

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Lake Washington School District

Docket No. 12-2024-OSPI-02426

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2024-SE-0176

A due process hearing was held before Administrative Law Judge (ALJ) Courtney Beebe on April 7 and 8, 2025. The Parent of the Student whose education is at issue¹ appeared and represented herself. The Lake Washington School District (District) was represented by Carlos Chavez, attorney at law. Also present for the District was Deborah Wagner, Director of Special Education.

STATEMENT OF THE CASE

Procedural History

1. The Parent filed a due process hearing request on December 4, 2024. The District filed a response on December 16, 2024. The Parent filed a "Supplemental Letter" and Exhibits 1 through 22, on December 24, 2024. As per the December 5, 2024, Scheduling Notice, a prehearing conference was held on January 3, 2025. The First Prehearing Order was issued on January 7, 2025. The decision due date was extended to thirty (30) days after the close of the record.
2. On January 17, 2025, the District filed a Motion for Summary Judgment and Declaration of Deborah Wagner with Exhibits A, B, C, and D, in support. On January 24, 2025, the Parent filed a Response to the District's Motion for Summary Judgment and Declaration of Parent, incorporating Exhibits 1 through 22, filed on December 24, 2024, and adding Exhibits 23, 24, 25, and 26. On January 30, 2025, the District filed a Reply to the Parent's Response to the District's Motion for Summary Judgment.
3. On February 5, 2025, the assigned ALJ denied the District's motion in her Order on District's Motion for Summary Judgment. On February 13, 2025, the parties appeared for a second prehearing conference and a due process hearing was

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

scheduled for July 14 and 15, 2025. The Second Prehearing Order was issued on February 13, 2025.

4. To accommodate the Parent's request for a due process hearing at a date prior to July 2025, the matter was reassigned to ALJ Courtney E. Beebe. The parties appeared on March 6, 2025, for a prehearing conference and the due process hearing was scheduled for April 7 and 8, 2025. The Third Prehearing Order was issued on March 7, 2025. The parties' witness lists, exhibit lists, and exhibits were due to be filed by March 31, 2025, five (5) business days prior to the due process hearing.

5. On March 24, 2025, the Parent requested additional time to file her witness lists, exhibit lists, and exhibits because the District was not able to timely disclose some documents requested by the Parent. The District agreed to the Parent's request. The Parent's request was granted, and the parties' witness lists, exhibit lists, and exhibits were due by 5:00 p.m. on April 3, 2025. The parties timely filed their witness lists, exhibit lists, and exhibits. However, the Parent submitted Exhibit P30 on April 7, 2025.

6. The hearing commenced on April 7, 2025, and ended on April 8, 2025. The parties did not object to the admission of any of the exhibits. All exhibits were admitted. After testimony concluded, the District, on the record, renewed its motion for summary judgment, asserting that no genuine issue of material fact existed and the District was entitled to judgment as a matter of law. The Parent responded on the record by providing argument in opposition to the District's Motion. The record closed on April 8, 2025, after the parties provided verbal closing arguments on the record. The decision in this matter is due May 8, 2025.

EVIDENCE RELIED UPON

Exhibits Admitted:

District's Exhibits: D1, D2, D3, D4, D5, D6, D7, D8, and D9.

Parent's Exhibits: P1, P2, P3, P4, P5, P6, P7, P8, P9, P10, P11, P12, P13, P14, P15, P16, P17, P18, P19, P20, P21, P22, P23, P24, P25, P26, P27, P28, P29, and P30.

Witnesses Heard (in order of appearance): Parent, Meghan Ames, Deborah Wagner, and Keith Buechler.²

² The Parent identified four additional witnesses on her witness list, but these witnesses did not testify. (Tr., pp.216-217.)

ISSUES

1. The issues for the due process hearing are:
 - a. *Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:*
 - i. *Failing to properly address harassment, intimidation, and bullying of the Student after the start of the 2024-2025 school year, which adversely impacted the Student's social interactions, social skills development, participation in non-academic settings (WAC 392-172A-02065) and the collaboration and cooperation goals of her individualized education program (IEP); and*
 - ii. *Failing to provide the Student with transportation services under the Student's IEP when she transferred from Audubon Elementary School (AES) to Benajmin Franklin Elementary School (BFES);*
 - b. *And, whether the Parent is entitled to their requested remedies:*
 - i. *An order directing the District to provide the Student with transportation services to and from BFES; and*
 - ii. *Or other equitable remedies, as appropriate.*

FINDINGS OF FACT

The following findings of fact are entered based on the parties testimony and documentary evidence presented at the due process hearing as required by RCW 34.05.461. However, the relevant material facts of this case are entirely undisputed by the parties.

Student's March 6, 2024, IEP

1. During the 2023-2024 academic year, the [REDACTED] Student attended fourth grade at Audubon Elementary School (Audubon) in the District. (D1, p.1; Tr., p.46 (Parent).) The Student received a diagnoses of ADHD (Combined Presentation), Developmental Coordination Disorder, Auditory Processing Disorder, Other Specified Neurodevelopmental Disorder, and Oppositional Defiant Disorder (Moderate), in July /

August 2020. (D1, p.12.) The Student was evaluated on March 14, 2022, and determined eligible for special education services in the areas of reading, writing, math, vision, social / emotional, and behavior. (D1, pp.1-34.)

2. On March 6, 2024, the Student's Individualized Education Program (IEP) team met to discuss a proposed annual IEP for the Student. (D1, p.1; Tr., pp.37-38 (Parent); 70 (Ames).) The IEP team consisted of the following members: Meghan Ames, Principal; Monique Peckham, Counselor; Catherine Mueller, General Education Teacher; Rachel Ingalls, Special Education Teacher; Tia Vogtsberger; and the Parent. (D1, pp.1-3; Tr., pp.37-38 (Parent) 70 (Ames).)

3. The March 6, 2024, proposed IEP included twenty accommodations. (D1, p.19.) The Student also received vision support as a related service. (*Id.*) Also, the March 6, 2024, IEP provided for the following specially designed instruction (SDI):

Services 03/11/2024 - 03/05/2025							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Mathematics	Special Ed Teacher	Special Ed Teacher	30 Minutes / 4 Times Weekly	Special Education	03/11/2024	03/05/2025
No	Reading	Special Ed Teacher	Special Ed Teacher	20 Minutes / 4 Times Weekly	Special Education	03/11/2024	03/05/2025
No	Writing	Special Ed Teacher	Special Ed Teacher	20 Minutes / 4 Times Weekly	General Education	03/11/2024	03/05/2025
No	Behavior	Special Ed Teacher	Special Ed Teacher	15 Minutes / 3 Times Weekly	Special Education	03/11/2024	03/05/2025
No	Social / Emotional	Special Ed Teacher	Special Ed Teacher	15 Minutes / 3 Times Weekly	Special Education	03/11/2024	03/05/2025
Related							
No	Vision	Vision Specialist	Special Ed Teacher	30 Minutes / 1 Times Yearly	General Education	03/11/2024	03/05/2025
Total minutes per week of building instructional time available for this student (excluding lunch):				1735 minutes per week			
Total minutes per week student is served in a special education setting:				290 minutes per week			
Percent of time in general education setting:				83.29% in General Education Setting			

(D1, pp.21-22; Tr., pp.41-42 (Parent); 110-111 (Wagner).)

4. The IEP placed the Student in the general education setting for 83.29% of the week and the Student was able to "participate in all extra-curricular activities offered by the school." (*Id.*) The Student's SDI in the areas of social / emotional and behavior would be delivered in the special education environment, but as reflected in the Student's IEP goals, the Student had the opportunity to practice skill building in the general education setting. (Tr., pp.110-111 (Wagner).) Additionally, the Student's general and special teachers would collect data and observe the Student's progress in both the general and special education environments. (*Id.*)

5. The March 6, 2024, IEP also reflected that the Student would receive regular transportation from her home to Audubon and would attend general physical education. (*Id.*) The March 6, 2024, IEP did not require the District to provide the

Student with specialized transportation as a related service. (D1, p.22; Tr., pp.41-42 (Parent).)

6. In the area of social / emotional, as per the Student's previous IEP, she participated in a "small social group for 30 minutes, 3 times per week," and "focused on two goals in the area of social emotional skills, including flexibility with less-preferred adults and group / partner work." (D1, p.24; Tr., pp.110-111 (Wagner).) The Student progressed in "following directions from familiar adults," and showed "significant progress when working with preferred partners in her class and as a member of her social group." (D1, p.24.)

7. The Student continued to struggle with complying with requests from unfamiliar adults and larger group settings (3 or more other students) when working on classroom-based group projects. (*Id.*)

8. Accounting for the Student's present levels of performance, the IEP team proposed the following classroom-based goals for the Student in the area of social / emotional:

[Perspective Taking Goal]

By 03/05/2025, when given a situation that causes frustration in the general or special education setting [the Student] will demonstrate perspective taking skills improving social /emotional skills from demonstration perspective skills (e.g., verbalizing an understanding of others' feelings and thoughts, pausing for consideration, or self-reflection) on 0/5 opportunities to demonstrating perspective skills (e.g. verbalizing an understanding of others' feelings and thoughts, pausing for consideration, or self-reflection) on 4/5 opportunities as measured by teacher collected data.

[Group Collaboration Goal]

By 03/05/2025, when given an opportunity to collaborate on a group project (3+ people) [the Student] will use strategies to complete a group project improving social / emotional skills from actively participating in group tasks including contributing to brainstorming sessions, sharing responsibilities, listening to the ideas of others, and working collaboratively to achieve a common goal (which may include agreeing to disagree and moving on) on 0/5 opportunities to actively participating in group tasks including contributing to brainstorming sessions, sharing responsibilities, listening to the ideas of others, and working

collaboratively to achieve a common goal (which may include agreeing to disagree and moving on) on 4/5 opportunities as measured by teacher collected data.

(D1, pp.13-14; Tr., pp.109-112 (Wagner).)

In the area of behavior, as per the Student's previous IEP, the Student worked on two goals: 1) initiating tasks within one minute of direction or prompting by the general education teacher, and 2) when given direction or feedback from a teacher or adult, the Student would give a respectful, non-argumentative response. (D1, p.14.) The Student progressed in these areas, but the IEP team determined that continued focus on "attending to non-preferred tasks in the general and special education setting, including her ability to focus, pay attention, and actively engage in a task or activity" was necessary. (D1, pp.13-14; Tr., pp.109-112 (Wagner).)

9. The IEP team proposed the following goal for the Student in the area of behavior:

By 03/05/2025, when given an unpreferred academic or social activity in the general education or special education setting [the Student] will maintain focus, listen, and actively participate in the learning activities improving attending skills from maintaining focus, listening, and actively engaging in the learning activities (including active listening, following directions, participation, respecting others, and task completion), 2/5 opportunities to maintaining focus, listening, and actively engaging in the learning activities (including active listening, following directions, participation, respecting others, and task completion) 4/5 opportunities as measured by teacher collected data.

(D1, p.15.)

10. During the March 6, 2024, IEP team meeting the Parent did not request that the Student receive specialized transportation from the Student's home to Audubon Elementary School. (Tr., p.42 (Parent).) Also, at the March 6, 2024, IEP meeting, the Parent did not raise concerns about the Student receiving special education services due to harassment, intimidation, or bullying by other Audubon students. (Tr., pp.39-40 (Parent).)

11. The IEP team, including the Parent, signed the IEP on March 6, 2024. (D1, p.1; Tr., pp.37-38 (Parent); 70 (Ames).) The District issued a Prior Written Notice (PWN) on March 11, 2024, proposing to initiate the March 6, 2024, IEP on March 11, 2024. (D1, p.24.)

Harassment, Intimidation, and Bullying Complaint and Investigation

12. On February 23, 2024, prior to the development of the Student's March 5, 2024, IEP, the Parent filed a "Harassment, Intimidation, and Bullying Complaint" (Parent's HIB Complaint). (P8; Tr., pp.145-150 (Parent).) The Parent alleged that other students at Audubon had engaged in "hitting, kicking, shoving, spitting, hair pulling, or throwing something at the student," "excluding or rejecting the student," and spreading harmful rumors or gossip about the student," in violation of the District's HIB Policies 3207 & 3207P. (*Id.*) The allegations involved a number of students, but one student, A.B.A., was consistently involved in the events. (*Id.*)

13. The seminal event occurred on February 22, 2024, when A.B.A. and the Student were playing tag at recess and a verbal altercation occurred that resulted in A.B.A. pushing the Student. (*Id.*)

14. On March 2 and 3, 2024, four HIB Complaints were filed against the Student by the parents of other students (including A.B.A.'s parent), and one HIB Complaint was filed against the Parent. (P12; Tr., pp.154-158 (Parent).) The complaints alleged that the Student was "extremely aggressive and hostile during hide and seek," "intimidated other students," "engaged in loud outbursts and exaggerated emotions," "engaged in cyberbullying," and that the Parent harassed the school's Israeli community. (*Id.*)

15. The District initiated an investigation into all the HIB complaints. Regarding the HIB Complaint filed by the Parent, the investigation resulted in findings that there was insufficient evidence regarding two allegations, but sufficient evidence that a "violation of school and playground expectations occurred (related to playground safety and school safety)" on February 22, 2024. (P13, P15, P17; Tr., pp.78-79 (Ames); 157-160 (Parent).) However, the District concluded that the playground incident did not violate HIB Policies 3207 & 3207P. (*Id.*)

16. The findings and conclusions were set forth in a letter dated April 10, 2024 (HIB Investigation Letter). (*Id.*) The Parent appealed the determination on April 19, 2024, and on May 7, 2024, the District's HIB Coordinator, Johnny Phu, issued a decision supporting the District's April 10, 2024, letter (HIB Coordinator Letter). (P19; Tr., pp.179-183 (Parent).) The Parent did not appeal the May 7, 2024, HIB Coordinator Letter. (Tr., p.182-184 (Parent).)

17. The April 10, 2024, letter recommended that the "students shall be distanced and separated from regular / frequent interaction through having assigned seats away from each other. Additionally, the current separation plan at recess shall be

maintained with each student being assigned to different zones for the remainder of the year.” (P15, p.1; Tr., pp.158-163 (Parent).)

18. To address the recess playground conflict between A.B.A. and the Student and to prevent future negative interactions, the District implemented an informal agreement that A.B.A. and the Student would remain physically separated during recess (Separation Plan). (P9, P19; Tr., pp.73-74, 79-81, 85-88 (Ames); 140-150, 179-181 (Parent).) To develop the plan, the associate principal asked A.B.A. and the Student to identify “preferred play areas” on the playground, and each student was assigned to remain in their selected area during recess and directed to not interact. (*Id.*) The Student had full access to recess and “lots of cooperative activities on the playground.” (Tr., p.113 (Wagner).)

19. The Parent disagreed with the terms of the Separation Plan because it appeared that A.B.A.’s assigned playground area was preferential in comparison to the Student’s assigned playground area. (P15, p.3; Tr., pp.88-89 (Ames); 140-145, 180-182 (Parent).) The Parent believed that the Student’s playground area did not include access to group games. (*Id.*) As per the Parent’s request, the District also gave the Student the option to spend recess at the school office where she could ask a classmate to join her and use a laptop for activities. (P10; P11; Tr., pp.92-93 (Ames); 140-145 (Parent).) The Student occasionally selected this option. (Tr., p.188 (Parent).)

20. A.B.A. did not attend special education classes with the Student. (Tr., pp.62-63 (Parent); 79-80 (Ames).) A.B.A. was a member of the Student’s general education class, but the general education teacher did not partner A.B.A. and the Student in the same groups for activities and projects, and the students were seated away from each other. (*Id.*) The Student and A.B.A. rode the same school bus to and from school without any negative interactions and without a separation plan. (Tr., pp.194-196 (Parent).) Even so, the Parent moved the Student to another classroom towards the end of the 2023-2024 school year (Tr., p.46.)

21. Ms. Ames did not receive any reports from the Student that she was suffering social or emotional difficulties as a result of the implementation of the Separation Plan during recess. (Tr., pp.91-92 (Ames).)

September 12, 2024, Student In-District Variance Request

22. The 2024-2025 academic year began on Tuesday, September 3, 2024. (D9, p.1; Tr., pp.72-75 (Ames).) The Student attended school on September 3, 4, 5, and 6, 2024. (D2, pp.1-3; Tr., pp.41-44, 140-142 (Parent); 72-76, 97-99 (Ames).) During recess periods on September 3, 4, and 5, 2024, the Student remained in her preferred

area as per the Separation Plan, but on Friday, September 6, 2024, during recess the Student accessed a different part of the playground in contravention of the Separation Plan. (*Id.*) Ms. Ames reminded the Student that the Separation Plan from 2023-2024 remained in effect and the Student should follow the Separation Plan. (*Id.*) This is the first time during the 2024-2025 academic year that the Student was informed that the Separation Plan remained in place. (*Id.*)

23. On Monday, September 9, 2024, the Parent emailed Ms. Ames asking about why the Separation Plan continued after the end of the 2023-2024 academic year. (D2, pp.1-3; Tr., pp.43-45, 140-142 (Parent); 72-76 (Ames).) The same morning, Ms. Ames responded via email and confirmed that she had informed the Student that the Separation Plan from the 2023-2024 academic year remained in place until the parents of all the students involved agreed to discontinue it. (*Id.*)

24. The Parent disagreed with the continuation of the Separation Plan because she believed that A.B.A. received preferential play spaces and the Student could not access all available group games from her assigned playground space. (Tr., pp.46-48, 140-143 (Parent).) Ms. Ames understood from A.B.A.'s parents that they wanted the Separation Plan to remain in place. (Tr. pp.97-98 (Ames).)

25. On September 11, 2024, during recess the Student left her assigned part of the playground in contravention of the Separation Plan, and went with another student to an area called the "sand-pit." (D2, p.2; P27; Tr., pp.43-45, 140-142, 190-192 (Parent); 73-77 (Ames).) While at the sandpit, A.B.A. approached the Student and yelled at the Student to leave because that was not her assigned playground space. (*Id.*) The Student refused to leave, and A.B.A. grabbed the Student by her sweatshirt sleeves, and pulled her across the playground to her assigned area. (*Id.*) Ms. Ames reported the incident to the Parent. (*Id.*)

26. On September 12, 2024, the Parent completed an "In-District Variance Request Form" (Variance Request) seeking to transfer the Student to Benjamin Franklin Elementary School (BFES) in the District. (D3, pp.1-2; Tr., pp.45-48 (Parent).) The Parent requested that the transfer occur on September 16, 2024. (*Id.*) This form includes the following language:

I understand and agree that if this In-District Variance Request is granted, I assume all responsibility for my student's transportation to and from school and that my student will continue to meet the school's attendance expectations and behavior expectations as set forth in the school's student handbook . . .

(D3, p.1; Tr., pp.47-48 (Parent).) The Parent signed the Variance Request understanding that the Parent would be responsible for transporting the Student to BFES. (*Id.*)

27. Ms. Ames signed the Variance Request, acknowledging receipt, on September 12, 2024. (D3, p.2; Tr., pp.76-78 (Ames).) Mr. Buechler, principal at BFES, received the Variance Request on September 12, 2024, and signed the document that same day. (D3, p.2; Tr., pp.122-123 (Buechler).) When he signed the document, Mr. Buechler noted that the Student's transfer to BFES was "approved with the following conditions: . . . Provide your own transportation." (*Id.*) The Student transferred to BFES on September 17, 2024. (D4, p.1; Tr., pp.48-50 (Parent).)

28. The Parent requested an IEP team meeting with the BFES staff. (D4, p.3; Tr., pp.50-52 (Parent).) The Parent requested the meeting because she desired to add two items to the Student's IEP: 1) adding specialized bus transportation for the Student between her home and BFES, and 2) adding a provision that required the District to allow the Parent to chaperone all of the Student's field trips. (*Id.*) The Parent did not seek to discuss the Student's progress towards her IEP goals or otherwise assert the Student did not receive the benefit of the special education services delivered by the District at Audubon or BFES. (Tr., pp.50-53 (Parent).)

29. The IEP team met on October 2, 2024, and the Parent attended with an attorney. (P2, p.1; Tr., pp.50-51 (Parent); 106-110 (Wagner).) The District declined to initiate either of the Parent's requests. (D4, p.3; P2, p.1; Tr., pp.50-52 (Parent); 127-128 (Buechler).) In regard to the request for the Parent to participate as a chaperone on field trips, the District denied the Parent's request because she had lost her voluntary status districtwide because she incited conflict and was trespassed from District property. (P21, pp.1-2; Tr., pp.116-117 (Wagner).)

30. As to the request for specialized transportation, the District declined to add specialized transportation to the Student's IEP but offered to include the Student in regular bus transportation if there was already an established bus route between the Student's residence and BFES. (*Id.*) The District later confirmed that there was not an established bus route between the Student's residence and BFES. (D4, p.3; P2, p.1; Tr., pp.50-52 (Parent); 127-128 (Buechler).)

31. On October 3, 2024, the District issued a PWN rejecting the Parent's requests and implemented the March 6, 2024, IEP at BFES without any changes. (*Id.*) On October 16, 2024, the Parent emailed the other members of the Student's IEP team to respond to the content of the October 3, 2024, PWN. (P2, p.1; Tr., pp.50-52 (Parent).)

32. The Parent filed the due process hearing request in this matter on December 4, 2024.

Progress Reports, March 5, 2025, Reevaluation, and March 5, 2025, IEP

33. The Student's progress towards the social / emotional and behavior goals in the March 6, 2024, IEP was documented on June 12, 2024, and January 15, 2025. (D5, pp.3-5; Tr., pp.54-56, 152-155 (Parent).) In the area of behavior, the Student made "sufficient progress":

January 2025: [the Student] has had a great transition to [BFES]. In the classroom, she is participating in non-preferred activities in at least 3 out of 5 opportunities. [The Student] consistently listens and participates in group discussions and groupwork. For written work, [the Student] benefits from having choice over the order work must be completed (Must Do/May Dos), clear expectations, flexible seating and non-confrontational check-ins. [The Student] frequently refuses to join small group Math and SEL. If forced, she will not participate/engage in activities. [The Student] benefits from push-in support with adults she has strong relationships with.

June 2024 [at Audubon]: [The Student] currently maintains focus, listens, and actively engages in unpreferred activities 50% of the time. When engaged and interested, [the Student] demonstrates effective attention, participation, and respect for others. This shows that she has the capacity for focus and engagement but struggles to apply these skills consistently to tasks she finds uninteresting.

The IEP team will continue to explore ways to make unpreferred activities more engaging for [the Student] by connecting them to her interests or offering choices within tasks.

(Id.)

34. In the area of social / emotional, the Student made "sufficient progress" towards the "perspective taking goal":

January 2025: [The Student] does not regularly attend our end of day Social Group, but in the classroom and at recess, I have observed her perspective-taking skills. When she is frustrated, [the Student] does a great job of seeking out trusted adults to support her problem solving

(Ms. O'Brien, Mr. Dooley, Mrs. Edwards, Ms. Kareth). [The Student] identifies her feelings and demonstrates perspective taking skills at least 66% of the time. When frustrated or feels that something is unfair, she at times can seem argumentative, but she is more 'fact finding.' Once she understands the rationale behind the decision, she goes along with the plan. As she has adjusted to [BFES], her incidents of feeling frustrated in group projects, recess problems and frustration due to workload have consistently declined.

June 2024 (Allison Jarvis) [at Audubon]:

[The Student] has been participating in a Social Group for the 23/24 school year. Currently, when given a situation that causes frustration in the Social Group environment, [the Student] demonstrates her perspective-taking skills in various ways including verbalizing an understanding of others' feelings and thoughts, pausing for consideration, and/or self-reflection on 3/5 opportunities. [The Student] has made a lot of progress in this area. An upsetting situation used to immediately stop her participation in group, but she is able to return to the task after a frustrating situation.

(Id.)

35. Also, in the area of social / emotional, the Student made “progress” towards her “group collaboration” goal through June 2024, and “sufficient progress” through January 15, 2025:

January 2025 [BFES]: [The Student] is consistently demonstrating group collaboration skills in class with a variety of peers in at least 4/5 opportunities. [The Student] is consistently participating in groups and when something doesn't go her way, she is negotiating with peers to solve the problem, accepting help from peers and rejoining the group if peers seek her out. Her attention does sometimes affect her overall participation in groups. All in all, [the Student] is doing a great job with group projects!

June 2024 (Allison Jarvis) [Audubon]:

Currently, when given an opportunity to collaborate on a group project in Social Group, [the Student] uses strategies to complete the group project on 2/5 opportunities - including contributing to brainstorming sessions, sharing responsibilities, listening to the ideas of others, and working collaboratively to achieve a common goal (which may include

agreeing to disagree and moving on). She listens to others' ideas, but rarely independently chooses someone else's idea if she has her own. [The Student] does best when in a leadership role. She is a very strong leader and participates best when given the opportunity to start the project. She has gotten better at agreeing to disagree but is still working on rejoining the group and activity after a frustrating situation, especially when her idea is not selected. [The Student]'s 4th grade teacher reports that she has been an active participant in her Oregon Trail wagon train. She has shown progress in collaborating with her team and listening to the ideas of [others].

(*Id.*)

36. The District conducted a triennial reevaluation of the Student and completed the reevaluation report on March 5, 2025 (Reevaluation). (D6, pp.1-39; Tr., pp.57-59 (Parent).) The March 5, 2025, Reevaluation team determined that the Student continued to qualify for special education services in the areas of executive functioning and social / emotional development, “particularly in areas such as sustained attention and effort, planning and organizing her approach to tasks, flexible problem-solving, and accepting constructive feedback.” (D6, p.6; Tr., pp.57-59 (Parent).)

37. The Reevaluation team recommended that the IEP team develop social emotional goals “focused on improving her ability to ask for help when needed, accept constructive feedback, and develop and maintain relationships.” (D6, p.7; Tr., pp.57-59 (Parent).)

38. The Reevaluation team also recommended changing the “behavior” category to “organization” because it more accurately describes the Student’s executive functioning challenges when performing writing tasks. (D6, p.6; Tr., pp.57-59 (Parent).) The Reevaluation team recommended that the IEP team develop a goal “focused on improving her ability to initiate and complete academic tasks, persist through tasks that are challenging or of low interest, and apply planning and organizational strategies to complete academic tasks, particularly in the writing process.” (D6, p.7; Tr., pp.57-59 (Parent).) The Reevaluation team determined that the Student no longer qualified for SDI in the areas of behavior or writing. (*Id.*)

39. The Student’s IEP team drafted a proposed IEP on March 5, 2025, and held a meeting on the same date to review the document. (D7, pp.1-22; Tr., pp.57-59 (Parent); 124-125 (Buechler).) The Student’s IEP team included the following members: Keith Buechler, Principal; Stacey O’Brien, Counselor; Ian Dooley, General

Education Teacher; the Parent; the Student; Christina Meehan, School Psychologist; and Mallory Edwards, Special Education Teacher. (D7, p.3; Tr., pp.57-59 (Parent).)

40. Based on the March 5, 2025, Reevaluation and the Student's progress reports, the Student's present levels of performance reflected that she had made "sufficient progress" towards the "perspective taking" social / emotional goal in the March 6, 2024, IEP. (D7, p.7; Tr., pp.124-126 (Buechler).) Also, the Student's present levels of performance reflected that she had met the "group collaboration" social / emotional goal in the March 6, 2024, IEP. (*Id.*) The Student's IEP team, including the Parent, created the social / emotional goals of "self-advocacy" and an "accepting feedback" in the March 5, 2025, IEP. (D7, pp.7-8.)

41. The Student's IEP team reviewed the recommendations from the March 5, 2025, Reevaluation and the Student's progress data in the area of behavior and concluded that the Student had met her behavior goal in the March 6, 2024, IEP. (D7, p.10.) The Student's IEP team created two goals in the area of organization that addressed the Student's executive functioning needs when performing writing tasks. (D7, pp.10-11.)

42. The proposed March 5, 2025, IEP included regular transportation, and did not include specialized transportation. (D7, p.17; Tr., pp.58-59 (Parent); 126-128 (Buechler).) The Parent, who attended the meeting and participated in the development of the March 5, 2025, IEP, did not request to include specialized transportation. (*Id.*)

43. All members of the Student's IEP team signed the March 5, 2025, IEP, including the Parent and the Student. (D7, p.22; Tr., pp.57-59 (Parent).) The District issued a PWN on March 6, 2025, proposing to initiate the March 5, 2025, IEP on March 10, 2025.

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

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

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

(I) impeded the child’s right to a free appropriate public education;

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

(III) caused a deprivation of educational benefits.

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

The District has Shown that this Tribunal Lacks Jurisdiction to Determine Whether the District “Failed to Properly Address [HIB] of the Student after the Start of the 2024-2025 School Year” or During the 2023-2024 Academic Year (Issue a.i.)

6. The District asserts that the Office of Superintendent of Public Instruction (OSPI) has not delegated to the Office of Administrative Hearings (OAH) jurisdiction to conduct hearings regarding the Parent’s claims in Issue a.i., specifically whether HIB occurred and whether the District appropriately addressed the alleged HIB events.

7. The Parent asserts that the HIB events on September 11, 2024, the events that are the subject of her February 23, 2024, HIB Complaint, and the resulting Separation Plan prevented the Student from accessing her special education services at Audubon, and therefore OAH has jurisdiction to hear her claims.

8. OSPI has delegated authority to OAH to hear a number of administrative proceedings, including IDEA claims. WAC 392-101-010; RCW 39.05. Specifically, OAH conducts hearings regarding complaints that relate to the identification, evaluation, or educational placement of the child, or the provision of FAPE under the IDEA. 20 U.S.C. § 1415 (b)(6). OSPI has not delegated to OAH any authority to review the findings or conclusions of a school district’s HIB investigation, evaluate a school district’s HIB policy / procedure, address a parents’ claims that a student violated a school district’s HIB policy, or review the District’s response to an HIB event or claim. The District is also correct that OAH cannot review general education student discipline that do not result in a change of placement as per a Student’s IEP. WAC 392-172A-05145(2) (special education students are subject to the same discipline procedures for code of conduct violations as general education students, so long as application of procedures does not change a student’s placement).

9. Part of Issue a.i is “whether the District failed to properly address harassment, intimidation, and bullying of the Student after the start of the 2024-2025 school year.” The record shows that by raising this issue, the Parent challenges 1) the continued use of the Separation Plan beginning in 2024-2025, and 2) the District’s response to the altercation between A.B.A. and the Student on September 11, 2024. Further review of the record reflects that the Parent is also expanding the time period of Issue a.i to include the events of the 2023-2024 academic year. The testimony of the Parent and the evidence she presented reflects that she is attempting to appeal the findings and conclusions of District’s April 10, 2024, HIB Investigation Letter, and May 7, 2024, HIB Coordinator’s Letter.

10. Unfortunately, this tribunal has no authority to address the Parent’s claims regarding 1) whether the District properly addressed the Parent’s February 22, 2024,

HIB Complaint, 2) whether the April 10, 2024, HIB Investigation Letter and May 7, 2024, HIB Coordinator's Letter were proper or valid, 3) whether the Separation Plan was an appropriate response to the HIB claims and /or should have been implemented at the start of the 2024-2025 academic year, or 4) whether the District properly addressed the altercation on September 11, 2024.

11. Given the plain text of the issue presented by the Parent and the evidence in the record, it is concluded that this tribunal lacks jurisdiction to address the first portion of the Parent's claim in Issue a.i. This portion of the Parent's claim in Issue a.i. must be dismissed.

The Student was Not Deprived of the Educational Benefit of the March 6, 2024, IEP in the General Education and Special Education Environments During the Period of March 6, 2024, to March 5, 2025.

12. In Issue a.i., the Parent also makes the following assertion: "...which adversely impacted the Student's social interactions, social skills development, participation in non-academic settings (WAC 392-172A-02065) and the collaboration and cooperation goals of her individualized education program (IEP)."

13. During the due process hearing, the Parent explained that the implementation of the Separation Plan in the Spring of 2024 prevented the Student from accessing her special education services because she could not practice group collaboration skills in the general education environment (the playground during recess). Essentially, the Parent is asserting that the Student's March 6, 2024, IEP's social / emotional goal of learning group collaboration skills, and because the Student could not participate in group collaboration in all areas of the playground during recess at Audubon, the Student could not practice her group collaboration skills and advance towards the goal.

14. The Parent also presented an argument that the implementation of the Separation Plan at the beginning of the 2024-2025 academic year caused the altercation between A.B.A. and the Student on September 11, 2024, and as a result, the Parent was required to transfer the Student to BFES. The thrust of this argument is that the Student was not able to access or benefit from her special education services at Audubon because of the Separation Plan and the District's response to the September 11, 2024, altercation.

15. Throughout the hearing the District responded that the Parent is expanding Issue a.i. beyond its plain language and conflating the Student's access to and benefit from special education services with the HIB investigatory and response process and the voluntary choice transfer process.

16. A party requesting a due process hearing may not raise issues during a due process hearing that were not raised in the complaint unless the other party agrees. WAC 392-172A-05100(3); 20 U.S.C. § 1415(f)(3)(B). “Administrative and judicial review in IDEA cases is specifically limited to the issues raised in the due process complaint, unless the parties agree otherwise.” *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 *34-35 (W.D. Wash. May 8, 2019), *aff’d sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022) (upholding ALJ’s refusal to address claims raised for first time in post-hearing brief where Parents cited no evidence that parties agreed to expand scope of due process hearing).

17. This is consistent with Washington administrative law requiring that a notice of hearing includes a statement of the issues (RCW 34.05.434) and that prehearing orders identify all issues and provide an opportunity to object. WAC 10-80-130. An exception to this rule is when an issue was actually tried by the parties at an administrative hearing. *M.C. v. Antelope Valley Union High School Dist.*, 858 F.3d at 1196; *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 *15-16 (E.D. Cal. Mar. 7, 2019), *aff’d* 810 Fed. Appx. 588 (9th Cir. 2020); see also *Issaquah Sch. Dist.*, at *37 (holding that parents failed to show any of claims not considered by ALJ were tried by consent, contrasting with Antelope Valley: “[b]oth sides in Antelope Valley ‘presented extensive evidence,’ including witness testimony, regarding the omitted claim”).

18. The District did not affirmatively agree to any expansion of Issue a.i, and a review of the record shows that the District repeatedly objected to the Parent’s testimony and evidence that expanded the scope of Issue a.i. Thus, it cannot be said that the exception identified in WAC 392-172A-05100(3) applies to this case.

19. Regardless, the Parent did make a direct assertion about the Student’s access to and benefit from special education services in the text of Issue a.i. Further, the Parent was provided with an extensive opportunity to present testimony about the Student’s access to special education services, how the Student benefited from those services, and all of her exhibits were admitted into the record, regardless of whether the testimony or documents were relevant to Issue a.i.

20. The District was also given the opportunity to present evidence and testimony regarding the Student’s access to special education services and goals, and the Student’s progress.

21. Given that both parties presented testimony and evidence regarding whether the Student accessed and benefitted from her special education services, it is concluded that the parties actually tried the following issue:

Whether the Student was deprived of the educational benefit of the March 6, 2024, IEP in the general education and special education environments between March 6, 2024, and March 5, 2025, because of the implementation of the Separation Plan.

22. Case law reflects that administrative tribunals do not address the issue of whether HIB occurred, but where the District's response or lack of response to alleged HIB events impacted the Student's ability to access and benefit from their special education. In *M.L v. Federal Way Sch. Dist.*, 394 F.3d 634 (9th Cir. 2015), the U.S. Court of Appeals for the Ninth Circuit determined that the student at issue in the appeal was not denied FAPE when his classroom teacher failed to stop classmates from teasing him. The court determined there was no evidence that the teasing affected the student's special education services and concluded the teasing did not result in the loss of educational benefit. The court rejected the parents' argument that unaddressed teasing was "potentially dangerous" because it could escalate to physical abuse that the student's limited verbal skills would prevent him from reporting. *Id.* at 651. In discussing the issue, the court cited with approval authority holding that HIB must be so severe and the school district's response so inadequate that it effectively bars the victim's access to an educational opportunity before it amounts to a denial of FAPE. *Id.* at 650-51.

23. Here, the District did not ignore the conflict between the Student and A.B.A., but instead immediately responded to the two incidents of mutually aggressive behavior. on the playground on February 22, 2024, by putting in place the Separation Plan. Thereafter, it appears that the Student and A.B.A. were able to access and benefit from their general and special education environments until September 11, 2024.

24. The record shows that the Student attended her special education class and received social / emotional SDI and worked on the classroom-based group collaboration goal. The Separation Plan was not in place in the special education environment because A.B.A. did not attend this class with the Student. The record does not show that the Student missed any special education classes or services at all, much less as a result of the Separation Plan.

25. Further, while the Separation Plan was in place the general education environment the record shows that the Student had ample opportunities to, and actually did, engage in group collaboration in the classroom, at lunch, in the school office, and in her area of the playground. The Student, then, accessed and benefitted from the educational environment and was able to work on the classroom-based group collaboration goal. Finally, the June 12, 2024, and January 15, 2024, progress reports reflect that the Student "sufficiently progressed" or "progressed" towards her social /

emotional and behavior goals between March 6, 2024, and March 5, 2025. The Parent's concerns about the Student's situation with A.B.A. are valid, but the evidence does not support a conclusion that the District did not address the conflict or that the Student lost any special education access or benefit.

26. Certainly, the altercation between the Student and A.B.A. on September 11, 2024, is a cause for concern and the result of the Separation Plan, i.e. the Student did not comply with the Separation Plan and A.B.A. engaged in another act of aggressive and physically abusive behavior. However, the District did not have an opportunity to address the September 11, 2024, altercation, and the Parent exercised her right to school choice by removing the Student on September 12, 2024. Because the Student did not remain at Audubon, and the evidence shows that BFES implemented the Student's March 6, 2024, IEP, starting on September 17, 2024, and again on March 5, 2025, it cannot be concluded that the Student could not access or benefit from special education services while at BFES.

27. Based on the arguments of the parties, the record available, and the issues presented, it is concluded that the District has carried its burden and has shown that the Student the Student accessed her special education program and received the benefits of special education services between March 6, 2024, and March 5, 2025.

The District has Shown that the Student Does Not Require the Related Service of Specialized Transportation to Attend BFES.

28. The Parent has not alleged that the District had an obligation to provide the related service of specialized transportation during the 2023-2024 academic year or between September 3 and September 16, 2024, when the Student attended Audubon. The Parent has not asserted that the March 6, 2024, IEP should have included specialized transportation until she made the request on October 2, 2024. The Parent testified that she believed that the District should have amended the Student's March 6, 2024, IEP to include the related service of specialized transportation beginning October 2, 2024, because she was forced to transfer the Student to BFES for "safety reasons." The Parent also asserts that the March 5, 2025, IEP should have included specialized transportation.

29. The District argues that neither the Student's March 6, 2024, IEP or March 5, 2025, IEPs on their face require the District to provide the Student with specialized transportation. The District also asserts that the fact that the Student receives special education services at BFES does not alter the District's policy that parents who voluntarily transfer a student to a choice school are responsible for the student's transportation to and from BFES.

30. “Related services means transportation . . . required to assist a student eligible for special education services to benefit from special education services . . .” WAC 392-172A-01160. “Transportation” is defined by WAC 392-172A-02095(1) as:

Transportation options for students eligible for special education services shall include the following categories and shall be exercised in the following sequence:

- (a) A scheduled school bus;*
- (b) Contracted transportation, including public transportation;
and*
- (c) Other transportation arrangements, including that provided
by parents . . .*

31. The IDEA defines transportation as:

- i. travel to and from school and between schools;*
- ii. transportation in and around school buildings; and*
- iii. specialized equipment (such as adapted buses, lifts, and
ramps), if required to provide transportation for a child with
a disability.*

(34 C.F.R. § 300.34(c)(16) (2006).) Decisions regarding such services are left to the discretion of the IEP team. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46576 (August 14, 2006).)

32. The case of *Long Beach Unified School District*, 123 LRP 7809 (February 24, 2023), is instructive. In that case, a California student with autism, emotional disturbance, and the need for a one-to-one aide required specialized transportation to access in-person instruction at his middle school because his anxiety and maladaptive behaviors required support and supervision during transport. (*Id.*) The school district and the parent verbally agreed that the student required specialized transportation, but the related service was not memorialized in the student’s IEP. (*Id.*) The school district provided the student with curb-to-curb transportation while he attended middle school. (*Id.*)

33. However, the student voluntarily chose to transfer to a high school that was not his school of residence. (*Id.*). The school district asserted that under its general district

transportation policy, the school district was not required to provide the student with specialized transportation to a non-residential, choice school unless the student's IEP specifically required specialized transportation. (*Id.*)

34. The student prevailed before the ALJ in that case because, even though the student voluntarily enrolled in a choice school and the related service of specialized transportation was not memorialized in the student's IEP, there was sufficient extrinsic evidence presented that the student's anxiety and maladaptive behaviors prevented him from accessing his special education program without specialized transportation. (*Id.*) The ALJ in that case relied heavily on the fact that the parties had verbally agreed that specialized transportation was necessary for the student during middle school, even though it was not memorialized in the student's IEP. (*Id.*)

35. Like the student in *Long Beach*, it is undisputed that the Student's March 6, 2024, IEP and March 5, 2025, IEP do not specify that the Student must receive the related service of specialized transportation. Also like the student in *Long Beach*, it is undisputed that the Student attends BFES by choice and that BFES is not the Student's neighborhood school. Lastly, like the Student in *Long Beach*, it is undisputed that the District's policy only requires the District to provide transportation to a student's neighborhood school for general education, and does not allow for transportation to a nonresident, choice school. Further, the Parent admitted and the documentary evidence shows that the Parent was informed on the Variance Form that she was obligated to provide transportation for the Student to and from BFES.

36. Based solely on the limited inquiry of the District's transportation policy, the Parent's voluntary transfer of the Student, and the specific provisions of the Student's March 6, 2024, and March 5, 2025, IEPs, it could be concluded that the Student in this case is not entitled to the related service of specialized transportation.

37. However, the Parent did make a request for specialized transportation on October 2, 2024, based on a change of circumstances. This change of circumstances, i.e. the transfer of the Student to BFES, requires the tribunal to evaluate all the evidence, including extrinsic evidence, and determine whether specialized transportation became necessary for the Student to access her special education program when she transferred to BFES.

38. The issue here, then, is whether there is sufficient evidence beyond the District's policies and the March 6, 2024, and March 5, 2025, IEPs, that the Student's disability manifests in such a way that the act of transporting the Student to BFES, where special education programming is implemented, requires the related service of specialized transportation.

39. The Parent was provided with the opportunity to meet with the BFES IEP team and to fully participate by discussing the issue of transportation at the October 2, 2024, IEP meeting. Unfortunately, there is no evidence in the record or from the October 2, 2024, IEP meeting that the Student's disabilities manifest in a way that obstructs the Parent from transporting the Student to BFES for special education programming. On the contrary, the Parent successfully transports the Student to BFES on a regular basis. Also, the Parent testified that the Student successfully rode the regular school bus to and from Audubon and did not require any specialized transportation. Unlike the Student in *Long Beach*, then, there is no extrinsic evidence that the Student's IEP team recommended specialized transportation, or that the Student's disability manifests in such a way that she requires specialized transportation.

40. The Parent's difficult choice to transfer the Student is understandable given the circumstances of September 11, 2024, and the tribunal recognizes the difficulties that the added burden of transporting the Student to BFES creates. However, as described above, the District was able to successfully serve the Student at Audubon and the Parent's choice to transfer the Student was voluntary.

41. Given the record available and the circumstances presented, then, it is concluded that the District has carried its burden and has shown that it was not obligated to provide the Student with the related service of specialized transportation in the Student's March 6, 2024, or March 5, 2025, IEPs as per the Parent's October 2, 2024, request.

Requested Remedies

42. The Parent requests entry of an order directing the District to provide the Student with specialized transportation services to and from her home to BFES. Because the Parent did not prevail on her claims, there is no basis to award the Student specialized transportation as a related service. As a result, the Parent's request for relief is denied.

ORDER

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

1. This Tribunal lacks jurisdiction to address the first portion of the Parent's claim in Issue a.i regarding the alleged HIB events of February 23, 2024, and September 11,

2024, and the District's investigation of and response to those events. This portion of the Parent's claims in Issue a.i is DISMISSED for lack of jurisdiction.

2. The District has met its burden and shown that it did not violate the IDEA or deny the Student a FAPE by depriving the Student of an educational benefit of her March 6, 2024, IEP, between March 6, 2024, and March 5, 2025.

3. The District has met its burden and has shown that the District is not required to provide the Student with the related service of specialized transportation beginning October 2, 2024.

4. The Parent is not entitled to her requested remedies.

SERVED on the date of mailing.



Courtney Beebe
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Legal Services, PO Box 47200, Olympia, WA 98504-7200. To request the administrative record, contact OSPI at appeals@k12.wa.us.

DECLARATION OF SERVICE

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

Parent

[REDACTED]

via E-mail

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Dated May 6, 2025, at Olympia, Washington.

Jazmyn Johnson
Representative
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cc: Administrative Resource Services, OSPI