 11, 2024. The matter was assigned to ALJ Becker. A prehearing conference was held on October 15, 2025, and the due process hearing was scheduled for January 6 through 10, 2025. On November 25, 2025, the Parents moved to continue the due process hearing to allow time to file a motion for summary judgment. The District did not object and the due process hearing was reset for March 17 through 21, 2025.

On November 25, 2024, the Parents filed a motion for summary judgment. The District filed a response, the Parents filed a reply, and the motion was decided on the pleadings. It was concluded that the District's failure to provide a copy of the Individuals with Disabilities Education Act (IDEA) procedural safeguards to the Parents until March 5, 2024, was a procedural violation of the IDEA. Whether this procedural violation constituted a denial of a free appropriate

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

public education (FAPE) to the Student could not be determined on summary judgment and was an issue heard at the due process hearing.

The due process hearing was held as rescheduled, and post-hearing briefs were timely submitted by the parties on May 16, 2025.

Due Date for Written Decision

The written decision in the case is due on June 15, 2025.

EVIDENCE RELIED UPON

Exhibits Admitted:

District Exhibits: D1-28

Parent Exhibits: P1, P2, P4, P6-11, P13, P14, P17-20, P24-29, P32-36, P38, P41-44, P46, P48-53, P55, P56, P60 pages 1-4 and 7-12, P61-71, P73, and P74

Witnesses Heard:

Student's Mother (Ms. Parent)

Steve Gill – District school psychologist

Dr. Julia Barta – Psychologist

Andrea Grant – District school counselor

Nancy Heuett – District first grade general education teacher

Karen Finigan – District Executive Director of Special Services

Audra Walters – District Director of Special Services

██████████ – Neighborhood resident

Helen Caldart – Lay education advocate at SEAL K12

Jessica Olson – District school nurse

Kelley Adcox – District interventionist

Leann Klockman – District instructional specialist

Sarah Thompson – Former assistant principal of Liberty Ridge Elementary School

ISSUES

The issue heard in the due process hearing are:

- a. Whether the Sumner-Bonney Lake School District (District) violated the Individuals with Disabilities Education Act (IDEA) and state regulations implementing the IDEA and failed to offer the Student a free appropriate public education (FAPE) from September 11, 2022, to September 11, 2024, as follows:
 - i. Failing to comply with child find requirements during the 2022-23 and 2023-24 school years; and
 - ii. Significantly impeding the Parents' right to meaningfully participate in the Student's educational programming during the 2023-24 school year by:
 - A. Refusal by the school psychologist to meaningfully consider relevant Parent and school information during the special education referral process;
 - B. Failing to abide by IDEA timelines for special education referrals; and
 - C. Refusing to initiate a special education referral upon request of the Parents on March 1, 2024, and April 25, 2024.
- b. Whether the District's failure to provide a copy of the IDEA procedural safeguards to the Parents until March 5, 2024, which has previously been determined to be a procedural violation of the IDEA, constituted a denial of FAPE to the Student as set forth in WAC 392-172A-05105(2).
- c. And, whether the Parents are entitled to their requested remedies:
 - i. Declaratory relief that the District denied the Student FAPE from September 11, 2022, to the date of filing this Due Process Complaint;
 - ii. Reimbursement to the Parents for Dr. Barta's evaluation;

- iii. The District will reimburse the Parents for sensory items they purchased for the classroom for the Student's accommodations;
- iv. As compensatory education, the District will also reimburse the Parents for private summer programs they needed to obtain for the Student to remediate her educational loss;
- v. Compensatory education in an amount to be determined at hearing; and
- vi. Providing the Student with such other and further relief, which is unknown to the Parents at this time, as deemed appropriate by the Administrative Law Judge presiding at the hearing on this matter.²

FINDINGS OF FACT

Background

1. The Student is currently [REDACTED] and is in second grade. She has attended school at Liberty Ridge Elementary (Liberty Ridge) in the District at all times relevant to this action. P71 p.1.³ Liberty Ridge is a "Title 1" school, meaning that it receives extra federal funding due to the percentage of low-income students at the school. Tr. 671-72.

2. The Student resides with her Parents, her 19-year-old sister, and her grandmother. Tr. 467. Ms. Parent is a certified nursing assistant. P71 p.1; tr. 467.

Kindergarten – The 2022-23 school year

3. The Student was in kindergarten during the 2022-23 school year. P71 p.1.

² Order Setting Forth Revised Statement of Issues for Hearing dated March 13, 2025. The Parents initially had four other requested remedies, but they were withdrawn at the start of the due process hearing and are not listed here.

³ Exhibits are cited by party ("P" for Parent; "D" for District), exhibit number, and page number. For example, a citation to P1 p.5 is to the Parents' Exhibit 1 at page 5. The hearing transcript is cited as "Tr." with references to the page of the cited testimony. For example, a citation to Tr. 80 refers to testimony at page 80 of the transcript.

4. The Student was prescribed medication for sleep issues in September 2022. In November 2022, the Student was showing signs of anxiety, such as chewing her hair and biting her fingers, and she was prescribed an anxiety medication. P71 p.2; tr. 472-73.

5. The Student took medication at school during kindergarten and first grade. This required her to go to the school nurse's office for her dose once or sometimes twice per day. Tr. 588-90. A side effect of one of the medications was that the Student had to go to the bathroom with urgency. *Id.* at 590.

6. All students in kindergarten through second grade at Liberty Ridge participate in social-emotional learning (SEL) as a specialist class, similar to music and physical education. Jenna Slowey was the Student's SEL teacher during kindergarten. Tr. 160.

7. On November 21, 2022, Ms. Parent met with District counselor Andrea Grant⁴ to discuss the Parents' concerns about the Student's behavior at home. The Student had kicked out a window, put a hole in a door with her head, broken her bed, and used obscenity toward Ms. Parent when she was not given candy. P71 p.2. The Student had also attempted to get out of Ms. Parent's car while it was moving, and the Parents were concerned that she would try to run away from home or school. Tr. 477-79.

8. No concerns about the Student's behavior at school had been reported to Ms. Grant. Tr. 147-48.

9. On November 22, 2022, Ms. Grant referred the Student to Consejo Counseling and Referral Services, an outside agency, due to "unsafe behavior at home." D26. The referral document states, "Parents cannot find anything that helps and are struggling to get help." *Id.*

10. In the fall of her kindergarten year, the Student's screening data for reading placed her in the 8th percentile for letter naming fluency (LNF) and in the 11th percentile for letter word sound fluency (LWSF). P1. For kindergarteners, LNF is a test that measures how many letters a student can name in one minute. Tr. 619 LWSF is a dyslexia screener. P1. For kindergarteners, LWSF is a one-minute test that measures how well a student knows the sounds the letters make. Tr. 619. According to District guidelines, a student performing below the

⁴ Ms. Grant has a bachelor's degree in psychology and a master's degree in school counseling. Tr. 139.

26th percentile in two or more of the screened areas is eligible for the learning assistance program (LAP)⁵ and will be given further diagnostic testing. P1. In the District, LAP qualification is based solely on “Aimsweb” scores. Tr. 614. Aimsweb is a nationally normed test given to elementary students in the District three times a year. It is administered on a computer *Id.* 73, 309, 350.

11. The Student’s winter kindergarten dyslexia screening data shows that her result was “not typical” on the Rapid Automatized Naming (RAN) screener. The RAN requires students to name/identify pictures. The RAN screener is only given once. It provides information as to whether the child being tested may have “processing difficulties.” P1; tr. 619-20. On a second dyslexia screener known as the “phenome segmentation” (PS), the Student’s score during that same time period was in the 78th percentile. The PS requires a student to break out the individual letter sounds within a short word, such as “cat.” *Id.* The Student’s winter score on the LWSF was in the 38th percentile, and her score on the LNF was in the 21st percentile. P1.

12. Kelley Adcox⁶ is a District reading interventionist. In that role, she teaches small groups and oversees other staff members who teach small groups. Ms. Adcox also administers and oversees student testing. At Liberty Ridge, the reading intervention program is called “WIN”.⁷ Tr. 607-09. A WIN group uses a standard curriculum and provides students who do not qualify for the LAP program with extra support. *Id.* at 614, 616.

13. According to Ms. Adcox, administering dyslexia screenings is a Washington State requirement but, in her opinion, it “doesn’t seem to be very accurate” and “a lot of kids get flagged.” P43; tr. 620. However, the dyslexia screening is part of the Aimsweb benchmark process, and the District does use the Aimsweb testing results to determine which student they may need to look at more closely to determine whether they need extra help. Tr. 616-18.

14. On January 6, 2023, Ms. Grant referred the Student to Catholic Community Services Wraparound with Intensive Services (WiSe) after Ms. Parent told Ms. Grant that the Student’s behavior at home was worsening. P71 p.3. The

⁵ LAP is a state-funded program designed to provide support for students who are not at grade level. Tr. 648.

⁶ Ms. Adcox has a bachelor’s degree in elementary education, and a master’s degree in reading and literacy. She has experience teaching kindergarten through fourth grade. Ms. Adcox has been an interventionist for nine years. Tr. 607-09.

⁷ WIN stands for “What I Need.” Tr. 49.

WISe team began working with the Student in February 2023. *Id.* at 4. It is rare for Ms. Grant to refer a student to WISe. Tr. 172.

15. On January 13, 2023, the Liberty Ridge assistant principal, Mr. Gould, called Ms. Parent and asked her to pick up the Student early. Mr. Gould informed Ms. Parent that the Student had gone into the boy's bathroom and punched another student, and she had also locked all the stalls in the girls' bathroom. After this incident, the Student was not permitted to use the school bathroom without supervision for the remainder of kindergarten. P71 pp.3-4.

16. On February 2, 2023, the WISe team started working with the Student at school. P71 p.4.

17. On March 24, 2023, Ms. Parent called Ms. Grant and informed her that the family did not want services from Consejo, and that the Parents had been completely unaware that services from Consejo had begun for the Student at school. The Parents had not heard anything from Consejo since their intake, and were getting services through the WISe program. P8 p.4.

18. On May 3, 2023, the Student's kindergarten teacher, Jennifer Oddenino, completed a Vanderbilt Assessment Scale for one of the Student's health care providers. P10 pp. 2-3. The teacher's ratings are notable in that Ms. Oddenino reported that the Student "very often" failed to give attention to details and made careless mistakes, and was very often reluctant to engage in tasks that required sustained mental effort. Ms. Oddenino also reported that the Student was often distracted, forgetful, and fidgety. The Student often got out of her seat when she was not supposed to, had difficulty sustaining her attention, failed to follow through with finishing schoolwork, and seemed fearful or anxious. *Id.*

19. Ms. Oddenino also reported that the Student's academic performance in written expression was "problematic." Her behavior was also problematic with regard to following directions and completing assignments. Ms. Oddenino did not think the Student had issues with peer relationships or with disrupting class. P10 p.3.

20. Ms. Slowey, the SEL teacher, also completed a Vanderbilt Assessment, on May 23, 2023. Ms. Slowey noted that the Student often had difficulty sustaining her attention to tasks, following through, and organizing tasks. The Student fidgeted and often got out of her seat. Ms. Slowey felt that relationships with peers, following directions, and disrupting class were "somewhat of a problem" for the Student. P10 pp.5-6.

21. Ms. Parent was told by Ms. Oddenino that the Student was “hissing” at other students and at teachers, and was biting and hitting. The Parents did not receive any documentation of these behaviors. P71 p.3. Ms. Parent began keeping notes to document when she was told about the Student having issues at school because she did not receive any official notice of the issues from the school. *Id.* There are no District reports in the record that document this hissing, biting and hitting behavior.

22. On June 2, 2023, the Student was diagnosed with Attention Deficit Hyperactively Disorder (ADHD) and Oppositional Defiant Disorder (ODD) by Dr. Tonya Kellerman. P71 p.5; tr. 315. Ms. Parent informed the school nurse about these diagnoses. *Id.*

23. On June 10, 2023, Ms. Parent emailed Ms. Grant and stated, “For next year can we get [Student] tested for IEP.” She stated that the WISE program was recommending an IEP. P11. June 10, 2023, was a Saturday.⁸

24. On June 14, 2023, Ms. Grant informed the Liberty Ridge school psychologist, Steve Gill,⁹ about the Parent’s request. Ms. Grant stated in her email to Mr. Gill that the Student has ADHD and some “minor impulse control issues,” but she appeared to be doing well academically. Ms. Grant also stated that the Student had “very unsafe behaviors” at home. P13

25. On June 22, 2023, Ms. Parent confirmed in an email to Mr. Gill that she was making a referral for a special education evaluation of the Student. D1 p.2. Ms. Parent stated in her email that the Student had been diagnosed with ADHD and ODD. Ms. Parent further stated that the Student needs help in class, does not sit still and do her work, and that it is a struggle for her to listen to her teachers and Parents. Ms. Parent reported that the biggest areas of struggle for the Student were math and reading, and that the Student had said “her brain goes too fast.” *Id.*

26. Mr. Gill responded by email to Ms. Parent the same day, and stated, “As soon as I return in August, I will start the paperwork process and call you to discuss the process. To save time, please get a letter from your doctor regarding the diagnosis (nothing complex, it can be as simple as stating the diagnosis, on

⁸ The tribunal takes *sua sponte* official notice of this fact.

⁹ Mr. Gill has an undergraduate degree in teaching and a master’s degree in school psychology. He has been a school psychologist for 33 years. Tr. 229, 307.

their letterhead, and have their name) Also, waiting until August to visit and do the paperwork doesn't slow down the process, given we need to return to school to make the next moves forward in the process. " D1 p.2.

27. Mr. Gill also asked Ms. Grant and Ms. Oddenino if they had any documentation from a medical provider of the Student's ADHD. P14.

28. The Student's year-end kindergarten report card, covering all three trimesters, contained almost all 3's and a few 2's. A "3" indicates "meeting the standard at the expected level for this point in the year," and a "2" indicates "approaches competence with teacher support." D24 p.1. The Student did not receive any 1's (attempts the work with significant teacher support) or 4's (exceeding the standard). The Student finished the third trimester with four 3's and one 2 in social emotional development, and four 3's and one 2 in reading. She had all 3's in phonological awareness, phonics, and math. She had three 3's and one 2 in writing/language. The Student had all 3's in fine motor, fitness, and STEM. The teacher's year end comments included, "Please remember to read over the summer, focus on letter sounds and blending sounds to read words, and continue to practice basic math skills." *Id.* at 1-2.

29. The Student's reading screener results in the spring of her kindergarten year placed her in the 12th percentile for LNF and the 20th percentile for LWSF.¹⁰ P1. Thus, over her kindergarten year, the Student's LNF was up and down, ending in the 12th percentile. Her LWSF was also up and down, ending in the 20th percentile.

30. Documentation of the Student's kindergarten assessments that was available from the Aimsweb data base shows that the Student was "well below average" on her math concepts and application scores for 2022 and 2023, and was at "high" risk for not meeting the standard at the end of the school year. P74; Tr. 98.

31. Mr. Gill can access a student's Aimsweb testing data if he chooses to do so. Tr. 268.

32. According to District records, the Student was placed in a reading intervention group in the fall of her kindergarten year, but she "picked up skills

¹⁰ An email between staff members in the District shows that the Student's "Aimsweb LNF and Aimsweb LWSF" were both "33" in the spring of her kindergarten year. P17. The accuracy of this and whether it conflicts with the data in exhibit P1 is not clear from the evidence in the record.

very fast” and no longer qualified for the group by the winter. The records further indicate that the Student was not on grade level in math during her kindergarten year according to benchmark data, and that she did not demonstrate significant negative behaviors in the school setting during kindergarten. D15 p.5.

33. June 19, 2023, was a non-school day in that it was a holiday. D27 p.7. The last possible day of school in the 2022-23 school year was June 22, 2023, depending on whether emergency make-up days for adverse weather were needed. *Id.* There is no evidence in the record as to what day the school year actually ended.

First Grade – The 2023-24 school year

34. The Student was in first grade during the 2023-24 school year. On August 29, 2023, Mr. Gill emailed Ms. Parent and informed her that he was working on the paperwork for the Student’s special education referral that had been made in June. He stated that he would gather information to determine whether the school would seek the Parents’ permission to conduct an evaluation of the Student. D1 p.1.

35. On August 30, 2023, Ms. Gill sent Ms. Parent a prior written notice (PWN) indicating that the District was proposing to initiate a referral of the Student for special education. D1 p.4.

36. School started for first graders on September 5, 2023. D28.

37. As part of the referral process, Mr. Gill gathered information about the Student. On September 5, 2023, he stated in an email to the Student’s first grade teacher, Nancy Heuett,¹¹ that the Student did not “present as a clear case.” P18. According to Mr. Gill, when determining whether to evaluate a student for special education eligibility, important factors to consider can include whether the student takes anxiety medication, whether the student is incontinent at school, and whether a student exhibits school reluctance due to anxiety or emotional dysregulation. Tr. 263.

38. Mr. Gill reviewed a summary of the Student’s kindergarten Aimsweb testing data that was provided to him by Ms. Adcox. Tr. 271. Mr. Gill does not give much consideration to Aimsweb scores. He is more concerned about how a

¹¹ Ms. Heuett has bachelor’s and master’s degrees in education. She has been a teacher since 1989, teaching first, second, third, and fourth grades. Tr. 41.

student responds to intervention and how they compare to other students. In Mr. Gill's experience, children who enter intervention groups but continue to go downward in skill level, due to not responding, are the children who qualify for special education. Mr. Gill believes Aimsweb scores can be misleading. *Id.* at 287, 303-04. His opinion is that students who struggle with reading but respond to group intervention are well above the skill level of children who qualify for special education. *Id.* at 304.

39. Mr. Gill opined at the due process hearing that it would be hard for a student with ADHD to focus on Aimsweb testing and demonstrate underlying skills. It is harder for younger children because they do not understand the relative importance of the test. Tr. 304.

40. There were 20 students in Ms. Heuett's first grade class during the 2023-24 school year. Tr. 42. Ms. Heuett described the Student as having a "very average" ability to listen and follow directions. "She acted just like any other first grader in the classroom." *Id.* at 45.

41. On September 19, 2023, Ms. Gill emailed several District staff members, including Ms. Heuett and Ms. Grant, about the Student and stated, "There are no documented skills deficits that are outside the average range for students her age." He also stated that the Student has ADHD and "her behavior is 'active' but not significantly outside the norm." P19.

42. Ms. Oddenino's input indicated that that the Student did kindergarten work independently during the 2022-23 school year. She was not a behavior problem. Ms. Oddenino rated the Student's work habits as 6 out of 10 (with 10 being "outstanding"), her effort level and attitude toward work as 7 out of 10, and her peer interactions as 9 out of 10. D5 p.6.

43. Ms. Heuett responded to Mr. Gill on September 20, 2023, and stated that the Student "appears to be a little below first grade level but some of that is motivation or wanting someone else to do her work for her." P20. Ms. Heuett's "Student Strengths Rating Scale" reported that the Student "always or almost always" focused attention on tasks, kept her materials organized, followed multi-step directions, and independently started tasks when needed. D6 p. 1.

44. Ms. Heuett emailed Mr. Gill on September 26, 2023, stating that the Student had been vocal about enjoying school, and that she listens, follows directions, and works well with other students. Ms. Heuett reported that "there have been some hiccups, but nothing out of what is normal for a first grader." D3.

Ms. Heuett clarified at the due process hearing that the “hiccups” referred to “silliness” in the bathroom of the type that was normal for a first grader. Tr. 45.

45. Ms. Heuett also informed Mr. Gill that the Student was behind academically but Ms. Heuett wanted to give her some time to see if “teaching and reteaching” would help her catch up. D3. Ms. Heuett worked one-on-one with the Student for the teaching and reteaching. Tr. 62.

46. Ms. Heuett also reported the Student’s test score in story comprehension was 2 out of 6, which is low, but the skill was just beginning to be taught. D3; tr. 45-46, 61. Ms. Heuett felt that the Student was progressing, and noted that most of the children in her class were reading at a kindergarten level at the beginning of the school year. Tr. 47. Mr. Gill was not concerned about the comprehension score because children who are developing basic reading skills are frequently behind on comprehension. *Id.* at 233.

47. Mr. Gill spoke with the Liberty Ridge assistant principal from the Student’s kindergarten year, Mr. Gould. Mr. Gould confirmed that the Student had no discipline “write ups” during kindergarten. Tr. 279.

48. On September 28, 2023, the school Guidance Team met to discuss the Student’s referral. The Guidance Team’s written record indicates that the Student’s kindergarten teacher reported that the Student did well when she did her work, and she was not a behavior problem. The record further indicates that the Student was reluctant to complete classroom work and homework, and that she has ADHD. D5 p.1.

49. Later on September 28, 2023, Mr. Gill emailed Ms. Parent and informed her that the District was not going to conduct a special education evaluation of the Student. He stated that the District was recommending “examining a 504 plan¹² that could include accommodations” such as limiting classroom work and homework to key concepts. The District was also recommending a behavioral contract for school and home to encourage the Student to complete her work. D4 p.1. Mr. Gill attached a PWN stating that the District was refusing to initiate an initial evaluation of the Student. The PWN states, “The information indicates

¹² A “504 plan” refers to section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 et seq., a federal statute that protects qualified individuals who have disabilities from discrimination based on their disabilities. A person qualifies for a 504 plan if they have a physical or mental impairment that substantially limits one or more “major life activities” such as learning, reading, or communicating. 42 U.S.C. §12102.

recommending a 504 plan and recommending a Tier 2 behavior plan are the appropriate actions at this time.” *Id.* at 2. The PWN also states that 504 accommodations would be related to ADHD, and a Tier 2 behavior plan would address work reluctance issues. *Id.*

50. A “Tier 2” intervention is a step above classroom instruction, which is considered to be Tier 1. Mr. Gill felt that an active child with ADHD could be helped by a Tier 2 behavior plan. Tr. 284.

51. Ms. Gill testified at the due process hearing:

[T]he majority of students who have ADHD will be considered either for special education or for a 504 plan. And the drawing line is whether you have any evidence that they're performing well outside of the norm. Then you might suspect disability. You can go that direction or, if they're not performing well outside the norm and you believe that accommodations/modifications might be what is necessary, then you'll look at a 504 plan.

Tr. 234-35.

52. Mr. Gill was not concerned about the Student’s math performance in kindergarten because a percentage of students are going to be below grade level. If they are within the general average range and are making progress, he is not concerned. Tr. 236.

53. Mr. Gill did not believe an evaluation of the Student was necessary as of September 2023 because the Student’s performance was in the average range, and she had a high rate of absenteeism that might have affected her academic performance. Tr. 237. Although the Student exhibited some distractibility, her teacher and others felt that a 504 plan with accommodations would be the place to start. *Id.* at 238.

54. Ms. Parent did not know what Mr. Gill reviewed when considering the evaluation request and he did not explain to her the basis for the decision not to evaluate. P71 p. 5. However, the PWN describes that Mr. Gill considered parent and teacher input, classroom performance, file review, informal observation, and medical information when making the decision. D4.

55. Ms. Grant is the Liberty Ridge 504 plan case manager. Tr. 151. On October 3, 2023, Mr. Gill informed Ms. Parent that Ms. Grant and Liberty Ridge

Assistant Principal, Sarah Thompson,¹³ would work with her on the 504 plan process and on a behavior/incentive plan for the Student. P25 p.1. According to Ms. Grant, the 504 plan was not actually developed until February of 2024 because the Parents wanted an IEP, not a 504 plan. Tr. 183-84.

56. Later on October 3, 2023, Ms. Thompson emailed Ms. Parent and informed her that the school was using a variety of strategies to help the Student, such as proximity to the teacher, breaks and fidgets¹⁴ when needed, flexibility on assignments, and SOAR ticket reinforcement. P26. SOAR tickets are used in the school for positive reinforcement of safe choices and other desirable behaviors. Tr. 67-68. Ms. Thompson suggested using SOAR tickets at home to reinforce good behavior. P26.

57. On October 11, 2023, the Student began attending a first grade “WIN” intervention group. P27.

58. Ms. Parent was informed at some point during the Student’s first grade year that the Student had gotten in trouble for standing on toilets and looking into other bathroom stalls. The Parents never received any documentation of this behavior. P71 p.6.

59. The Student was incontinent at school at times. The school nurse communicated to Ms. Parent that the Student also came to her office frequently and had a lot of complaints about not feeling well. P 71 p.6.

60. The Student’s fall 2023 LWSF score was in the 11th percentile and her PS score was in the 88th percentile. Her oral reading fluency (ORF) score was in the 6th percentile and her nonsense word fluency (NWF) was in the 31st percentile. P1.

61. The Student’s fall 2023 Aimsweb score in math concepts and applications was a 2.¹⁵ The expectation for winter was 17 and the year-end goal was 19. P24 p.1. The Student’s score in math fluency was 15, with a winter expectation of 15 and a year end goal of 16. Her score in number comparison was 20 (winter expectation is 28, year-end is 30). *Id.*

¹³ Ms. Thompson has a bachelor’s degree in elementary education and early childhood education, and a master’s degree in teacher leadership. She also holds a principal certification. Tr. 669-70.

¹⁴ A fidget is a small item a student can hold. Its purpose is to help a student focus. Tr. 197.

¹⁵ This appears to be a raw score, not a normed percentile. See P74.

62. On November 7, 2023, Ms. Heuett completed a Student Strengths Rating Scale regarding the Student. Rating choices for various items were “always or almost always, often, sometimes, and rarely or never.” D6. Notable on the rating was that the Student “often” follows classroom rules and participates in class, and “sometimes” acts inappropriately with adults. The Student “sometimes” manages time effectively and “sometimes” understands what she had read. She “sometimes” regulates her emotions and behaviors. The Student “always or almost always” focuses attention on tasks, keeps her materials organized, follows multi-step directions, and independently starts tasks when needed. She sometimes uses correct grammar, sometimes writes complete sentences, and sometimes uses correct spelling and punctuation. Ms. Huette’s handwritten comments on the rating scale include that the Student sometimes has trouble following directions when expectations are not clear. D6.

63. The Student’s November 2023 progress report shows that first grade reading levels are expected to be at Lexia¹⁶ level 6 (L6) at the start of the school year and progress to L7 by November/December. As of November, the Student was at L4, which is a kindergarten level. P24 p.2. She could correctly read 17 words per minute (wpm), while the expectation was 70-97 wpm. Her comprehension, accuracy reading aloud, and automatic word reading were all below the fall expectation. The Student’s math core fluency for both addition and subtraction was solving 3 problems per 90 seconds, while the year-end expectation was 16-20 problems. *Id.*; tr.17.

64. The Student received a report card grade of “1” in the first trimester for “recognizes and reads grade-appropriate irregularly spelled words.” She received a 3 in the single math criteria that was graded, and all 2’s is social emotional development. D24 p.3.

65. Ms. Heuett was not concerned about the Student at this point because she was doing well on math module assessments in class and was receiving support in reading. Tr. 78.

66. On December 18, 2023, Ms. Parent again made a written request for a special education evaluation of the Student through an email to Mr. Gill. D7. Ms. Parent asked for an opportunity to meet with the school team to give input regarding the reasons for her request. Ms. Parent informed Mr. Gill that the Student had been diagnosed with a sleep disorder and anxiety. Ms. Parent stated

¹⁶ Lexia is a computer program that reinforces and reteaches reading. Tr. 75.

that the Student's behaviors at school had included hissing at teachers, hitting students, going into the boys' bathroom, locking herself in the nurse's bathroom, lying about being assaulted by another student, standing on toilets to look into other bathroom stalls, taking a teacher's items, hitting students on the bus, and licking other students on the bus. Ms. Parent also reported that the Student was failing math and reading, and was "bombing at timed tests." She further said that, at home, the Student refused to do homework most nights, and was inattentive and distractible. *Id.*

67. Ms. Parent's descriptions of the Student's behaviors were not consistent with information Mr. Gill had been provided by members of the school staff. Tr. 240.

68. Mr. Gill responded to Ms. Parent by email and said he would document the referral and start gathering information. D7. On December 20, 2023, Mr. Gill sent Ms. Parent a "Parent Questionnaire For Special Education Evaluation Report." D9.

69. Ms. Heuett completed a "Teacher Input to Special Education Evaluation" form on December 19, 2023. She checked a line indicating that "Student's behavior impacts learning" rather than selecting another option which was "Student is not a behavior problem." D11. Ms. Heuett does not recall having concerns about the Student's behavior in class at this time. Tr. 50.

70. Ms. Heuett also reported that the Student was working slightly below grade level, and was reading at a kindergarten level 5 (L5) whereas "it would be ideal for her to be completing First Grade L7 or beginning L8." D11. Ms. Heuett also reported that the Student could complete three addition and three subtraction problems in 90 seconds, whereas by the end of first grade, students should be able to complete 20 problems in 90 seconds. *Id.* However, Ms. Heuett was not concerned about the Student because she feels that children this age can make leaps and bounds in their learning based on their developmental level. Tr. 50. Mr. Gill was also not concerned about the Student's performance, in part because Ms. Heuett is a very experience teacher and she felt the Student would catch on to the math. *Id.* at 295, 305.

71. In January 2024, the Student began leaving school early on Tuesday afternoons to attend private occupational therapy (OT) to address sensory issues and behavior. P71 p.7; tr. 578.

72. On January 9, 2024, Ms. Adcox reported to Mr. Gill that the Student had qualified for the LAP program in the past and had been placed in a small intervention group. Ms. Adcox reported that the Student did well in the group and

was moved into a regular general education reading group. D12. Ms. Adcox does not typically provide Mr. Gill with Aimsweb scores because she does not consider them to be the most important data. She focuses on whether a student is responding to instruction. Tr. 628-29. If a Student has low Aimsweb scores but they are able to learn what is being taught in class, Ms. Adcox is not particularly concerned about the Aimsweb scores. *Id.* at 629.

73. On January 18, 2024, Mr. Gill emailed Ms. Parent and informed her that the Student was performing in the average range within the school setting. Mr. Gill said the Student had graduated out of the reading intervention group, and was demonstrating skills within the average range in math and written language. The Student did not have any incidences of discipline, although, according to Mr. Gill, “This is not to say that she hasn’t ever been in trouble, but instead the level of trouble she has been in has been within the type that is handled within the classroom by the teacher or a short conversation with an administrator.” D13 pp. 5-6.

74. Ms. Parent replied to Mr. Gill’s email on January 18, 2024, and inquired why “bad reports” about the Student’s behavior at school had not been documented. The Parent said the Student had come home with “thinking sheets”¹⁷ in kindergarten and this school year regarding taking things that do not belong to her. According to Ms. Parent, the Student had almost gotten suspended in kindergarten, had hit another student, had locked the girl’s bathroom, had gone into the boy’s bathroom, had hissed at teachers, and had climbed onto toilets to look into other bathroom stalls. Ms. Parent reported that homework was a struggle, and it could take two hours to get it done. On the work sent home from class, almost every math problem was wrong, and every word was spelled incorrectly. Ms. Parent reported that the Student’s physician and occupational therapist thought she needed special education. According to Ms. Parent’s email, the Student was struggling every single day. D13 p.5.

75. Mr. Gill considered the Parent’s input but did not have any verification that the behaviors Ms. Parent reported happening at school, such as stealing and licking other children on the bus, had actually occurred. Tr. 286. Ms. Parent had never personally observed the Student in her classroom in kindergarten or first grade. *Id.* at 318.

¹⁷ A “think sheet” is a low-level intervention by a teacher. It is a piece of paper that asks a student to think about what they have done and what they could have done differently. Tr. 246.

76. The Student had several rule infractions during first grade, mostly dealing with the bathroom. Ms. Heuett witnessed the Student climb up on a toilet on one occasion. She only recalls this happening once. *Id.* at 53, 70. According to Ms. Heuett, the Student “had a tough time in the bathroom” because it was a great place to play with her friends. Ms. Heuett was not concerned about this behavior because “this is what first graders do.” *Id.* at 55. The Student was not the only child who misbehaved in the bathroom and Ms. Heuett felt it was very normal. *Id.* However, for a period of time during first grade, the Student had to have an escort to the bathroom. *Id.* at 71.

77. Delaney Kissel is a clinical care coordinator at Catholic Community Services who worked with the Student. On January 19, 2024, Ms. Kissel emailed Ms. Parent and numerous District staff members and stated that “[the Student] should not be denied an evaluation for an IEP or for 504.” D13 p.3. Ms. Kissel stated that she was present during the Student’s parent-teacher conference and the teacher had said the Student was behind. According to Ms. Kissel, there was nothing being done except saying that the Student should be able to catch up. Ms. Kissel said there was no evidence that the Student would be able to catch up, and she asked when the District was available for a meeting. *Id.* at 4.

78. On January 23, 2024, Mr. Gill emailed Ms. Parent, Ms. Kissel, and several District staff members. He reviewed the Student’s kindergarten and first grade report card grades. He also stated that the “think sheets” the Student had received are “a normal part of working with all children and are not uncommon.” P35. He then asked that any evidence he may have missed regarding the Student be provided to him prior to the upcoming meeting. *Id.*

79. The school’s Guidance Team met on January 31, 2024. Ms. Parent attended the meeting, as did her lay advocate, Helen Caldart.¹⁸ D15. The Guidance Team’s written record indicates that Ms. Parent informed the Team that the Student had difficulty dealing with mistakes and challenges. According to the record, the Student shuts down emotionally and stops engaging and participating when she makes a mistake, or if the task at hand becomes too difficult. *Id.* at 2. The Team’s record also notes that the Student had been in an intervention reading group when her skills indicated it was needed, and that she responded well and no longer needed the group. The record states, “This

¹⁸ Ms. Caldart is a lay education advocate at “Special Education Advocates League (SEAL) K12.” She has experience conducting trainings for parents regarding special education issues, and frequently attends special education referral meetings. Tr. 449-52, 455.

intervention might need to cycle.” *Id.* By this, Mr. Gill meant that a student in the low average reading range may go in and out of LAP intervention. Tr. 290.

80. Ms. Caldart attended the Guidance Team meeting virtually and took extensive notes. P38; tr. 452-53. Her notes indicate that the Student would be in the “top group” if she were to be placed back into a reading intervention group. P38 p.2. Ms. Caldart’s notes also indicate that the District stated they “know” the Student has a disability and “has a hard time getting things done.” *Id.* Ms. Caldart recalls the Team discussing whether the Student needed specially designed instruction (SDI), and Mr. Gill stating that she did not need it. Tr. 462-63.

81. Ms. Parent and Ms. Caldart both recall Mr. Gill stating at the beginning of the meeting that the Student did not need an IEP and the school would offer her a 504 plan instead. Ms. Parent felt that Mr. Gill had already made the decision, prior to the meeting. She felt that when she or Ms. Caldart tried to ask questions, they were “overruled” and their opinions did not matter. Ms. Parent did not agree with the idea of pursuing a 504 plan, but she did not think she had any other choice as to how to get the Student some help. P71 p.8; tr. 321-22, 453. Ms. Caldart recalls the majority of the meeting being devoted to discussing 504 plan accommodations. Tr. 455.

82. Audra Walters,¹⁹ District Special Services Director, recalls that Ms. Parent and Ms. Caldart both asked questions during the meeting and described how the Student behaved at home. Tr. 339-40. Ms. Walters agreed with the decision not to move forward with an evaluation of the Student because there were no academic or social concerns about her at school. *Id.* at 341-42.

83. Mr. Gill did not write a written report regarding his observations of the Student. He testified that he observed her by seeing her almost every day in the school office area. He also went to her classroom at least once, and he observed her in the hallway. Mr. Gill has seen the Student interacting with adults and other students on numerous occasions. Tr. 288-89.

84. On February 5, 2024, Mr. Gill sent Ms. Parent a PWN indicating that the District was again refusing to initiate a special education initial evaluation. The District suggested in the PWN that the Parents and staff work to implement a 504 plan, and a “school to home to school incentive plan.” D13 pp. 1, 11. The PWN

¹⁹ Ms. Walters has a master’s degree in administration and has been the District Special Services Director since 2017. Her job entails supervising and supporting special education staff members. Tr. 330-32.

states that the evidence does not support initiating an evaluation, and that the Student was performing within the average range across core academic subjects as well as socially and emotionally within the school setting. *Id.* Mr. Gill re-sent the PWN on February 21, 2024, after learning that Ms. Parent had not received it the first time. D14 p.1.

85. Mr. Gill testified that an evaluation of the Student was not warranted at this time because she was still within the average range, and she had an "extreme" rate of absenteeism and tardiness. Tr. 246-47. No members of the school staff disagreed with the decision not to evaluate. *Id.* at 248.

86. On February 8, 2024, the District completed paperwork for a 504 referral for the Student. D16. Among the "concerns" listed on the referral form are ADHD and "trouble focusing in class." Ms. Grant based the "trouble focusing" concern on teacher reports. *Id.* at 1; tr. 152. Some of the modifications/accommodations in the 504 plan included reduced homework, oral spelling tests, use of non-distracting fidget items, and seating proximity to the teacher. D16 p.6.

87. The Student's winter score on the ORF was in the 2nd percentile and her score on the NWF was in the 27th percentile. Both had dropped since the fall. P1. The Student's Aimsweb benchmarks were all lower in winter than they had been in the fall. P24 p.1. Her math concepts and application score was a 1, down from 2. Her math fluency was a 2, down from 15. Her number comparison was a 2, down from 20. Her nonsense word fluency was 27, down from 31 (with a year-end goal of 68). *Id.* Ms. Heuett attributed the drop in scores to the Student becoming resistant to doing work and "shutting down." Tr. 111-12. The Student would report that she did not know how to do something or was "supposed" to not know something. *Id.* Ms. Heuett did not see the Student's skill levels drop in class. She felt the Student was able to do her schoolwork "if she really wanted to." *Id.* at 113.

88. The date on which the winter Aimsweb testing was done is not in the record. However, on February 12, 2024, the Student's winter Aimsweb early numeracy report was printed. P42 p.2. It shows the Student's concepts and applications score in the 1st percentile nationally, and she was marked as "high risk status" in this area. Her score on many of the skills tested was zero. *Id.* at 2-3.

89. On February 15, 2024, the Student was evaluated by Catholic Community Services of Western Washington Family Behavioral Health System. A letter from a nurse practitioner at Catholic Community Services stated that the Student was

diagnosed with posttraumatic stress disorder and separation anxiety disorder. P68.

90. On March 1, 2024, Ms. Parent emailed the District²⁰ and stated, “I am writing to request that my daughter, [Student], be evaluated with an IEE in a comprehensive assessment for special education services.²¹ She is currently enrolled in Liberty Ridge Elementary in the 1st grade. I am concerned with [Student’s] progress in school and believe she may need special education services for her to learn and be successful.” D17 p.3.

91. At the time, Ms. Parent felt that “since we weren’t getting anywhere with her school,” she wanted to see if the Student could be evaluated by someone else. Tr. 539. Ms. Parent was hoping that by talking to someone “higher up,” an evaluation would proceed. *Id.* at 542. Ms. Parent did not know the “rules” that applied to requesting an IEE, and she asked for one because it got brought up at a WISE meeting. *Id.* at 538.

92. Later that same day, Karen Finigan, District Executive Director of Special Services,²² replied to Ms. Parent by email and stated, “Wanted to let you know that we received your request for a referral to special education. We will connect with you about next step.” D17 p.2. Ms. Finigan testified at the due process hearing that it was an error on her part to refer to the Parent’s email as a “request for a referral.” Tr. 416.

93. On March 4, 2024, Ms. Finigan emailed Ms. Walters and said, “Parent is wanting an IEE when student wasn’t evaluated, so I then [sic] this could go to some sort of due process.” P46. Ms. Walters responded by stating that the Parent’s IEE request could “put the District in a position to evaluate.” *Id.* Ms. Walters interpreted the IEE request as a request for a special education evaluation. Tr. 352.

94. On March 4, 2024, Ms. Finigan again emailed Ms. Parent and stated, “Looking at the records the student was not evaluated and therefore there would not be an IEE option.” D17 p.2.

²⁰ The recipients of this email cannot be determined from exhibit D17.

²¹ Underlining in original.

²² Ms. Finigan has a bachelor’s degree in elementary education and a master’s degree in emotional and behavioral disabilities. She also has a degree in administrative leadership. Tr. 385. She has experience teaching math and special education. *Id.* at 386.

95. When asked whether this IEE request could be treated as a request for a special education referral, Ms. Finigan testified:

The way I saw it and why it's confusing to me is because it was a request for an IEE and underlined and everything, and, to me, it was confusing because that's not the process. The process would be -- there was, I think, two previous evaluations that didn't go through to evaluation, so in my mind, I was explaining the IEE process with the parent.

Tr. 396. According to Ms. Finigan, "We could always refer a student [for an evaluation] at any time." *Id.* at 398.

96. On March 5, 2024, Ms. Finigan and Ms. Parent spoke by telephone. Tr. 387. Ms. Finigan then sent an email to Ms. Parent to which she attached the IDEA procedural safeguards. D17 p.1. Ms. Finigan did not offer Ms. Parent the option to make a new special education referral. Tr. 404. As determined earlier in this matter on summary judgement, this was the first time the District provided a copy of the procedural safeguards to the Parents, rather than providing a clickable online link.

97. On March 11, 2024, Ms. Parent was told by Ms. Thompson that the Student had bitten another student. P71 p.10; tr. 580-81. Ms. Thompson does not recall a biting event. If she had documented it, there would have been a record in the database which documents behavior infractions. Tr. 679. Ms. Thompson does not recall any incidents of the Student biting someone at school. *Id.* at 680.

98. On March 18, 2024, the Student's winter Aimsweb early literacy report was printed. P42 p.4. Her oral reading fluency score was in the 2nd percentile and her "early literacy composite" was also in the 2nd percentile. The report noted that the Student's risk level for not meeting year-end grade-level benchmarks was "high" and that she would "benefit from intensive intervention." *Id.* at 4, 8.

99. The WIN group was considered by Ms. Heuett to be intensive intervention. Tr. 99.

100. The Student's first grade MyLEXIA report through March 2024 charted the Student's progress in skills such as building words, consonant digraphs, sight words, categorizing words, and picture-phrase matching. P42 p.8. The report showed that the Student was deemed "high risk" and had a one percent

likelihood of meeting end-of-year grade-level benchmarks as of March 2024. This had dropped from a 27% likelihood in November 2023.

101. The Student's March 2024 "Unit 4 Skills Assessment Results" recorded by Ms. Heuett showed the Student had the following scores:

<u>Assessment</u>	<u>Student Score</u>	<u>Expectation</u>
Vowel Team Dictation	0	8-9
Unit 4 Word Reading	4	5-6
Comprehension	3	6-9
Fluency/Accuracy (wpm; accuracy %)	32; 88%	69; 96-100%
Isolated word reading	35	32-40
Tricky words	38	50

P42 p.6. Thus, the Student was below expectation in all areas except isolated word reading.

102. The Student's report card for terms 1 and 2 of first grade contained all 2's in social emotional development. Term 2 ended on March 8, 2024. D24 p.4. The Student had 1's, 2's and 3's in various aspects of reading. The Student had 1's in word recognition and in "reads grade level text orally with accuracy." *Id.* at 3. The Student had 2's and 3's in writing/language. She had 1's, 2's and 3's in math, with 1's in both adding and subtracting numbers fluently within ten. *Id.* Teacher comments after each term included a description of what was taught in class but no individualized comments regarding the Student.

Dr. Barta's evaluation

103. In April 2025, the Parents took the Student to Dr. Julia Barta for a neuropsychological evaluation. D20. Dr. Barta holds a PsyD degree, which is a doctorate in psychology with a specialty in school psychology. Tr. 731. She is a licensed educational psychologist and a nationally certified school psychologist. *Id.* Dr. Barta is also a licensed mental and behavioral health provider with expertise in autism and special education. P73. Dr. Barta has worked as a school psychologist since 2014, and is the owner of JB Psychological Services. *Id.* She currently works full time as a school psychologist for Washinton Educational Services District 113, and works part-time in her private practice. *Id.*; tr. 732.

104. The Parents sought the evaluation to determine if the Student met the diagnostic criteria for dyslexia due to her challenges with reading and writing.

They were also concerned about the Student's inability to regulate emotions, meet developmental milestones, and participate in group activities. D20 p.3.

105. Dr. Barta evaluated the Student on two different days. D20 p.7. She conducted an interview and mental status examination of the Student and administered numerous assessment instruments. *Id.* at 3. Dr. Barta noted that the Student did not pick up on social cues. Tr. 735. The Student also had a hard time just sitting and playing, and exhibited a lot of sensory-seeking behaviors. *Id.* at 754, 756. The Student was not able to engage in conversation appropriately with Dr. Barta. *Id.* at 781.

106. Dr. Barta concluded that the Student's overall intellectual functioning was below average. D20 p.8. Assessment results show the Student may have difficulty with visual memory, visual problem solving, and deductive reasoning. *Id.* at 8-9.

107. The Student's academic achievement performance was in the very low range in that she outperformed only 4% of same-aged peers. D20 p.10. Academic achievement refers to a child's aptitude to apply cognitive skills and learned knowledge derived from grade level expectations. *Id.*

108. The Student's reading composite score was in the low average range. Her phonemic proficiency, word reading, reading fluency, reading comprehension, and orthographic processing were all in the very low range. D20 p.11. The Student's dyslexia index was also in the very low range (this is a problematic score, not a good score), and she struggled when required to quickly and accurately sound out nonsense words. *Id.*

109. The Student's written expression composite score fell within the very low range. Spelling was in the very low range and alphabet writing fluency was in the low average range. D20 p.12.

110. The Student's mathematics composite score was in the low average range. D20 p.13. Her language skills were in the low average to average ranges. *Id.* at 14.

111. Dr. Barta assessed the Student's social emotional and adaptive functioning by using the Behavior Assessment System for Children – Third Edition (BASC-3) and the Vineland – Third Edition (Vineland-3) rating scales, completed by Ms. Parent and Ms. Heuett. D20 p.15. On the BASC-3, the Parent reported that the Student had clinically significant scores in external problems, internalizing problems, and behavioral symptoms. Ms. Heuett scored the Student

as “at risk” in internalizing problems and school problems. Both Ms. Parent and Ms. Heuett noted “conduct” problems regarding rule breaking, anger management, arguing with others, and patterns of deception. *Id.* Dr. Barta noted that the Student did not demonstrate as many elevated behaviors at school as at home. *Id.*

112. On the Vineland-3, Ms. Parent’s scores placed the Student in the low functioning range while Ms. Heuett’s scores put her in the adequate range. D20 p.20. Ms. Huetette’s scores placed the Student in the adequate range for communication, daily living skills, socialization, and motor skills. Ms. Parent’s scores placed the Student in the moderately low and low ranges in these areas. D20 pp. 20-22.

113. Dr. Barta also assessed the Student for autism spectrum disorder (ASD). The assessment results showed the Student had indicators of ASD, including difficulties with communication and social interaction, stereotyped behaviors, and restricted interests. D20 p.28.

114. Dr. Barta concluded that the Student’s “pattern of reading and writing difficulties are indicative of learning disabilities, including dyslexia and dysgraphia.” Dr. Barta further concluded that the Student “demonstrates difficulties with executive functioning that impede her learning and will likely continue as an area of challenge throughout schooling.” D20 pp. 28-29.

115. Dr. Barta diagnosed the Student with ASD level 2 (requiring moderate support), ADHD, and severe specific learning disorders (SLDs) in reading (dyslexia), written expression (dysgraphia), and mathematics. D20 pp. 29-30.

116. Dr. Barta determined that the Student qualified for special education under the category of autism. She recommended SDI in social emotional, reading (basic, fluency, and comprehension), and writing. D20 p.31. Dr. Barta also recommended additional evaluation in communication, fine motor, and possibly sensory and executive functioning. Dr Barta provided a lengthy list of suggestions that might benefit the Student, such as use of speech-to-text software, audio study materials, and graphic organizers. *Id.* at 31-35.

117. Dr. Barta opined at the due process hearing that nationally normed assessment data such as the Aimsweb results should be considered when deciding whether to evaluate a child for special education eligibility because “the whole point is to gather data.” Tr. 749-50, 752. She also opined that it was developmentally problematic for a first grader to have toileting issues. *Id.* at 770.

118. In Dr. Barta's opinion, the Student should have been evaluated by the District in kindergarten. Tr. 795. Dr. Barta opined that the Student lost educational opportunities because her evaluation was delayed. *Id.* at 797-98.

119. The Parents paid Dr. Barta \$3485.00 for the evaluation. P71 p.16.

Remainder of the 2023-24 school year

120. In the spring of 2024, it became a struggle for the Parents to get the Student to school. She screamed and fought at home, and was frequently late to school as a result. P71 p.11.

121. On April 15, 2024, Ms. Heuett began keeping a behavior log for the Student for use by the Student's occupational therapist. P51; p71 p.12. Data kept through May 6, 2024, showed incidents where the Student put a used paper towel on another person's head, did not listen, played with her watch, sat on the floor, avoided school work, needed redirection, refused to work, and played with lip gel. P51.

122. On April 25, 2024, Ms. Parent and Liberty Ridge principal, Ms. Hardtke, exchanged multiple email messages. P53. Ms. Parent asked to set up a meeting regarding the Student, saying, "[Student] is needing help and after we got her tested out of school way more issues it seems have come up that need to be addressed." Ms. Parent went on to say that she was waiting for the final evaluation report and wanted to set up a meeting now to "get everyone on board." Ms. Hardtke asked Ms. Parent to "please send the paperwork for us to review." *Id.*

123. By May 2024, the Student was frequently refusing to do her schoolwork. Tr. 120. She would tell Ms. Heuett, "My mom says that I don't know how to do this stuff, and I'm not supposed to do this." When crawling around on the floor, the Student would say, "This is what I'm supposed to do." *Id.* Ms. Parent never told the Student that she did not have to do her work at school or that she was not supposed to know how to do things. Tr. 545.

124. On May 15, 2024, Ms. Heuett noted that the Student "has begun to sit on the floor behind her desk so I can't see her and she plays with things back there. [Student] has begun to refuse to do any class work at her desk or at the teacher's desk, refusing to do the work." P51 p.2. The Student also left the classroom without permission. According to a test proctor, the Student gave up right away on an Aimsweb math assessment and "just gave random answers." *Id.*

125. Dr. Barta finished her evaluation report on May 19, 2024. Ms. Parent took the report to school on May 20, 2024, and gave a copy to Ms. Hardtke, who said she would give it to Mr. Gill. P71 p.12; tr. 370.

126. Between May 20 and 23, 2024, the Student snuck her purse and toys out to recess by wrapping them in her sweatshirt, rolled around under her desk, and was incontinent. A behavior log entry for May 20-23, 2024, states, "All week [Student] has been crawling around and laying on the floor under her desk. When I ask her to sit up in her chair she yells 'Don't worry about it' at me." Another entry for May 23, 2024, states, "Today I asked [Student] why she continues to roll around under her desk and she told me it was because her mom said she could because she has Dyslexia." There are no more behavior log entries after May 23, 2024. P51 pp.2-3.

127. The Student's spring score on the ORF was in the 6th percentile and her score on the NWF was in the 31st percentile. P1.

128. Mr. Gill emailed Ms. Parent on the morning of May 21, 2024, and informed her that he had received the documents from Ms. Hardtke and would start a new special education referral. D18 p.11.

129. Later on May 21, 2024, Ms. Parent replied to Mr. Gill. D18 p.1. Ms. Parent stated that the Student was struggling in class and was "failing first grade." Ms. Parent stated that the Student was rolling around on the floor at school, pulling clothing off other students, hiding under her desk, having episodes of incontinence, and refusing to do classwork. *Id.*

130. On May 23, 2024, Ms. Heuett sent home a sheet of the Student's math work. Ms. Heuett had written across the top, "Crawling around on floor – refused to work in class." P41 p.6.

131. On the morning of May 24, 2024, Ms. Parent emailed Ms. Finigan and acknowledged receiving a PWN documenting a new referral for a special education evaluation. Ms. Parent asked that a school psychologist other than Mr. Gill handle this referral, as she wanted someone "neutral to the situation." P64.

132. On May 24, 2024, the Student eloped from the school playground by going over a fence. She was found in the backyard of a neighborhood home by the resident who happened to be home at the time. The resident, [REDACTED], first called Ms. Parent because the Student knew her phone number. P60 p.1; tr. 442. [REDACTED] then walked the Student back to Liberty Ridge. When [REDACTED]

██████ and the Student arrived at the school, a woman came from the playground and yelled at ██████ to stop walking. ██████ proceeded to explain that that she was bringing the Student back, and that the Student had said she was pushed over the fence by a big kid. The staff person responded, "That is not true. She is lying. She does this all the time. I have people out there searching for her." Tr. 442. At that point, the Student began crying and was visibly upset. *Id.*

133. The Student sustained scrapes on her abdomen, and scrapes and bruises on her arms during the elopement. P60 pp. 2-4, 7-11. The District's incident report regarding the elopement states that the Student told the school nurse that she "climbed over the fence and hurt her stomach." P61.

134. After this incident, Ms. Parent asked if the Student could get paraeducator supervision at school to be sure she did not elope again, but Ms. Hardtke denied the request. P71 p.15. The Student missed several days of school after the elopement incident due to being distressed by the events of that day. P66,

135. Regarding the first-grade year overall, Ms. Heuett did not think the Student needed many breaks during class, and did think she needed to use fidgets. Tr. 67. The Student did require extra time on assignments. *Id.* The Student often said she was tired when she did not want to complete her work. She also frequently asked to go to the nurse's office. *Id.* at 90. Ms. Heuett did not think this was because the Student did not understand the schoolwork. *Id.* Ms. Heuett does not recall the Student ever biting another student. *Id.* at 103.

136. The Student used "chew items" much of the time in first grade. Tr. 102. The Parents spent \$61.94 on chew items, fidgets, and chair wiggle feet for the Student's use in first grade. P71 p. 11.

137. The Student's report card for term 3 of first grade contained all 2's in social emotional development. D24 p.3. She had primarily 3's in reading with one 1 in "reads grade level text orally with accuracy." She had a 4, indicating she exceeded the expected standard, in "isolates and pronounces initial, medial vowel, and final sounds (phonemes) in spoken words." *Id.* The Student had primarily 3's in writing/language and math, with one 1 in "subtracts numbers fluently." The teacher's comments at the end of the term included, "To meet the end of year reading target, students needed to read 70 words in a minute on the end of year Aimsweb Oral Reading Fluency text. Your student read 25 words." *Id.* at 3-4.

138. The Student attended Thrive Summer camp during the summer of 2024 in order to receive support for her social skills. The Parents paid \$1254.00 for the camp. P71 p.15. The Student also received academic tutoring over the summer at Student Success Center of Orting. The Parents paid \$200.53 for the tutoring. *Id.* at 16.

139. On August 22, 2024, the Student underwent a reading assessment at Sylvan Learning Insight. She performed at the kindergarten level on this assessment. P67. Her academic perseverance, academic self-confidence, and school engagement were all rated as being very low. *Id.* at 2. The Parents paid \$95 for this testing. P71 p.15.

140. The Student started attending Applied Behavioral Analysis (ABA) therapy in the fall of 2024, at the recommendation of Dr. Barta, to address her autism. P71 p.16.

Second Grade – The 2024-25 school year

141. Summer Holmes is a District school psychologist. She took over the Student's case on September 4, 2024. D23.

142. On September 4, 2024, the District informed the Parents that it was seeking parental consent to perform an initial special education evaluation of the Student. D23. According to Mr. Gill, the District decided to proceed with an evaluation at this point because the Student's performance had shown a difference and she was becoming more reluctant to participate in school. Tr. 251-52.

143. The Student's second grade fall score on the vocabulary screener was in the 8th percentile. Her ORF was in the 2nd percentile and her reading comprehension was in the 21st percentile. P1.

144. The Parents filed the Complaint in this due process action on September 11, 2024.

145. The Student was evaluated by the District on or about November 4, 2024. P69. The Student had to be evaluated over multiple sessions due to "lower stamina and inconsistent engagement and effort depending on the day and the required task." *Id.* at 9. She was observed to disengage by putting her hood up and her head down, and she was completely resistant to directions at times. *Id.* Six out of eight of her reading subscores were in the 5th percentile or less, with two being in first percentile. *Id.* at 10. Her written expression score in "sentence

writing fluency” was in the 0.4th percentile. *Id.* at 13. Based on the evaluation, the Student was found eligible for special education services under the category of “other health impairments.” *Id.* at 3.

146. An IEP meeting was held for the Student on December 12, 2024, and an IEP was developed. The IEP start date was January 6, 2025. P69 p.3. The IEP provides the Student with SDI in basic reading skills, reading comprehension, written expression, and social/emotional. It also provides OT as a related service. *Id.* at 6.

147. The IEP service matrix is as follows:

Services 01/06/2025 - 01/05/2026							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Basic Reading Skills	Educational Staff/Para	Special Education Teacher	25 Minutes / 4 Times Weekly	Special Education	01/06/2025	01/05/2026
No	Reading Comprehension Skills	Educational Staff/Para	Special Education Teacher	20 Minutes / 4 Times Weekly	Special Education	01/06/2025	01/05/2026
No	Social/Emotional	Educational Staff/Para	Special Education Teacher	30 Minutes / 2 Times Weekly	Special Education	01/06/2025	01/05/2026
No	Written Expression	Educational Staff/Para	Special Education Teacher	30 Minutes / 4 Times Weekly	Special Education	01/06/2025	01/05/2026
Related							
No	Occupational Therapy	OTR/COTA	Occupational Therapist	30 Minutes / 1 Times Weekly	Special Education	01/06/2025	01/05/2026
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:				390 minutes per week			
Percent of time in general education setting:				78.09% 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	Social/Emotional	Special Education Teacher	Special Education Teacher	15 Minutes / 1 Times Monthly	Special Education	01/06/2025	01/05/2026

Description of Services:

This matrix demonstrates how [REDACTED] minutes are divided by subject and the frequency of those minutes. This matrix is a guide for [REDACTED] services and may look different depending on schedule conflicts throughout the year (testing, assemblies, snow days, absences etc.) Supplementary aids and services for social/emotional is a monthly check in by phone with mom.

P69 p. 24 (Student name redacted).

148. Accommodations in the IEP include access to fidgets, extended time, and word prediction software, among many other things. P69 pp. 21-22.

149. The Student’s winter scores on the reading screeners were in the 13th percentile for vocabulary, the 33rd percentile for reading comprehension, and the 6th percentile for ORF. P1.

150. According to the Parents, the Student is currently “far behind” in school. P71 p.18.

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. RCW 28A.155.260(1). In a due process hearing, the burden of proof is a preponderance of the evidence. RCW 28A.155.260(3).

The IDEA and FAPE

3. Under the IDEA, a school district must provide a 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 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).

6. "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry. As the U.S. Supreme Court has made clear, "[a] focus on the particular child is at the core of the IDEA," and an IEP must meet a child's unique needs. *Id.* 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.

Whether the District failed to comply with child find requirements during the 2022-23 and 2023-24 school years

7. Pursuant to WAC 392-172A-02040(1), school districts are obligated to conduct "child find" activities:

School districts shall conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability. The child find activities shall extend to students residing within the school district boundaries whether or not they are enrolled in the public school system.

8. School districts' precise obligations regarding child find in Washington State are not clear. In 2014, the Ninth Circuit Court of Appeals recognized:

We have not yet articulated a test for when the child find obligation is triggered. The parties and the district court rely upon a test articulated by a Hawaii district court. See *Dept. of Educ., Haw. v. Cari Rae S.*, 158 F. Supp. 2d 1190 (D. Haw. 2001) ("[T]he child-find duty is triggered when the [district] has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability") (internal quotation marks omitted). The Sixth and Third Circuits have promulgated tests that differ significantly from the *Cari Rae* standard. See *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012) (noting that "Child Find does not demand that schools conduct a formal evaluation of every struggling student"); *Bd. of Educ. of Fayette Cnty., Ky. v. L.M.*, 478 F.3d 307, 314 (6th Cir. 2007) (holding that the individual claiming a child find violation must demonstrate "that school officials overlooked clear signs of disability and were negligent in failing to order testing or that there was no rational justification for not deciding to evaluate").

G.M. v. Saddleback Valley Unified Sch. Dist., 583 F. App'x 702, 703-04 n.1 (9th Cir. 2014).

9. In 2016, the Ninth Circuit issued its decision in *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105 (9th Cir. 2016), which is frequently cited in the context of child find. *Timothy O.* is widely relied on for the proposition that a disability is suspected, and therefore must be assessed by a school district, when the district has notice that the child has displayed symptoms of that disability. *Id.* at 1119-20. In *Timothy O.*, the child at issue had already been identified and an initial evaluation was being conducted by the time the disputed conduct occurred. The district's initial evaluation did not assess the child for "social/adaptive behavior," the category covering autism spectrum disorders. During the evaluation, the evaluators had difficulty engaging the child in play, and a school psychologist observed the child for thirty to forty minutes to consult on the "possibility of looking at autism as a handicapping condition." *Id.* at 1113-14. Based on that informal observation, the school psychologist concluded there was no need to assess the child for autism because the child's use of facial expressions and other behaviors were uncharacteristic of autism. The district never informed the child's parents that it had contemplated assessing the child for autism. *Id.* at 114. Two days before the child's initial IEP meeting, the district received a report from an outside psychologist finding that the child had concerning symptoms of autism. However, the report was not discussed at the

IEP meeting and the district did not revisit its decision not to assess the student for autism. An IEP was developed to address a “speech or language impairment.” *Id.* at 1115.

10. The Ninth Circuit held that “if a school district is on notice that a child may have a particular disorder, it *must* assess that child for that disorder, regardless of the subjective views of its staff members concerning the likely outcome of an assessment.” *Timothy O.*, 822 F.3d at 1121 (emphasis in original). The court emphasized that “a school district cannot disregard a non-frivolous suspicion of which it becomes aware simply because of the subjective views of its staff, nor can it dispel this suspicion through informal observation.” *Id.* Notably, these findings pertain to the procedures for evaluations contained in 20 U.S.C. §1414, not the child find requirement contained in 20 U.S.C. §1412(a)(3). As the court explained, school districts must identify children with disabilities, and “once identified, those children must be evaluated and assessed for all suspected disabilities so that the school district can begin the process of determining what special education and related services will address the child’s individual needs.” 822 F.3d at 1110. Whether a school district must have a reason to suspect a child may need special education services when determining whether to evaluate was not at issue in *Timothy O.*

11. Subsequent to *Timothy O.*, district courts within the Ninth Circuit have articulated the child find standard in a variety of ways. In *S.B. v. San Mateo Foster City Sch. Dist.*, 2017 U.S. Dist. LEXIS 217440 (N.D. Cal. Apr. 11, 2017), *aff’d sub nom. Burnett v. San Mateo Foster City Sch. Dist.*, 739 F. App’x 870 (9th Cir 2018), the district court cited *Cari Rae* when determining that the child find duty is triggered when the school district has reason to suspect a child has a disability and reason to suspect the child may need special education to address that disability. *San Mateo* at *40. The *San Mateo* court went on to explain that “[o]nce a child is identified as potentially in need of specialized instruction and services, the district must conduct an initial evaluation to confirm the child’s eligibility for special education.” *Id.* at *41. The district court upheld the ALJ’s underlying finding that San Mateo had good reason to suspect the student at issue was a child with a disability and that special education services may be needed to address the disability. *Id.* at *46. Notably, when affirming the district court’s decision, the Ninth Circuit did not review the appropriateness of the conclusion that a child find violation had occurred because the school district did not appeal that conclusion. *Burnett*, 739 F. App’x at 872.

12. In *P.B. v. Thorp Sch. Dist.*, 2021 U.S. Dist. LEXIS 59845 *26-27 (E.D. Wash. 2021), the court reiterated that “there is no binding Ninth Circuit caselaw on how courts are to determine whether a violation of child find laws has occurred and whether that amounts to a deprivation of a FAPE.” One year later, in *N.N. v. Mt. View–Los Altos Union High Sch. Dist.*, 2022 U.S. Dist LEXIS 139275 *86-87 (N.D. Cal. August 4, 2022), the court concluded that the school district had an obligation to assess the student at issue for special education eligibility once it had reason to believe that she suffered from a disability that impacted her ability to access her education. The *N.N.* court held that a school district is not relieved of its duty to assess a student based on an administrator’s opinion that a 504 plan is appropriate. The court also noted, “Courts within the Ninth Circuit have described the threshold for suspecting that a child has a disability as ‘relatively low.’” *Id.* at *82, 86.

13. Under the IDEA, the following disability categories can qualify a student to receive special education services: intellectual disability, deafness (including hard of hearing), a speech or language impairment, a visual impairment (including blindness), an emotional/behavioral disability, an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deafblindness, multiple disabilities, or for students three through nine, a developmental delay. WAC 392-172A-01035(1)(a); see 20 U.S.C. §1401(3).

14. An “other health impairment” means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that: (i) is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and (ii) adversely affects a student's educational performance.” WAC 392-172A-01035(2)(j). Thus, ADHD is not an “other health impairment” unless it limits a student’s alertness in the educational environment and adversely affects the student’s educational performance.

15. “Specific Learning Disability” is defined as:

[A] disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including

conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that adversely affects a student's educational performance.

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

WAC 392-172A-01035(2)(k).

16. In the present case, the District bears the burden of proof on the child find issue. It argues that no child find violation occurred during the 2022-23 school year because the student met all or most kindergarten grade level standards and did not exhibit problematic behaviors at school. District's Post-Hearing Brief at 21. The evidence supports the District's position. While the Parents reported very problematic behavior at home, such behavior was not seen at school aside from one incident in the bathroom.²³ The Student had one atypical dyslexia screening score, but a high percentile score (78%) on the other. The Student was placed in a reading intervention group in the fall of kindergarten, but she no longer needed it by winter. The Student's teacher did notice that the Student had difficulty sustaining attention and problems with written expression, and the SEL teacher also observed that Student had difficulty sustaining attention. However, the Student had good grades on her year-end report card - almost all 3's and a few 2's - indicating that she was meeting or approaching expected standards, even though she was not at grade level for math. The Student was not diagnosed with ADHD until June 2023, at which point the Parent requested an initial evaluation which was addressed during first grade.

17. It is concluded that the preponderance of the evidence demonstrates there was little to no reason for the District to suspect the Student had a disability that was limiting her alertness in the educational environment and adversely affecting her educational performance during kindergarten. As such, the District did not fail to comply with child find requirements during the 2022-23 school year.

²³ The Parents argue that Ms. Grant's referral of the Student to the WISE program indicates the Student was experiencing barriers to learning. Parents' Post Hearing Brief at 11. However, that referral was made in response to Ms. Parent's report that the Student's behavior at home was worsening, not due to behaviors at school.

18. During the 2023-24 first grade year, the District knew about the Student's ADHD diagnosis. After the Parents' June 10, 2023 referral for an initial evaluation, Mr. Gill examined data regarding the Student. Ms. Heuett noted that the Student was behind academically but was progressing and was essentially on par in reading with her peers. The Student listened and followed directions, was not a behavior problem, and "acted just like any other first grader." A preponderance of the evidence shows that the ADHD did not limit the Student's alertness in the educational environment or adversely affect her educational performance at this point. It is therefore concluded that the District did not violate its child find duty when it declined to evaluate the Student for special education eligibility in September 2023.

19. Ms. Parent again requested a special education evaluation on December 18, 2023. By then, the Student had been placed in a WIN reading intervention group and her math score was well below expectations. Ms. Heuett had observed that the Student had trouble following directions at times. Significantly, Ms. Heuett also reported, "*Student's behavior impacts learning.*" The Student was reading at a kindergarten level with very low words per minute. Ms. Parent reiterated to Mr. Gill that the Student had been diagnosed with a sleep disorder and anxiety, as well as ADHD, and she refused to do homework most nights. Ms. Parent provided a litany of "bad reports" she had gotten from school staff that were not documented, and she told Mr. Gill that the student was "struggling every day." Moreover, the Guidance Team discussed the Student's ADHD and the fact that "she had a hard time getting things done." Mr. Gill had observed the Student in the hallway, in the office, and once in her classroom, but he did not write a report about his observations. Mr. Gill opined at the Guidance Team meeting that the Student did not need an IEP and the District again declined to evaluate her.

20. A preponderance of the evidence indicates that the Student's disability was impacting her educational performance at this point. Her behavior was impacting learning, she had a hard time getting things done, she refused to do homework, was performing below expectations, and was observed by the Parents to be struggling mightily. Such reports from a parent cannot be summarily dismissed by district staff. See *L.J. v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 1006 (9th Cir. 2027)(finding that behavior outside of school was relevant to finding the student eligible for special education when the behavior interfered with the student's education). The District declined to evaluate the Student based in part on Mr. Gill's informal observations and his opinion that she did not need SDI. Relying upon informal opinions such as this was frowned upon by the *Timothy O.* court. And, as noted above, the Ninth Circuit threshold for suspecting that a child has a disability is relatively low. It is therefore concluded that the

District has not met its burden to show that the decision not to evaluate the Student at this juncture comported with its child find duties. Rather, the District violated its child find obligations on February 5, 2024, when it refused to initiate a special education initial evaluation of the Student.

21. A child find violation is a procedural violation of the IDEA and the ALJ must determine if the violation led to a denial of FAPE. As set forth above, procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

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

WAC 392-172A-05105(2).

22. Failing to proceed with the evaluation in February 2024 delayed the evaluation process by seven months, since the District eventually agreed to evaluate the Student on September 4, 2024. Once she was evaluated, the Student was determined to be eligible for special education and was provided with an IEP. A preponderance of the evidence shows that the Student would likely have been found eligible for special education if she had been evaluated in February 2024. Significantly, in April 2024, two months later, Dr. Barta diagnosed the Student with ASD and severe specific learning disorders. There is no reason to believe these conditions did not exist two or three months earlier.

23. A "loss of educational opportunity" occurs "when there is a strong likelihood that, but for the procedural error, an alternative placement would have been better considered." *Timothy O.*, 822 F.3d at 1124 (cleaned up). To succeed on a claim of FAPE denial due to a procedural error, a parent need not definitively show that the child's educational placement would have been different without the error. *Id.* In the present case, the delay in evaluating the Student deprived her of the educational benefits she would have received had an evaluation been conducted and an IEP implemented seven months earlier. This denied her a FAPE. The redress for this violation is discussed in the remedies section, below.

Whether the District significantly impeded that Parents' right to meaningfully participate in the Student's educational programming during the 2023-24 school year

Refusal by the school psychologist to meaningfully consider relevant Parent and school information during the special education referral process

24. WAC 392-172A-03005 pertains to "referral and timelines for initial evaluations." It provides, in part:

(1)(a) A parent of a child, a school district, a public agency, or other persons knowledgeable about the child may initiate a referral request for an initial evaluation to determine if the student is eligible for special education services.

(b) The request must be in writing, unless the person is unable to write and/or communicate orally.

(c) Each school district must have an optional referral form for requesting an initial evaluation available to the general public and provide it upon receipt of any referral request in the requestor's native language or with the support of a qualified interpreter when needed.

(2) The school district must document the request for an initial evaluation, including the date the request is received, and:

(a) Notify the parent that the student has been referred because of a suspected disability and that the district, with parental input, will determine whether or not to evaluate the student;

(b) Collect and examine existing school, medical and other records in the possession of the parent and the school district; and

(c) Within twenty-five school days after receipt of the request for an initial evaluation, make a determination whether or not to evaluate the student. The school district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.

In the present case, the Parents contend that Mr. Gill did not comply with WAC 392-172A-03005 when determining that the District would not evaluate the Student in September 2023 and February 2024.

25. This issue has been analyzed above in the context of child find. As previously concluded, the District and the school psychologist appropriately collected and examined the relevant information in September 2023, and its decision not to evaluate the Student for special education eligibility at that time was appropriate. However, the District did not adequately collect and examine the relevant, available information in February 2024, and should have determined that an evaluation was warranted at that time. This constituted a procedural violation of the IDEA that deprived the Student of FAPE, as analyzed above.

Failing to abide by the IDEA timelines for special education referrals and refusing to initiate a special education referral upon request of the Parents on March 1, 2024, and April 25, 2024.

26. Pursuant to WAC 392-172A-03005, Ms. Parent's Saturday, June 10, 2023 email to Ms. Grant wherein Ms. Parent stated, "For next year can we get [Student] tested for IEP," is concluded to constitute a referral request for an initial evaluation. The request is deemed made on the first school day after it was sent, i.e., on June 12, 2023. The school year ended by June 22, 2023, at the latest, and school started again on September 5, 2023. Thus, 25 school days from the initial request was September 28, 2023, at the latest.²⁴ Mr. Gill informed Ms. Parent on September 28, 2023, that the District had declined to evaluate the Student, and issued a PWN. This was a timely determination.

27. Ms. Parent made the second referral request on December 18, 2023. Twenty-five school days from this date was February 6, 2024. D28. Mr. Gill notified Ms. Parent that the District had declined to evaluate the Student on February 5, 2024, and issued a PWN. This determination was timely.

28. The Parents contend that they made another referral request on April 25, 2024. However, Ms. Parent's April 25, 2024 request to Ms. Hardtke that a meeting be set up because "the Student is needing help" and "way more issues have come up" does not constitute a written referral for an initial evaluation. Rather, it is a broad request for a meeting about unspecified issues. It is concluded that this email did not trigger the provisions in WAC 392-172A-03005, and the District was not required to treat this email as a special education referral.

²⁴ The first day of the 25-day count begins on June 13, 2023. WAC 10-08-080.

29. Ms. Parent made another referral request on May 20, 2024, when she submitted Dr. Barta's evaluation to the District. The District issued a PWN on September 4, 2024, notifying the Parents of its decision to conduct an initial evaluation of the Student. This PWN was issued less than 25 school days after it was received, even if the two emergency weather days schedule in June 2024 were school days (which cannot be determined from the record). See. D28. This was a timely determination.

30. Ms. Parent's March 1, 2024 email requesting an IEE, however, presents a different scenario. Ms. Finigan initially responded to that email by acknowledging it as a request for a special education referral. Ms. Finigan testified at the due process hearing that it was an error on her part to refer to this as a request for a referral because she later determined that the Student had never been evaluated and, consequently, there was no basis for an IEE. Ms. Finigan said she found Ms. Parent's email "confusing because that's not the process," although she acknowledged the District could refer a student for an initial evaluation at any time. Unlike Ms. Finigan, Ms. Walters, the Director of Special Services, interpreted Ms. Parent's March 1st email as a request for a special education evaluation. Notably, the Parents had not been provided with the IDEA procedural safeguards at the time Ms. Parent sent this email. Ms. Parent credibly explained at the due process hearing that she did not know the "rules" about requesting an IEE and she went with a suggestion made at a WiSe meeting. She did not feel she was getting anywhere with the Liberty Ridge personnel and she wanted to contact someone "higher up" in hopes that an evaluation would proceed.

31. It is concluded that the District should have treated the March 1, 2024 IEE request as a referral for an initial special education evaluation that triggered the requirements of WAC 392-172A-03005. Ms. Walters interpreted it as a referral request, and Ms. Parent had not received a copy of the required procedural safeguards. Because the District did not collect information and never made a determination whether an evaluation of the Student was warranted in response to the email, the District failed to comply with WAC 392-172A-03005. This constituted a procedural violation of the IDEA.

32. Had the District deemed the Parent's March 1, 2024 email to be a referral, it would have gathered information about the Student. At that point, the District would, or should, have determined that the Student's scores on the ORF and NWF had dropped and her Aimsweb benchmarks were all lower than they had been in the fall. The Student's numeracy "concepts and applications" score was in the 1st percentile nationally, and she was marked as "high risk status" in this area. Her

scores on many of the skills tested were zeros. Her ORF score was in the 2nd percentile and her “early literacy composite” was also in the 2nd percentile. The Student’s risk level for not meeting year-end grade-level benchmarks was “high” and she was flagged as “would benefit from intensive intervention.” Moreover, the Student’s classroom Unit 4 Skills Assessment results were below expectation in all areas except one.

33. It is concluded that if the District had collected and examined existing records at this point, as required by WAC 392-172A-03005, it would, or should, have determined that a special education evaluation of the Student was warranted. This was a procedural violation of the IDEA. As discussed above, failing to proceed with the evaluation delayed the process and deprived the Student of the educational benefits she would have received had an evaluation been conducted and an IEP implemented earlier. This amounted to a denial of FAPE.

Whether the District’s failure to provide a copy of the IDEA procedural safeguards to the Parents until March 5, 2024, which has previously been determined to be a procedural violation of the IDEA, constituted a denial of FAPE to the Student

34. The District has the burden to prove by a preponderance of the evidence that its failure to provide the Parents with procedural safeguards until March 5, 2024, did not amount to a FAPE denial. As concluded above, Ms. Parent’s March 1, 2024 IEE request was an inartful attempt to escalate a referral for an initial evaluation to the District’s special services directors. The District Executive Director of Special Services admitted that she found the situation “confusing,” and it is quite reasonable to conclude that the Parents, who had no experience with special education, were also confused. Had Ms. Parent been provided with procedural safeguards prior to this point, she could have referred to the procedures and requirements for requesting an IEE and phrased her referral in a way that clearly stated her purpose. Moreover, the District relied on a strict interpretation of the IDEA procedures – which were only provided to Ms. Parent after she made her IEE request - when it determined that her March 1st email did not constitute a special education referral.

35. As determined above, the delay in evaluating the Student that ensued after the District declined to treat the March 1, 2024 email as a referral request constituted a denial of FAPE. For the same reasons, the failure to provide procedural safeguards to the Parents until March 5, 2024, also constituted a denial of FAPE.

Whether the Parents are entitled to remedies

36. Administrative Law Judges have broad latitude to grant relief and fashion equitable remedies appropriate for the denial of a FAPE. *School Committee of Burlington, Mass. v. Dept. of Education*, 471 U.S. 359, 370, 105 S. Ct. 1996 (1985); *Student W. v. Puyallup School Dist. No. 3*, 31 F.3d 1489, 1496 (9th Cir. 1994); *Forest Grove School Dist. v. T.A.*, 557 U.S. 230, 129 S. Ct. 2484, 2494 n. 11 (2009). To remedy a FAPE denial, a student is entitled to relief that is appropriate in light of the purposes of the IDEA. 20 U.S.C. § 1415(i)(2)(C)(iii); 34 C.F.R. § 300.516(c)(3). The purpose of the IDEA is to provide disabled students a FAPE that emphasizes special education and related services to meet their unique needs. *Burlington*, 471 U.S. at 374.

37. “Compensatory education” is an equitable remedy that seeks to make up for ‘educational services the child should have received in the first place,’ and ‘aim[s] to place disabled children in the same position they would have occupied but for the school district’s violations of the IDEA.’” *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011)(quoting *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005)). “Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” *Student W. v. Puyallup.*, 31 F.3d at 1497.

Compensatory education hours

38. Here, the Parents request an award of 945 hours of compensatory education for the Student in seven areas, including math and executive functioning. Parent’s Post Hearing Brief at 47. This request is not consistent with the conclusions of law, above, and the time period during which the Student was denied FAPE.

39. The Student’s current IEP provides for 180 minutes per week of SDI in reading, 60 minutes per week of SDI in social/emotional, and 120 minutes per week of SDI in written expression. It also calls for 30 minutes per week of OT, as well as 15 minutes per month of social/emotional check-in by phone with the Parents. The OT is provided by an occupational therapist, and all other services are provided by special education staff.

40. The District’s delay in evaluating the Student delayed the implementation of an IEP for her by approximately 20 school weeks. See D28. Given that the Student is at an important age for developing reading skills, as well as the severity of her learning disorders as diagnosed by Dr. Barta, it is appropriate to provide the Student with 1:1 compensatory education for the hours she missed due to

the delay in her evaluation. Therefore, 130 hours of compensatory education is awarded. This represents the 60 hours in reading, 20 hours in social/emotional, 40 hours in written expression, and 10 hours in OT that would have been provided by the IEP over 20 weeks.

41. This compensatory education shall be used in any instructional or related service areas the Parents see fit. It shall be delivered by providers of the Parents' choosing with an hourly rate cap of \$125.00 per hour, to be paid by the District. The compensatory education award must be fully used within 18 months of the date of this order.

Reimbursement for Dr. Barta's evaluation

42. The Parents paid Dr. Barta \$3485.00 for her evaluation of the Student. Had the District conducted a timely evaluation, Dr. Barta's evaluation likely would not have been necessary. This evaluation was the first evaluation the Student received, and it was a turning point. It was only after the Parents presented the District with Dr. Barta's evaluation report that the District agreed to go forward with an evaluation of the Student. It is therefore concluded that it is appropriate for the Parents to be reimbursed by the District for the cost of Dr. Barta's evaluation.

Reimbursement for private summer programs and tutoring

43. The Student attended camp during the summer of 2024 in order to receive support for her social skills. The Parents paid \$1254.00 for the camp. The Student also received academic tutoring over the summer at Student Success Center of Orting. The Parents paid \$200.53 for the tutoring. On August 22, 2024, the Student underwent a reading assessment at Sylvan Learning Insight. The Parents paid \$95 for this testing.

44. There is insufficient evidence to support the necessity of the summer camp or the Sylvan assessment, so reimbursement is not awarded for those expenses. However, the tutoring was clearly necessary given the Student's academic struggles, so it is appropriate for the Parents to be reimbursed by the District for the \$200.53 they paid for tutoring.

Reimbursement for sensory items

45. Access to fidgets is an accommodation in the Student's IEP. The Parents spent \$61.94 on chew items, fidgets, and chair wiggle feet for the Student's use

during first grade. It is appropriate for the Parents to be reimbursed by the District for this expense.

Other requested relief

46. The Parents request in their post-hearing brief that the Student's IEP be ordered revised to expressly require use of an evidence-based literacy program. Parents' Post Hearing Brief at 40-41. The appropriateness of the Student's IEP was not at issue in the hearing. No evidence was presented as to the type of reading SDI the Student is receiving or the effectiveness of that SDI. It would therefore be inappropriate for the ALJ to order that the IEP be revised. This requested relief is DENIED.

47. Any relief not awarded above is DENIED.

ORDER

1. The Sumner-Bonney Lake School District violated the IDEA and denied the Student FAPE as set forth above.
2. The District is ORDERED to provide the Parents with the relief specified in paragraphs 40, 41, 42, 44 and 45 above.

SERVED on the date of mailing.



Jacqueline H. Becker
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

Parents c/o Feeney Law Office PLLC & Mineiro Law PLLC	via E-mail nicholle@mlp-law.net jenna@feeneylaw.net
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Nicholle S. Mineiro Mineiro Law PLLC 2018 156th Avenue NE Building F, Suite 100 Bellevue, WA 98007	via E-mail nicholle@mlp-law.net
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Jenna E. Schuenemann Feeney Law Office, PLLC MacHunter Bldg 1177 Jadwin Ave., Ste. 104 Richland, WA 99352	via E-mail jenna@feeneylaw.net
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Karen Finigan Sumner-Bonney Lake School District 1202 Wood Ave Sumner, WA 98390	via E-mail karen_finigan@sumnersd.org
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Susan Winkelman Pacifica Law Group LLP 401 Union St., Suite 1600 Seattle, WA 98101	via E-mail susan.winkelman@pacificallawgroup.com grace.mcdonough@pacificallawgroup.com
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Dated June 12, 2025, at Olympia, Washington.

Lan Le

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

cc: Administrative Resource Services, OSPI