

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Bellevue School District

Docket No. 06-2023-OSPI-01903

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

Agency: Office of Superintendent of
Public Instruction
Program: Special Education
Cause No. 2023-SE-0095

A due process hearing was held before Administrative Law Judge (ALJ) Paul Alig on January 14-17, 21-24, 2025, February 13, 14, 27 and 28, 2025, March 18, 2025, and April 4, 2025, via videoconference. The Parent and the Adult Student (Student) whose education is at issue¹ appeared and were represented by Ryan Ford, attorney at law and Anna "Mickey" Moritz, attorney at law. The Bellevue School District (District) was represented by Shannon McMinimee, attorney at law until June 3, 2025. At that time the District's motion for an order to change its attorney was granted and Lynette Baisch, attorney at law, became the attorney of record representing the District. Also present for the District at times were Kristin Lierheimer, Special Education Director, Karen DeJong Special Education Director, Katherine Gilkey, former Special Education Director, currently on contract and Maureen Lutz, District paralegal. Stevan Garcia and ALJ Niles McDonald, of the Office of Administrative Hearings (OAH) observed portions of the hearing.

STATEMENT OF THE CASE

Procedural History

On June 5, 2023, the Student filed a due process hearing request. On June 6, 2023, the District filed its response to the hearing request. On June 15, 2023, the case was consolidated with a hearing request filed by the District on February 21, 2023; Cause No. 2023-SE-0030 and Docket No. 02-2023-OSPI-01807.² On September 27, 2023, a prehearing order was issued identifying the issues for hearing and scheduling the consolidated hearings to begin January 22, 2024. On February 6, 2024, the Student was granted leave to amend her due process hearing request. On April 16,

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

² Dismissed on May 28, 2024.

2024, the District's request to un-consolidate the hearings was granted and the issues for hearing were revised. On September 24, 2024, the Student was again granted leave to amend her complaint. On October 21, 2024, the revised issues for this hearing were established. On October 24, 2024, the District's request for continuance was granted and the hearing was rescheduled to begin November 19, 2024. On November 1, 2024, the District's request for an additional continuance was granted and the hearing was scheduled to begin January 6, 2025. On January 3, 2025, the Student's request to continue the hearing to begin January 14, 2025 was granted.³

Due Date for Written Decision

As set forth in a previous order, based on a joint motion of the parties, the due date for a written decision in this case is forty-five (45) days after the record of the hearing closes. The record closed on September 2, 2025, the due date for the parties' post-hearing briefs. Accordingly, the due date for a written decision is October 17, 2025.⁴

EVIDENCE RELIED UPON

Exhibits Admitted:

District's Exhibits: D1-D82, D85, D86

Student's Exhibits: P1-P11, P12, P12A-P12II, P13, P13A-P13E, P13Fp92, P13G, P13Hpp1-111, P13Ipp62-64, 131-740, P13J, P13K, P13Lpp7, 134, 286, 443-461, 494-504, P13M, P13N, P13Zpp1-3, 174-186, 203-215, P14-P19, P20pp55-59, P21, P22, P24-P26, P28-P30, P31pp1-15, 19-21, 23-28, 31-34, 41-43, 100, 102-112.

Joint Exhibit: J1

Witnesses Heard (in order of appearance):

- Parent
- Student
- Martin Cordell, Adaptive Physical Education (PE) Teacher
- Tim Gager, Counselor
- Joseph Kempisty, Administrator

³ See, prehearing and continuance orders issued June 15, 2023; September 27, 2023; December 5, 2023; February 6, 2024; April 16, 2024; May 13, 2024; September 25, 2024; October 21, 2024 (Order Establishing Issues for Due Process Hearing); October 24, 2024; November 1, 2024 (Order on District's Objection to Order of Continuance); January 3, 2025; January 8, 2025; January 28, 2025, March 3, 2025 and March 19, 2025.

⁴ Order Granting Extension Of Due Date For Post-Hearing Briefs, dated July 28, 2025.

- Catherine Ugelstad, District Physical Therapist (PT)
- Amy Trescott, District Speech Language Pathologist (SLP)
- Anna DiNoto, PsyD., Licensed Mental Health Counselor (LMHC)
- Amy Stay, Special Education Teacher
- Chela Richards, District PT
- Jennifer Strehle, District Special Education Program Coordinator
- Breanna Werth, District Occupational Therapist (OT)
- Kristen Oulton, District Audiologist
- Christine Clancy, Ph.D., Neuropsychologist
- Sarah Kolpacoff, District Public Records Officer
- Lionel Enns, Ph.D., BCBA-D, Psychologist
- Sherri Spitzley, District Social Worker
- Jennifer Frohlich, District School Psychologist
- Julie O'Brien, District Social Worker
- Heather Swanson, Ph.D., Psychologist
- Susannah Day, Secondary Teacher, PE/Health
- Suzanna Dillon, Ph.D., Kinesiology Professor
- Sarah Susan "Sally Sue" McDonald, Special Education Director
- Genevieve "Genny" Olson, District Social Worker
- Kamila Tomaszewski, District Special Education Teacher
- Bryona Golding, General Education Teacher
- Monica Chapman, District Special Education Teacher
- Katherine "Kay" Gilkey, former Special Education Director
- Kristin Lierheimer, District Special Education Director

ISSUES

1. The issues for the due process hearing as stated in the October 21, 2024 "Order Establishing Issues for Due Process Hearing" are whether the District violated the Individuals with Disabilities Education Act ("IDEA") and denied the Student a free and appropriate public education ("FAPE") by:
 - a. Beginning August 8, 2021, through the 2022-2023 school year, whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:
 - i. Nonconsensual Destruction of Records: The District violated the IDEA when it failed to inform that Parent and/or the Student that personally identifiable information collected, maintained, or used for Student's special education

was no longer going to be retained by the District and destroyed the information without a request from the Parent or the Student to do so.

- ii. Failure to Follow Record Retention Procedures: The District violated the IDEA when it failed to follow its own record retention procedure pursuant to Washington Administrative Code (WAC) 392-172A-05235 after it collected, maintained, or used for the Student's special education information that it destroyed prior to the Student being separated from special education services through the District for at least six years.
- iii. Produced Records to Third Party: The District violated the IDEA when it failed to protect the confidentiality of the Student's personally identifiable information at the collection, storage, disclosure, and destruction stages when the District produced and continued to produce the Student's records, including special education records, as part of Public Records Act requests submitted by a law firm located in California.

b. Beginning August 8, 2021, through July 12, 2024, (unless otherwise stated) the District denied the Student and/or Parent meaningful participation in the individualized educational program (IEP) team meeting process by:

- i. By failing to convene an IEP team meeting to discuss placing the Student in Evergreen Transitions program and/or otherwise failing to allow Student/Parent to meaningfully participate in the District's decision to place Student in the Evergreen Transitions program through the end of the 2022-2023 school year.
- ii. By transferring the Student to the Evergreen Transitions program without informed consent.
- iii. By refusing to accommodate the Student's and Parent's disabilities in order to allow each of them to meaningfully participate in IEP team and other meetings related to the Student's special education services.
- iv. Requiring the attendance of District staff at meetings related to the Student's special education services that the District was on notice caused the Student and Parent substantial anxiety and created a barrier to be able to conduct special education related meetings for the Student.
- v. Not reading Student's letters to the IEP team and during other meetings related to the Student's special education services.

- vi. Not allowing the Parent to record IEP team and other meetings related to the Student's special education services to allow the Parent and Student to meaningfully participate in meetings related to the Student's special education services to which the Student does not currently attend due to her anxiety related to District staff meeting participants through December 2023.
- vii. By failing to have at least one general education teacher of the Student attend all of the Student's IEP team meetings.
- viii. By holding IEP team meetings and/or special education related team meetings without the Student and/or the Parent in attendance and/or excluding the Student and/or the Parent from meeting related to the Student's special education services through December 2023.
- ix. Material Revisions, Amendments to IEP Without Participation: From August 1, 2021, to the end of April 2023, by making material revisions or amendments to the Student's IEPs without her participation or the participation of her agents acting on her behalf at the IEP or other meetings related to the Student's special education services in which the revisions or amendments to the Student's IEPs were made.
- x. From February 16, 2024, to July 12, 2024, by muting the Student, the Parent, and/or the Student's agents acting on her behalf during virtual IEP team and other meetings related to the Student's special education services.
- xi. During the 2022-2023 school year, by providing the Parent and the Student with inaccurate progress monitoring data as it relates to present levels of performance and the Student's IEP goal progress reports. Specifically: Progress reports dated February 9, 2023, August 19, 2022, November 15, 2022, and January 24, 2023 quarters contain inaccurate progress monitoring data for all areas. Thus, any other document containing the same progress monitoring data addressed in the February 9, 2023, progress report would also have inaccurate data.
- xii. During the 2022-2023 school year by failing to timely produce or produce at all, all data and records related to Student that was requested by Parent to inform their decision-making process as it relates to the Student's special education services. Specifically, quarterly reports produced during February 2023, behavior

intervention plan (BIP) daily data and reports, and all supporting data from the IEP progress monitoring report from February 9, 2023.

- xiii. During the 2021-2022, 2022-2023, and 2023-2024 school years, failing to consider all recommendations and professional opinions regarding the Student included in documentation provided by the Student or Parent to the District when making determinations related to the Student's special education programming.
- xiv. From October 2022 through the end of the 2023-2024 school year, the District's communication plan for the Parent interfered with her ability to advocate, provide the District with relevant information related to the Student that was considered by the District and to meaningfully participate in communication related to the Student's special education.
- xv. The District failed to adequately document through a prior written notice (PWN) the following:
 - a. Changes or modifications to Student's transition programming and services occurring in August 2021, September 2021, March 2022 and October 2022, through the end of the 2022-2023 school year.
 - b. Fading out and/or removal of the Student's paraeducators during the 2022-2023 school year.
- xvi. That the District's procedural violations independently and in their totality rise to the level of a substantive violation of IDEA and, thus, constitute a denial of FAPE.
- xvii. The District applied different criteria to the Student's requested independent educational evaluation (IEE) providers than the criteria the District uses when it initiates an evaluation, to the extent those criteria are consistent with the Student's or Parent's right to an IEE.
- xviii. The District failed to fully fund a comprehensive IEE in all areas of suspected disability and need for Student or timely file and maintain its due process complaint after the Student or her agents notified the District of their disagreement with the District's reevaluation from 2021.
 - c. Beginning June 5, 2021, through July 11, 2024, (unless otherwise stated) materially failing to implement the Student's IEP by:
 - i. Failing to provide paraeducator services with fidelity, through January 12, 2024.

- ii. During the 2021-2022 and 2022-2023 school year, failing to implement the Student's BIP.
- iii. Failing to implement the Student's IEP during the pendency of complaints filed by the District and the Student that are currently before OAH.
- iv. Materially failing to provide the Student with all of the general education and special education related minutes she was entitled to as part of her IEP by:
 - a. Failing to allow the Student to participate in PE.
 - b. ~~During the 2021-2022 school year, granting the Student credit for courses in Physical Education despite Student's failure to actually attend and participate in such classes in order to "satisfy" the states requirements for physical education.~~⁵
 - c. During the 2021-2022 school year, granting the Student credit for courses she did not physically attend or participate in during the 2021-2022 school year including PE and the Student's special education class to which Amy Stay was the special education instructor responsible for the class.
 - d. Failing to initiate and follow State required High School and Beyond provisions and requirements.
 - e. Failing to provide adequate transportation services.
 - f. Failing to provide SDI minutes in the areas of Social/Emotional, Communication, Executive Functioning, adaptive PE, Sensory Support and Services, and Transition Services and Plan that are tied to her IEP goals.
 - g. Failing to work on the following IEP goals:
 - i. The Social/Emotional goals listed in her April 2021, April 2022 and April 2023 IEPs.
 - ii. The Adaptive goals listed in her April 2021, April 2022, April 2023, and April 2024 IEPs.

⁵ Issue stricken through the October 21, 2024 "Order Establishing Issues for Due Process Hearing."

- iii. All goals Ms. Tomaszewski was unable to work on with fidelity since becoming the Student's case manager or primary staff contact.
- d. Additional substantive violations beginning August 8, 2021, through July 11, 2024:
 - i. Failing to offer a transition program and services that were reasonably calculated to meet the Student's needs.
 - ii. Beginning June 5, 2021, through July 11, 2024, providing the Student with an IEP that the District knew or should have known it would not be able to implement on account of the Student's school refusal or avoidance.
 - iii. Failing to provide the Student with an IEP that adequately accounted for and supported the Student's pain management needs.
 - iv. Failing to develop IEPs for the Student that were reasonably calculated to meet the Student's needs due to being based on a reevaluation that was not appropriate and failed to adequately identify areas of need for the Student.
 - v. Failing to develop IEPs for the Student, including her BIPs, that were reasonably calculated to meet the Student's needs due to the Student's documented challenges with school refusal and missed instructional minutes and socialization opportunities.
 - vi. The District's exercise/movement program was not reasonably calculated to meet the Student's needs for the reasons generally stated in the Student's Amended Complaint.
- e. Beginning the 2022-2023 school year through May 1, 2024, the District's and its employees behavior and conduct towards the Student and her representatives constituted bullying in that there is a power imbalance and as one or more District employees were aggressive towards the Student and her representatives through the written word and verbally communications using their position of power to psychologically inflict discomfort on the Student, which resulted in a denial of FAPE in that that Student could not meaningfully participate in the formulation of her special education programming and access her special education and related services due to her fear and anxiety.

2. And, whether the Student is entitled to her requested remedies:

- a. Declaratory relief finding that the District violated IDEA.

- b. Declaratory relief that the Student was entitled to an IEE prior to the District conducting its reevaluation.
- c. Declaratory relief finding that the Student was denied FAPE by the District's actions.
- d. An order to ensure consistent retention of special education records for Student and that the District be required to undergo an independent review and audit of its record keeping practices for special education related records.
- e. An order to ensure the District maintains the confidentiality of Student's records and undergo an independent review and audit of its practices for maintenance of confidentiality for special education records.
- f. An order finding that the Parent is entitled to reimbursement for all costs, expenses, and services related to the District's failure to provide Student with a FAPE.
- g. An order finding that the Student is entitled to compensatory education as requested by her and determined by the ALJ.
- h. An order for District training of all District staff, administrators, and legal counsel for each violation of IDEA; and
- i. Or other equitable remedies, as appropriate.

FINDINGS OF FACT

- 1. At all relevant times the Student resided with the District boundaries. At the time of the hearing the Student was 21 years old. Both the Parent⁶ and the Student are authorized to communicate the Student's needs to the District. The Student lives with the Parent. The Student's parents are divorced. She has a difficult relationship with her father that has caused her trauma and is a source of ongoing stress.⁷
- 2. In September 2014, when she was [REDACTED], the Student was [REDACTED] [REDACTED] For years after the accident the Student was often unable to leave her house due to severe headaches. The combined effect of her concussions and headaches impacted her mental

⁶ Student's mother.

⁷ Student T285:1. Citations to the hearing transcript indicate who provided the testimony followed by the page number(s) and line(s) on which the testimony appears. For example, a citation to Student T285:1 is a citation to the Student's testimony at page 285 line 1 of the transcript.

capabilities in the areas of processing speed and reaction time. The Student's inability to attend school affected her both socially and emotionally. She experienced limited ability to move physically. She has become sensitive to noise. She remained in darkened rooms to avoid triggering migraines.⁸

3. In the summer of 2016, the Student enrolled in the District.⁹
4. In 2018 the Student became eligible to receive special education services under the category of Health Impaired (HI). and began working with District special education teacher, Amy Stay,¹⁰ who remained her assigned case manager through the end of the 2021-2022 school year.¹¹
5. On April 30, 2019, the District conducted an assessment revision that included a gross motor evaluation by Catherine Ugelstad, PT.¹² Based on this, the District determined the Student required a physical therapy (PT) consultation as supplementary aids and services.¹³
6. On July 25, 2020, Christine Clancy, Ph.D.¹⁴ conducted an evaluation of the Student. She identified the diagnoses of Generalized Anxiety Disorder, Obsessive-Compulsive Disorder, Intense Social Anxiety, and Autism Spectrum Disorder. The Student presented with pervasive resistance to change with her daily routine that manifested as lengthy panic attacks and could adversely impact her education. During these attacks she would have complete emotional breakdowns, behavior rigidity, poor adaptability, and inflexible insistence on sameness in all routines. She had chronic

⁸ D2p9; Parent T3181:16. Citations to the exhibits of record are by the party ("P" for Parent; "D" for District) and exhibit and page numbers. For example, a citation to D2p9 is to the District's Exhibit D2 at page 9.

⁹ Parent T158:1.

¹⁰ Ms. Stay received a Bachelor of Arts and Master of Education degrees in Special Education from the University of Washington. She is certificated to teach special education. Ms. Stay was employed as a special education case manager for the District from 2013-2022. Prior to that she was an Assistant Director of Special Education for the District beginning in 2001. Prior to that she had worked as a teacher, coordinator and department chair in special education departments for first the Shoreline and later Mukilteo school districts over a period beginning in 1973. P2pp1, 2; Stay T878:24.

¹¹ Parent T186:14.

¹² Ms. Ugelstad is a PT licensed by the Washington State Department of Health. She has worked with the District since August 2007 and has 33 years total experience working as a PT. She has a Bachelor of Science in biology and a minor in psychology. She has a Master of PT degree from Northern Arizona University. Ugelstad T641:10.

¹³ D3pp1-18; Ugelstad T645:22.

¹⁴ Dr. Clancy received a Bachelor of Science degree from the University of Toronto in 1989. In 1992 she obtained a master's degree in applied psychology with an early childhood studies specialization from the Ontario Institute for Studies in Education at the University of Toronto in Ontario. In 2003 she obtained a Doctor of Philosophy, School and Child Clinical Psychology from the same university. She is board certified in clinical neuropsychology and in the subspecialty of pediatric child neuropsychology. She is a licensed psychologist in the State of Washington. She has worked professionally as a pediatric neuropsychologist since 2003. Since 2013 she has maintained two private practices, TEAM-Seattle, PLLC and Clancy-Dunbar-Mayer, PLLC. P1pp1-11, Clancy T1268:23.

pain. Her symptoms impacted school attendance. She was profoundly reliant on her mother to support her emotional needs. The District received her evaluation and a letter of support from Dr. Clancy at least by March 1, 2021.¹⁵ When working with the Student, Dr. Clancy noted the hurt and abandonment that the Student's relationship with her father caused to her. The Student did not want any of her personal information about her care released to her father.¹⁶

7. The 2020-2021 school year was the Student's 11th grade year. She attended Bellevue High School (BHS). All of the Student's BHS classes during this year were online due to the COVID shutdown. The isolation had a negative impact on the Student's physical and mental health. By December 2020 her exercise was limited due to having only a stationary recumbent bike in her home. She was able to complete her academic classes with little challenge.¹⁷

8. Susannah Day,¹⁸ was the Student's "Walking for Fitness" physical education (PE) teacher during the second semester of the 2020-2021 school year.¹⁹ When it became apparent the Student was not coming to her online class she worked with Ms. Stay to develop a workout log to track her activity outside of the classroom. The Student received an A and graduation credit for the class.²⁰

9. On March 3, 2021, the District completed a reevaluation of the Student. The reevaluation was conducted by District School Psychologist Jennifer Frohlich.²¹ Other participants were Ms. Stay, Sandy Bacerdo, nurse; Kristi Shaw, general education teacher; Katie Klug, District Administrator; Ms. Ugelstad, and a paraeducator assigned to the Student. The Parent also participated in the reevaluation.²²

10. The reevaluation team determined the Student's disability category continued to be HI, based on her complex medical history. The Student's disability profile included post-concussive syndrome, light and sound sensitivity, occipital neuralgia, central

¹⁵ P13lpp62-64, D4pp12, 13, 20, D15p5; Clancy T1274:21, 1288:22.

¹⁶ Clancy T1298:13.

¹⁷ P12p12, Stay T2581:5.

¹⁸ Ms. Day obtained her bachelor's degree and teaching certificate from Seattle Pacific University in Seattle, Washington on or around 2008. She was taught PE at BHS for 15 years. Day T1898:22.

¹⁹ Day T1901:8.

²⁰ Day T1903:9.

²¹ Ms. Frohlich has an educational staff associate (ESA) certificate from OSPI to work as a school psychologist. She is a nationally board-certified school psychologist. She obtained a Bachelor of Arts degree from George Washington University in Washington D.C. with a psychology major. She has a Master of Education degree from the University of Washington. She has worked as a school psychologist with the District since 2002. Frohlich T1658:19.

²² D4p48, D6p6; Ugelstad T648:11, Stay 884:10, Frohlich T1669:3.

sensitization, migraines, neck and back pain and anxiety. Her disabilities continued to severely limit her ability to attend a full day at school.²³

11. In the area of social and emotional needs the Student struggled to demonstrate self-confidence and self-esteem, implement emotional regulation skills, and use strategies to decrease her anxiety and depression symptoms. She was limited in establishing and maintaining peer relationships. In the area of adaptive functioning, she struggled to demonstrate age-appropriate socialization skills such as self-advocacy, initiating conversations to gain needed information, and asking questions when unsure. In the area of physical needs, the Student's mind-body connection was further limiting her ability to participate in a general education setting. As a result of her needs in all areas she struggled to attend school regularly. The reevaluation team documented that these needs created an adverse educational impact and qualified her for specially designed instruction (SDI) in the areas of social/emotional skills and adaptive skills. In addition, the reevaluation team identified the need for consultation services in PT.²⁴

12. As part of the reevaluation Ms. Frohlich conducted cognitive testing using the Weschler Adult Intelligence Scale, Fourth Edition (WAIS-IV) assessment. The Student's General Ability Index (GAI) full scale score was 126. This indicated her reasoning abilities on verbal tasks were generally very superior compared to same age peers. Her nonverbal reasoning, working memory, and processing speed abilities were significantly lower but still within the average range when compared to her same aged peers.²⁵

13. The reevaluation team reviewed Dr. Clancy's report of July 2020 and the diagnoses she made. Although her disability category was not changed it was noted that the Student's anxiety and autism symptoms had just as significant an impact on her functioning as well as a direct relationship with her health impairment.²⁶

14. The Student's IEP team met on April 15, 2021. The team identified the need for paraeducator services for the Student in her two general education Running Start classes and in her PE program. It indicated that the Student would continue to participate in general education PE.²⁷

15. The Student's IEP included a social/emotional goal that stated:

²³ D4p8; Stay T888:5, Frohlich T1665:3.

²⁴ D4pp8-12; Stay T886:18, Parent T165:6, Frohlich T1669:24.

²⁵ D4p35; Frohlich T1668:21, Stay T892:6, T887:3, Parent T:164:3.

²⁶ D4pp8, 20; Parent T165:19, Frohlich T1669:9.

²⁷ D5pp1, 26, 27, 29; Stay T892:6, Parent T:161:23.

By 04/14/2022, when given a class to address emotional regulation and positive self talk, para ed [sic] support, and preferential registration [The Student] will use strategies to boost her self esteem (positive self statements, daily affirmations, gratitude/affirmation/goal setting journal, peer support) improving her ability to participate in in-school classes from 44% of the time for two periods to 80% of the time in three periods as measured monthly by attendance data.

The social-emotional goal provided for quarterly reporting of progress.²⁸

16. The Student's IEP also included an adaptive behavior goal that stated:

By 04/14/2022, when given instruction and practice in finding classes on campus and calming strategies [Student] will independently transition from the school entrance to class and from class to class improving her comfort in moving between classrooms and spaces at school without a preferred adult from a level of 1 on a scale of 1 to 10 opportunities (1 being very uncomfortable) to a level of 6 (being a little uncomfortable at times but I can do it) in 8 out of 10 opportunities as measured by weekly school data.

The adaptive behavioral goal provided for monthly reporting of progress.²⁹

17. The IEP included a post-secondary goal and transition plan. The goal stated she would enroll in a four-year university upon graduation. Her transition services provided for a college preparation program building her endurance to tolerate longer school days at school consistent with her social/emotional and behavior goal. These services included access to a college career counselor, college representative speakers and career interest surveys. Her post-secondary goal also provided that upon leaving public school the Student would have part-time employment. Transition services included access to career interest surveys, instruction in resume writing, access to accounting or entrepreneurship, and classes or internship in the school library. The transition plan identified she should have a course of study geared to a program of foundations for success in college. It also provided for the Student to have an opportunity to complete volunteer community service and two years of a world language.³⁰

²⁸ D5p12; Stay T889:7.

²⁹ D5p15; Ugelstad T648:19, Stay 893:18.

³⁰ D5p19; Stay T894:2.

18. The IEP provided SDI as follows:³¹

Services 04/15/2021 - 04/14/2022

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
Yes	Adaptive	Special Ed Teacher	Special Ed Teacher	240 Minutes / Weekly	Special Education	04/15/2021	04/14/2022
No	Social-Emotional	Special Ed Teacher	Special Ed Teacher	240 Minutes / Weekly	Special Education	04/15/2021	04/14/2022
No	Social-Emotional	Para-Educator	Special Ed Teacher	480 Minutes / Weekly	General Education	04/15/2021	04/14/2022
Yes	Social-Emotional	Para-Educator	Special Ed Teacher	480 Minutes / Weekly	General Education	04/15/2021	04/14/2022
No	Social-Emotional	Para-Educator	Physical Therapist	50 Minutes / Weekly	General Education	04/15/2021	04/14/2022
Total minutes per week student spends in school: 1830 minutes per week							
Total minutes per week student is served in a special education setting: 240 minutes per week							
Percent of time in general education setting: 86.89% in General Education Setting							

19. It provided she would receive supplementary aids and services as follows:³²

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	Counseling Support	Social Worker	Social Worker	30 Minutes / Weekly	Special Education	04/15/2021	04/14/2022
No	Consultation with Physical Therapy	Physical Therapist	Physical Therapist	15 Minutes / Monthly	General Education	04/15/2021	04/14/2022

20. The IEP identified the Student's least restrictive environment (LRE) as 80%-100% in regular class. The Student's PE program was developed in consultation with a PT to be delivered by a paraeducator. The purpose of the program was to help strengthen her mind-body connection. The IEP stated the Student's PE class should avoid running, jumping and strenuous exercises, and use walking, a stationary bike, flexible stretching, and gradual progression in a cardio program. The IEP permitted substitution of an alternative PE course to the general education PE class. It included as an accommodation to monitor the Student's sensitivity to light, sound, and heat. The IEP did not provide for the Student to receive specialized transportation.³³

21. The District issued a PWN that stated the IEP would be implemented by April 15, 2021.³⁴

22. In June 2021, the Student turned 18.³⁵

³¹ D5p19.

³² D5p26; Stay T897:14.

³³ D5p22-27; Ugelstad T649:1.

³⁴ D5p29; Stay T899:8, 933:16, Parent T217:20

³⁵ P12p1; Student T2765:8.

Summer 2021

23. The Student participated in ESY services in the Summer of 2021 that was provided to work on her IEP goals. As part of her ESY services the Student completed an on-line English course through Bellevue College at District expense. She completed the class with an A grade earning high school credit.³⁶

2021-2022 School Year

24. The Student's schedule at the start of the year was three classes total only two of which occurred in the building at BHS. This included a PE class, advanced placement (AP) Literature taught by Bryonna Golding³⁷ and a special education class taught by Ms. Stay. The PE class was individualized consistently with recommendations of her PT teacher, Ms. Ugelstad, and delivered to the Student remotely. The Student's in-person class attendance was less than 50%.³⁸ The Student was provided dedicated paraeducator support during the school year which helped her to attend her general education classes and work with her PT.³⁹

25. On September 29, 2021, the District, the Student and the Parent agreed to amend the Student's IEP. The District issued a PWN explaining the amendment which included an explanation of the Student's procedural safeguards.⁴⁰ The revised matrix clarified her ongoing paraeducator services and increased her SDI minutes as follows:⁴¹

Services 10/01/2021 - 04/14/2022							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
Yes	Adaptive	Special Ed Teacher	Special Ed Teacher	240 Minutes / Weekly	Special Education	10/01/2021	04/14/2022
No	Social-Emotional	Special Ed Teacher	Special Ed Teacher	240 Minutes / Weekly	Special Education	10/01/2021	04/14/2022
No	Adaptive	Para-Educator	Special Ed Teacher	480 Minutes / Weekly	General Education	10/01/2021	04/14/2022
Yes	Social-Emotional	Para-Educator	Special Ed Teacher	480 Minutes / Weekly	General Education	10/01/2021	04/14/2022
No	Social-Emotional	Para-Educator	Special Ed Teacher	240 Minutes / Weekly	Special Education	10/01/2021	04/14/2022

Total minutes per week student spends in school: 1830 minutes per week
Total minutes per week student is served in a special education setting: 480 minutes per week
Percent of time in general education setting: 73.77% in General Education Setting

³⁶ P13Np41, D6p6, 7, D7pp1, 2, D8pp1, 2; Parent T211:22, 2989:18.

³⁷ Ms. Golding obtained her teaching certificate in 1996 from Central Washington University. She has a master's in education from University of Phoenix. In 1996 she began teaching high school English. In 2001 she began with the District as a high school English teacher and has continued to do so except for two years when she taught at a high school in Baltimore. Golding T2340:25.

³⁸ P12p14, D6p7; Stay, Parent T215:23.

³⁹ Student T582:2, Stay T901:16.

⁴⁰ P12p14, D6p28; Stay T901:4.

⁴¹ D6p26; Stay T901:24.

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	Counseling Support	Social Worker	Social Worker	30 Minutes / Weekly	Special Education	10/01/2021	04/14/2022
No	1:1 Para-Educator Support	Para-Educator	Special Ed Teacher	480 Minutes / Weekly	General Education	10/01/2021	04/14/2022
No	1:1 Para-Educator Support	Para-Educator	Special Ed Teacher	240 Minutes / Weekly	Special Education	10/01/2021	04/14/2022
No	Consultation with Physical Therapy	Physical Therapist	Physical Therapist	15 Minutes / Monthly	General Education	10/01/2021	04/14/2022

26. The District assigned Liz Worth to be the Student's 1:1 paraeducator. Ms. Worth was not a good fit as a 1:1 due to frequent absences and inability to keep up with the Student.⁴²

27. District procedures provided that parents or adult students would be informed when personally identifiable information of student collected, maintained, or used by the District would no longer be retained by the District. Test protocols are not maintained in a student's record.⁴³

28. By October 2021, the Parent had requested all of the Student's special education records from the District. The District produced documents responsive to her request, including the March 2021 reevaluation. The Parent did not receive testing protocols related to that reevaluation, or other material she provided to the IEP team, and believed those documents were destroyed. The Parent could not specify what other documents were destroyed by the District.⁴⁴

29. By November 5, 2021, the Student had attended her AP Literature class 94% of the time and her special education class 83% of the time. She had not yet attended PE, and the District adjusted her walking schedule to address her need for exercise.⁴⁵

30. By January 2022, the Student had improved her attendance in PE and engaged in walking activities under consultation of her PT. However, beginning January 6, 2022, the Student stopped engaging in walking activities at school due to headaches and inconsistencies in District staffing of paraeducators.⁴⁶

⁴² P21p17; Student T2779:3.

⁴³ D77p36; Kolpacoff T1440:10.

⁴⁴ Parent T116:9, 132:3-157:1, 2976:11.

⁴⁵ D9p1; Stay T903:21

⁴⁶ D9p1; Ugelstad T657:9, Stay T9013:24.

31. During the 2021-2022 school year, the Student avoided working with the paraeducators who cause her stress. Her case manager tried to prevent this by having the Student meet with her paraeducators prior to delivering services. However, this was not always possible.⁴⁷

32. On March 1, 2022, the District updated the Student's BIP. Information was gathered from the Parent, Student, Thomas Gangle, Principal, Karen DeJong, Special Education Director, Anecia Robinson, School Counselor, Julie O'Brien,⁴⁸ District Social Worker, Ms. Stay, Ms. Golding, and Ms. Ugelstad. The BIP identified a targeted behavior of school attendance caused by breaks in routine and added stressors. The BIP hypothesized that contributing factors included her health impairment, frequent headaches, light and sound sensitivity, low stamina, feelings of anxiety, a lack of social opportunities and her long-term pattern of absenteeism. Intervention strategies included increased time at school and providing her with a customized PE program that could not be done at home by adding another class period to her in-person schedule. The BIP noted that if the Student could not attend PE, she would be given more time in the resource room to work on on-line course work. The BIP was to be assessed using daily data, weekly review by her special education teacher, and monthly team review to evaluate its effectiveness. The BIP stated that as the Student transitioned to the college campus for Running Start, she would need a paraeducator to coach her in the new setting.⁴⁹

33. On March 1, 2022, the District convened the Student's IEP team to develop her annual IEP. The Parent attended this meeting, but the Student did not. Also in attendance were Mr. Gangle, Ms. DeJong, Ms. Robinson, Ms. O'Brien, Ms. Stay, Ms. Golding, and Ms. Ugelstad.⁵⁰ The Student's IEP team updated her social/emotional goal to state “[b]y 04/14/2023 when given para ed support, preferential registration/scheduling, and counseling support [the Student] will use coping strategies improving her ability to participate in school classes from 61% for two in school classes to 80% for three in school classes as measured by monthly attendance (staff data).” It also updated her adaptive skills goal to state: “by 04/13/2023, when given practice in finding classes on campus and calming strategies [the Student] will independently transition from the school entrance to and from classes improving her independence level from a 50% independent level to an 85% independent level over

⁴⁷ Parent T201:10-203:11.

⁴⁸ Ms. O'Brien has an ESA certificate from OSPI to work as a school social worker. She received a Bachelor of Arts degree and a master's degree in social work from the University of Washington. She has worked as a school social worker for 19 years, spending approximately 13 years with the District. O'Brien T1695:17.

⁴⁹ D11pp1-3; Stay T932:24, 2670:6, Student T397:22.

⁵⁰ D10p27; Stay T906:14, Parent T189:8

four consecutive weeks as measured by daily staff data.” The IEP’s annual goals supported her transition plan. Her goals were to be reported on a quarterly basis. Her current tolerance for exercise was assessed as being able to do minimal walking due to her headaches and able to learn but not ready to engage in balancing activities with PT assistance.⁵¹

34. The IEP noted the Student’s LRE as 80% to 100% in the general education setting. It indicated that the Student would participate with nondisabled students in the general education classroom, and in non-academic and extracurricular activities when in her one special education class. It stated further that she would participate in a general education PE class with adaptations and/or modifications and paraeducator support to allow her to access the curriculum. It detailed that the class would start with an individualized or small group setting with monitored sensitivity to light, heat, and sound. The class was to progress to a larger group as she was able to use a cardio program that avoided running and jumping and strenuous activity and activities that irritate her spine or upper back such as lifting overhead, weightlifting, and neck rotation or bending.⁵²

35. The IEP identified that through June 21, 2022, the frequency and location of her special education services would be as follows:⁵³

Services 04/14/2022 - 06/21/2022

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
Yes	Social-Emotional	Para-Educator	Special Ed Teacher	480 Minutes / Weekly	General Education	04/14/2022	06/21/2022
Yes	Adaptive	Special Ed Teacher	Special Ed Teacher	240 Minutes / Weekly	Special Education	04/14/2022	06/21/2022
No	Social-Emotional	Special Ed Teacher	Special Ed Teacher	240 Minutes / Weekly	Special Education	04/14/2022	06/21/2022
No	Adaptive	Para-Educator	Special Ed Teacher	480 Minutes / Weekly	General Education	04/14/2022	06/21/2022
Total minutes per week student spends in school:				1200 minutes per week			
Total minutes per week student is served in a special education setting:				240 minutes per week			
Percent of time in general education setting:				80% in General Education Setting			

36. For the following school year, the IEP adjusted those services as follows:

⁵¹ D10pp6-9; Stay T908:4, 908:17, Ugelstad T659:2.

⁵² D10pp18-20; Stay T918:18, Parent T199:5, Ugelstad T659:17.

⁵³ D10p18; Stay T917:6.

Services 06/22/2022 - 04/13/2023

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
Yes	Adaptive	Special Ed Teacher	Special Ed Teacher	240 Minutes / Weekly	Special Education	06/22/2022	04/13/2023
No	Social-Emotional	Special Ed Teacher	Special Ed Teacher	240 Minutes / Weekly	Special Education	06/22/2022	04/13/2023
No	Adaptive	Para-Educator	Special Ed Teacher	480 Minutes / Weekly	General Education	06/22/2022	04/13/2023
Yes	Social-Emotional	Para-Educator	Special Ed Teacher	480 Minutes / Weekly	General Education	06/22/2022	04/13/2023
Total minutes per week student spends in school: <u>1200 minutes per week</u>							
Total minutes per week student is served in a special education setting: <u>240 minutes per week</u>							
Percent of time in general education setting: <u>80% in General Education Setting</u>							

37. The IEP explained that because of fatigue the Student would remain in a partial day schedule in 3 classes, 2 general education and one special education. She was to have paraeducator support while in class but the paraeducator should start to move away from the Student while in class. It noted she would benefit from Running Start courses next year. The Student was to see a social worker while in her special education class. The IEP increased PT services from once a month for 15 minutes to once per week for 30 minutes for the remainder of the 2021-2022 school year and then decreased to 30 minutes per quarter unless more was required. The IEP indicated that for the next year the Student's supplementary aids and services were:⁵⁴

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	PT Consultation	Physical Therapist	Physical Therapist	30 Minutes / Quarter (ESA Provider)	General Education	04/14/2022	06/21/2022
Yes	Counseling Support	Social Worker	Social Worker	30 Minutes / Weekly	Special Education	04/14/2022	06/21/2022
No	1:1 Para-Educator Support	Para-Educator	Special Ed Teacher	480 Minutes / Weekly	General Education	04/14/2022	06/21/2022
No	1:1 Para-Educator Support	Para-Educator	Special Ed Teacher	240 Minutes / Weekly	Special Education	04/14/2022	06/21/2022
Yes	Counseling Support	Social Worker	Social Worker	30 Minutes / Weekly	Special Education	06/22/2022	04/13/2023
No	1:1 Para-Educator Support	Para-Educator	Special Ed Teacher	480 Minutes / Weekly	General Education	06/22/2022	04/13/2023
No	1:1 Para-Educator Support	Para-Educator	Special Ed Teacher	240 Minutes / Weekly	Special Education	06/22/2022	04/13/2023
No	PT Consultation	Physical Therapist	Physical Therapist	30 Minutes / Quarter (ESA Provider)	General Education	06/22/2022	04/13/2023

⁵⁴ D1Opp18, 19; Parent T192:9, Ugelstad T696:9, Stay T924:15.

38. The IEP maintained the Student's post-secondary goals and transition services based on her March 1, 2021, transition assessment and updates from Ms. Golding regarding the Student's interest in becoming a fiction writer. The IEP team recommended the Student access the college and career resources at BHS through the Naviance on-line platform and her school counselor.⁵⁵

39. The District issued a PWN dated March 18, 2022, explaining its decisions. The District refused to offer "Adaptive PE" because it was offering an exercise/movement program designed and monitored by her PT. The District updated her BIP to provide paraeducator support for coping skills. The PT program included specifically trained 1:1 paraeducator support. The IEP team determined this approach to be more likely for success in light of the Student's past challenges with anxiety and current level of physical tolerance for exercise as assessed by Ms. Ugelstad. The District recommended an Adaptive PE evaluation as the Student did not qualify at that time. The PWN indicated that the Student would attend Running Start the next fall with paraeducator support that would gradually be faded.⁵⁶

40. On March 15, 2022, due to the Student's decreased progress, the District assigned and trained a new paraeducator to deliver the Student's PE program who was more physically capable of keeping up with and assisting the Student. Ms. Ugelstad also began providing the Student services on a weekly basis.⁵⁷

41. By April 2022, the Student was attending her weekly exercise/movement program with Ms. Ugelstad more regularly. Her PT services were increased to 30 minutes per week. She also received strength and cardiovascular exercise training. As part of the exercise/movement program the Student was doing activities in the community that she had not been doing previously.⁵⁸

42. Jennifer Strehle,⁵⁹ is the District transition program coordinator. She oversees the transition services program for the District including the Connections program which has a classroom-based and independent work element. The Connections program is a District transition program separate from the Evergreen Transitions program. The Connections program provides individualized 1:1 support to students in the program based on their IEP. It is meant for District students who require special

⁵⁵ P12p18, D10pp9, 10, 18-20; Stay T917:11.

⁵⁶ D10p23, Stay T922:15, Parent T224:23, Ugelstad T658:4, Stay T922:20.

⁵⁷ P12p17, D10p9; Stay T913:11, Student T2779:9, Ugelstad T657:20.

⁵⁸ D14p1; Ugelstad T659:19, Student T360:23, Parent T250:7.

⁵⁹ Ms. Strehle has certificates from OSPI and the State of New York to teach special education to grades Kindergarten (K) through 12. She has been a special education teacher for 14 years. She has worked as a special education coordinator for the District since 2015. Strehle T1130:10.

education who have had at least four years of high school and are able to work independently outside of a classroom. Connections students are able to work with their high school counselor and career counselor from their prior high school.⁶⁰

43. On June 9, 2022, Monica Chapman⁶¹ a teacher in the District's Connections Program, emailed the Student to schedule a meeting. Ms. Chapman explained that she was reaching out as she would be the Student's case manager next school year when the Student attended Bellevue College's Neurodiversity Navigators (NDN) program.⁶²

44. On or about June 16, 2022, the Student met with Ms. Strehle, Ms. Chapman, and Ms. Stay via Teams. The Student felt disappointed and set up for failure by this meeting as this was her first time meeting Ms. Strehle and she had not had any on site visit or an understanding of the other students that attended the Connections program. The District left the meeting with the impression the Student would receive special education services through Connections beginning at the start of the 2022-2023 school year. The District viewed its assigning of the Student to the Connections program to be a change in location and not a change in the Student's placement.⁶³

45. By the end of the 2021-2022 school year, the Student was participating in weekly PT. She was progressing toward each of her IEP goals. Her attendance had improved since January and February, and her physical stamina had increased. Her participation in this class and support she received from the District during the school year benefited her.⁶⁴

Summer 2022

46. During the summer of 2022, Sally Sue McDonald,⁶⁵ a District Special Education Director for Secondary Programs, was the Student's ESY Coordinator and special education case manager as Ms. Stay had retired.⁶⁶ The Student attended NDN class

⁶⁰ Strehle T1132:9 1147:19.

⁶¹ Ms. Chapman is certified by OSPI to teach special education and general education PE at the K through 12th grade level. In 2001 she received a bachelor's degree in education from the University of Idaho. On or around 2016 she received her master's degree in education from the Western Governor's University. She has been a special education teacher for 21 years. Chapman T2417:8.

⁶² P12pp21, 22; Student T364:12.

⁶³ P12p22; Parent T247:9, Stay T921:25, Strehle T1134:20, Chapman T2450:23, Lierheimer T3297:7.

⁶⁴ D10p2, D14pp1, 2, D15p17; Parent T190:10, 251:6, 3025:21, Student T355:21, 582:11, Stay T920:17.

⁶⁵ Ms. McDonald has a general education certification degree from the University of Puget Sound in Tacoma. She has a master's degree from Seattle University in psychology as an educational specialist where she also received administrative credentials. She has administrator, general education and special education certifications through OSPI. She has worked for the District for at least three years in her current role. McDonald 2010:8.

⁶⁶ McDonald T2010:17.

at Bellevue College. The District sent paraeducators to the college to assist the Student. The Student attended 18 out of 25 classes in-person and others remotely.⁶⁷

2022-2023 School Year

47. In September 2022, the plan was for the Student to take a Running Start class at Bellevue College while also attending the college NDN program, receiving SDI in Adaptive and Social/Emotional skills through the Connections program and PT, social work and paraeducator supports. Although the Student was no longer attending BHS, Ms. Ugelstad volunteered to continue to work with her based on a request because she had an ongoing relationship. This was unusual as she would not have typically been assigned to a Student in the Connections program.⁶⁸

48. On September 2, 2022, the Student met with Ms. Chapman at the District transition office. The Student did not feel she could communicate with Ms. Chapman and experienced an anxiety attack as a result of the meeting. In the middle of September 2022, the Student met again with Ms. Chapman this time via videoconference. During the meetings the Student tried to convey to Ms. Chapman that she required Adaptive PE. Ms. Chapman stated the request for Adaptive PE and fading out paraeducator support needed to be discussed at an IEP meeting. The Student determined that the Connections program was not a good fit for her and could not serve her needs related to her autism and her college path.⁶⁹

49. Ms. Chapman met with the Student two or three more times remotely for a total of four and a half hours. During these meetings they discussed the Student's progress at Bellevue College and support she required for her transition services. The Student raised several activities that were outside of what Ms. Chapman could do such as a name change, passport update and direct driver's instruction beyond self-study materials. After the month of September ended the Student refused to meet with Ms. Chapman. Because they were no longer meeting, Ms. Chapman was unable to provide SDI in Adaptive and Social/Emotional skills to the Student.⁷⁰

50. On September 15, 2022, the Student met with Nancy Whitaker, a paraeducator with the Connections program. Ms. Whitaker and the Student met at Bellevue College to become familiar with the campus. Ms. Whitaker brought another Connections student to the meeting without telling the Student in advance. This made the Student

⁶⁷ P12p23, D14pp1, 2, D15p17; Parent T190:10, 251:6, 3025:21, Student T355:21, 582:11, Stay T920:17, McDonald T2012:13.

⁶⁸ Ugelstad T661:9.

⁶⁹ P12pp25-27, D37p77; Student T390:15.

⁷⁰ Chapman T2425:19, 2483:3.

wary of Ms. Whitaker and the Connections program as the Student was anxious meeting new people and peers.⁷¹

51. The Bellevue College school-year began on September 19, 2022. The Student participated in an American Sign Language class (ASL) at Bellevue College which was a Running Start class through the District. The Student felt the ASL class was a perfect fit for her as it was quiet and less mentally fatiguing. The Student continued to attend an NDN class at Bellevue College with paraeducator support.⁷²

52. Beginning October 2022 through February 2023 the Parent sent hundreds of emails to District employees. Some of these emails threatened to call police or Bellevue College security on District staff. The Parent frequently did not copy the Student on email communications she sent to District employees.⁷³

53. On October 7, 2022, and October 10, 2022, the Student's IEP team met to align the Student's IEP services matrix with her participation in classes at Bellevue College. The IEP team included the Student, the Parent, Ms. Chapman, Katie Klug, BHS Assistant Principal, Ms. Frohlich, Martin Cordell,⁷⁴ a District Adaptive PE teacher, Ms. Day, Timothy Gager, School Counselor,⁷⁵ Ms. O'Brien, Ms. Ugelstad, Ms. Strehle, Del Stewart, Director, and Katherine Gilkey, Special Education Director.⁷⁶ The meetings felt very confrontational to the Student as her requests for Adaptive PE, teacher assignment, and not having her paraeducator support faded were rejected. The tone of the meeting was very frustrating for the Student and Parent. The Student felt

⁷¹ P12p27; Chapman T2420:23.

⁷² P12p24, D16p1; Strehle T1139:22, Student T362:1, Clancy T1281:23, Gilkey T2510:7.

⁷³ D80p2; Parent T1420:9, Chapman T2432:7, Gilkey T2555:2.

⁷⁴ Mr. Cordell has a bachelor's degree from Western Washington University in social work. He received a master's degree in teaching from City University. He also has an endorsement in English as a Second Language (ESL) from the University of Washington and an endorsement in physical education from Seattle Pacific University and recently completed a program in special education from Seattle University. He has a K through 8th grade teaching certificate and K through 12th grade physical education and health certificate from OSPI. He completed a program for special education certification and is waiting to complete his assessment. For the past three years has been employed as an Adaptive PE teacher for the District. He has worked as a teacher in various capacities for 20 years. Cordell T499:2.

⁷⁵ Mr. Gager obtained a Bachelor of Science in genetics from the University of California in Davis. He obtained a master's of curriculum and instruction from the California State University in Sacramento. He obtained a Master of Science in student counseling from National University. He has an ESA in school counseling from OSPI. He has worked as a school counselor in the District for six years. Gager T545:9.

⁷⁶ Ms. Gilkey obtained a bachelor's degree of arts and a master's degree in special education from the University of Washington in 2005. On or around 2016 she obtained a master's degree in education leadership from the same university. She has a teaching certificate in special education and a certificate as a program manager from OSPI. She worked as a special education teacher in an emotional/behavioral disabilities program for approximately seven years, as a program coordinator for approximately nine years, and three years as a special education director. She retired from the District in June 2024. Gilkey T2528:15.

unheard and disappointed as her impression was that none of her IEP team members were advocating for her.⁷⁷

54. The Student's LRE was identified as 40%-79% in general education. The amended IEP stated the Student would receive SDI toward her special education goals for 30 minutes weekly through a special education teacher. It stated she would be served 30 minutes per week by a District social worker and receive paraeducator services 30 minutes per day for four days per week with one day delivered in-person and the other three delivered remotely using the exercise/movement plan developed by Ms. Ugelstad. It provided for 30 minutes per quarter of PT consultation services. The Student's IEP listed as a modification Adaptive PE or modified PE curriculum/grading with paraeducator support to occur 4 times per week when the Student was enrolled in PE. It noted the Student was not currently enrolled in PE classes. The amended IEP did not include specialized transportation. It provided for 300 minutes per week of paraeducator services.⁷⁸

55. The District prepared two PWNS explaining the decisions made at the meetings. One PWN dated October 11, 2022 and the other dated October 19, 2022. The District explained it was refusing to include Adaptive PE exclusive of the PT developed exercise/movement plan as the Student had met the graduation requirements for PE, and her current reevaluation did not support that it was required to meet her transition services goals. The District also refused to amend the Student's IEP to remove the potential need to fade out dedicated paraeducator support. It indicated the Student's IEP team would meet again in four weeks to determine if the Student continued to require paraeducator support or if it would be faded as planned. The District refused to assign the Student to BHS instead assigning her to the Connections program. The Student's reason for wanting to be assigned to BHS was at least partly due to wanting to work with special education staff that she had a relationship with. The District explained its rationale that the Student was exclusively attending Bellevue College as part of her transition goals, and the Student had identified it as a better learning environment than BHS. The District believed that the Connections program was a good fit for her needs because she was doing well with her Running Start class which allowed her to receive dual high school and college credit, allowing her to progress toward her post-secondary goal. The District explained that based on the Parent's input it was decided to provide training to the Student on how to use public transportation rather

⁷⁷ P12pp31, 32, D16pp1, 2, D37p77; Strehle T1140:9, Student T357:3, 2786:23, Chapman T2430:23.

⁷⁸ D15p17; Student T366:23.

than specialized transportation.⁷⁹ Paraeducator support for the Student ultimately was not faded.⁸⁰

56. By October 2022, the Student had surpassed the 1.5 graduation credits requirement for PE having obtained 2.5 credits total.⁸¹

57. On October 14, 2022, the Parent emailed the District stating it was forcing the Student to self-advocate which was causing her stress, and this created an unending cycle of headaches, school absences, anxiety and depression. She explained the pressure of self-advocating caused her to shut down and that placing her in contact with people she had not met made her feel ambushed.⁸²

58. On October 18, 2022, the Student provided the District with a letter for the IEP team. Her letter expressed her strong objection to any interaction with Ms. Chapman, citing severe emotional distress and debilitating migraines directly caused by their interactions.⁸³

59. In October and early November, 2022, the Student met with Ms. Ugelstad and paraeducators at Bellevue College to participate in her exercise/movement program. During these meetings the Student felt misunderstood by Ms. Ugelstad based on her comparing the Student's current situation to being bedridden for two weeks and Ms. Ugelstad's refusal to advocate for her receipt of Adaptive PE with the IEP team.⁸⁴

60. On November 4, 2022, the Student had her final meeting with Ms. Ugelstad at Bellevue College. During the meeting the Student thought Ms. Ugelstad was trying to convince her to give up on Adaptive PE. Ms. Ugelstad believed she misunderstood a conversation she was having with a paraeducator. The Student left the meeting early as she was afraid to have any further interactions with Ms. Ugelstad who intimidated her. After this incident Ms. Ugelstad offered to provide services at a District building or through Teams.⁸⁵

61. Ms. Ugelstad developed a progress report dated November 15, 2022 that she provided to the Student. At the time they stopped meeting in early November, Ms.

⁷⁹ D16pp1,2, D17pp1,2; Student T374:19, Cordell T499:15-501:14, 509:5, Gager T546:14, Ugelstad T660:19, 661:15, Strehle T1140:9, Chapman T2467:25.

⁸⁰ D19p2; Student T371:15, Chapman T2441:16, Gilkey T2510:23.

⁸¹ D57p1.

⁸² P12pp33, 34, P12Sp6; O'Brien T:1698:8

⁸³ P12p35, P12Spp1-7; Student T382:5.

⁸⁴ P12p39; Student T2780:24.

⁸⁵ P12p41; Ugelstad T664:14.

Ugelstad had finished training paraeducators to work with the Student. The Student was on pace to achieve her annual IEP goals and had independently attended all her classes at Bellevue College. The Student was able to walk consistently to class both independently and with support from her paraeducators.⁸⁶

62. On or around November 2022, Dr. Heather Swanson⁸⁷ took over the Student's mental health treatment from Dr. Clancy.⁸⁸ During this time the Student was experiencing suicidal ideation. The Student would experience this in connection with receiving emails from the District or preparing for upcoming school meetings that she perceived as potentially confrontational. The Student felt emotionally abused by her interactions with the District.⁸⁹

63. On November 15, 2022, the Student cancelled her meeting with her assigned District social worker, Ms. O'Brien.⁹⁰

64. On December 19, 2022, the Parent emailed the District a durable power of attorney for education decision making granted to the Parent and signed by the Student. The Parent requested that, with the exception of her paraeducators, the District communicate only with her and not with the Student.⁹¹ On the same day, the Parent independently enrolled the Student in an online Geography and World Cultures class through Apex Learning Virtual School. The Student was awarded graduation credit for completing the class.⁹²

65. By December 2022, Ms. Gilkey believed the relationship between the Student and District had become broken. Based on this she took steps to convene a facilitated IEP meeting. However, that meeting was never held.⁹³

⁸⁶ D19pp1, 2; Student T389:16, Ugelstad T663:5 702:6, Chapman T2437:8.

⁸⁷ Dr. Swanson obtained her Bachelor of Science degree in psychology from Iowa State University. In 2008 she obtained her master's degree in science and in 2011 her doctorate in Child Clinical Psychology from Washington State University. Since 2019 she has been in private practice as owner of Balanced Minds PC providing outpatient psychotherapy and conducting comprehensive psychological and neuropsychological evaluations. Prior to that from 2015-2019 she worked as a psychologist for Neuropsychology and Cognitive Health of Bellevue Washinton. Prior to that Dr. Swanson worked in private practice as a psychologist in Colorado. P4pp1-12.; Swanson T1731:21.

⁸⁸ Clancy T1305:20, 1376:8, Swanson T1732:12.

⁸⁹ Swanson T1739:24, 1744:1.

⁹⁰ P12pp42, 43, P12Yp1; O'Brien T1700:20.

⁹¹ P12p45; Student T2789:20.

⁹² P13Mpp372-374; Stay T2655:7.

⁹³ Gilkey T2541:8.

66. The Student attended Bellevue College for the Winter 2022 quarter and took ASL II.⁹⁴

67. On January 3, 2023, the Student had a negative interaction with her paraeducator Ms. Whitaker who attempted to communicate with her about scheduling details. Based on this interaction the Parent emailed the District requesting Ms. Whitaker no longer serve the Student. On January 4th and 5th, 2023, Ms. Whitaker arrived to work with the Student at Bellevue College. On each occasion she was turned away by the Parent. The Parent made subsequent requests that Ms. Whitaker no longer work with the Student. Ms. Whitaker continued to attempt to work with the Student at Bellevue College until at least January 17, 2023.⁹⁵

68. On January 5, 2023, the District served the Student with the District's due process hearing request regarding her requests for an IEE (2023-SE-0030).⁹⁶

69. On or around January 16, 2023, the District received a letter dated that day from Kate Kennedy, a board certified advanced registered nurse practitioner (ARNP-BC), employed by Overlake Neuroscience institute. The letter recommended the Student be transported in vehicles that weighed at least 4,000 pounds when empty to decrease risks associated with another concussion should she be in another motor vehicle collision.⁹⁷

70. By January 23, 2023, the District determined a reevaluation was necessary to resolve the dispute over Adaptive PE, because the Student had refused paraeducator services and she had raised questions about the impact of her autism. The District proposed a Functional Behavioral Assessment (FBA) to obtain current information about the Student's needs and why she was not accessing the special education services offered by the District. The District provided the Student and Parent with a written consent form to conduct the reevaluation.⁹⁸ The Student and Parent did not give written consent to the District to conduct a reevaluation until the following year, January 16, 2024.⁹⁹

71. By January 24, 2023, the Student had not yet worked with a paraeducator for her exercise/movement program during the winter quarter due to a disagreement over where services were to be held. The District changed the Student's PT from Ms.

⁹⁴ P12p47, D57p2; Student T583:11.

⁹⁵ P12p48; Parent T456:12, Chapman 2422:7, Student T2790:22.

⁹⁶ P12p48; Student T310:24

⁹⁷ D71p1; Parent T467:9, 2976:3.

⁹⁸ D18pp1, 2, D26p24; Frohlich T2184:22, Ugelstad T668:7, Parent T236:16, 415:12, Richards T1112:8.

⁹⁹ D30p1; Parent T227:9.

Ugelstad to Dr. Chela Richards¹⁰⁰ who worked in the District transition program. Although Dr. Richards was assigned to the Student, they did not meet, and the Student did not receive services from her directly as the Student did not agree with the proposal to provide her services virtually.¹⁰¹ The District prepared a progress report dated the same day. It documented that the Student was maintaining her attendance at Bellevue College and remained at pace to achieve her IEP goals.¹⁰² The Student believed the report presented a misleading picture of her situation as it failed to acknowledge the bullying and harassment she was feeling from the District.¹⁰³

72. On or around February 2, 2023, the District received a second letter from Ms. Kennedy that explained to the District that she had been treating the Student since 2017, and her anxiety was a significant trigger for her migraines. The Student had expressed to her repeatedly that since the 2022-2023 school year began, the changes in her staffing, programming, and concerns over her education and transition services had been causing her significant stress. Her letter notified the District that during interactions with District staff the Student felt unheard, intimidated, isolated, threatened, helpless, impotent, marginalized, deprived of prior support and without any trusted point of contact within the District. The anxiety from stressors was causing the Student pain from intractable migraines which impacted her ability to do schoolwork and function in life.¹⁰⁴

73. On or about February 7, 2023, the District received a letter from Terra Wilde a Doctor of Nursing Practice (DNP) and ARNP. The letter alerted the District that Ms. Wilde was treating the Student and that the Student's stability had declined due to school stress, impacting her anxiety and depressive symptoms. The Student was also experiencing physical pain and migraines. She alerted the District the Student may be masking her symptoms and that the Student found situational stressors and confrontational situations extremely challenging.¹⁰⁵

74. On February 9, 2023, the Parent sent an email to Ms. Chapman stating she was not competent as a case manager or as a special education teacher and questioned how she could sleep at night. The following day the District notified the Parent that it would establish a communication plan consisting of a monitored email

¹⁰⁰ Dr. Richards has worked as a PT for the District for 13 years. She has an ESA certificate from OSPI to work in an educational setting as a PT. She has a Doctorate degree in Physical Therapy from Saint Augustine University and a Bachelor of Science degree in Exercise Science from Western Washington University. Richards T1108:17.

¹⁰¹ Student T390:15; Ugelstad T667:17, Richards T1114:11, 1122:25.

¹⁰² D19pp1, 2; Ugelstad T670:23, Chapman T2442.

¹⁰³ P12p51, D19p1; Student T392:22.

¹⁰⁴ D37p79, Parent T467:9.

¹⁰⁵ D26p24, D66p1; Parent T463:8.

box for her emails. The communication protocol did not limit the emails the Parent could send or delay her from receiving a timely response to her emails. The Parent was permitted to email directly Ms. Gilkey and Ms. McMinimee, District General Counsel. The District implemented the communication protocol because some of the Student's teachers, including Ms. Chapman, felt frightened and threatened by the Parent's communications. The District discontinued or reduced use of the communication plan around February 2024 when the Student began working with private providers contracted by the District.¹⁰⁶

75. On or about February 21, 2023, the District received a letter from Dr. Swanson, who continued to provide mental health therapy to the Student. Dr. Swanson's treatment included at least one 60-minute session per week. The letter explained that although the Student may appear bubbly and cheery this may mask her symptoms with people with whom she has not developed a good relationship. She explained the Student's masking behaviors should not be understood to reduce the impact of her autism disorder. The District was notified through the letter that the Student experienced stress from deviations in routine or expectations which negatively impacted her functioning abilities. These occurred in social situations or interactions in which negative emotions, conflict, or perceived criticism occurred. Dr. Swanson's letter put the District on notice that the Student may need assistance interpreting the social nuances of these situations and require time to process the moment. The letter further informed the District that the Student's chronic pain also impacted her ability to cope with negative emotions. It stated there may be days when the Student appears to demonstrate resilience and others in which she struggles with these challenges. Dr. Swanson recommended that those working with the Student be aware she may avoid eye contact to maintain her concentration and require rephrasing. She recommended alternative methods for the Student to provide input at meetings such as in writing or through recording. Dr. Swanson recommended avoiding statements that may be invalidating.¹⁰⁷

76. During the hearing Dr. Swanson emphasized that building rapport with the Student is the foundation of providing services to her. When the Student has to do unplanned things at the last minute or meet someone without preparation it causes her stress and impacts her level of energy, which affects her ability to participate. Ms. Swanson believed it was appropriate to include written Student input in the IEP process.¹⁰⁸

¹⁰⁶ D30pp1-3; Parent T1420:20, 2971:16.

¹⁰⁷ D26p24, D65pp1-3; Parent T459:24, 2976:11, Swanson T1734:10, 1765:18.

¹⁰⁸ Swanson T1743:2, 1762:5, 1820:13.

77. On March 2, 2023, the District received two records requests from an attorney in California, Michael Karatov, pertaining to the Student and the Parent. Mr. Karatov represented another person involved in the Student's car accident. The District Public Records Officer at the time of these requests was Sarah Kolpacoff.¹⁰⁹ The requests sought all records related to the District's January 5, 2023, due process hearing request 2023-SE-0030. This included but was not limited to the Student's special education reevaluation of March 2021, IEE requests made by the Parent in January 2023, and filings, orders, and communications related to the due process hearing request. Special education records were maintained by the District through its secure special educational database, "IEP Online." At the time of Mr. Karatov's public records requests, Ms. Kolpacoff believed that special education records attached to and transmitted by email were subject to production under Washington's Public Records Act. The District did not have authorization to release the Student's special education records to Mr. Karatov from either the Parent or Student. Prior to its releasing any information to Mr. Karatov, the Parent emailed the District her objection to release of the Student's personally identifiable information to him.¹¹⁰

78. On March 28, 2023, the Student wrote a letter for the Parent to read at the IEP meeting scheduled for the next day. The letter explained that the Student felt unsafe to attend the IEP meeting with Ms. Chapman and Ms. McMinimee present. She also explained holding the IEP meeting virtually limited her ability to self-advocate. The letter stated that the current IEP team lacked knowledge of her as she feared engaging with District staff and had not seen or talked with anyone on her IEP team for months. The letter notified the District that the meeting was scheduled for a time that conflicted with a preexisting psychiatry appointment, and she disapproved of the timing, location, content and attendees at the meeting. The letter stated that she objected to the meeting proceeding without her involvement and that doing so caused emotional and physical harm to her and denied her voice in her own education.¹¹¹

79. On March 29, 2023, the District convened the Student's IEP team to review her annual IEP. The parties had previously planned for the meeting to be held on March 16, 2023; however, the meeting was postponed as the parties could not identify mutually agreeable dates. The District chose the date of March 29, 2023, unilaterally, based on the schedule of other team members and the urgency in completing the IEP by the annual review date of April 15, 2023 and prior to the start of Bellevue College's

¹⁰⁹ Ms. Kolpacoff became the District's public records officer in 2022. Prior to that she worked in support of the student records officer and in discovery preparation. She has also worked for the District as a substitute teacher prior to working in the student records office. Kolpacoff T1446:12-1447:14.

¹¹⁰ P13Dpp155, 198-203; Kolpacoff T1481:10, 1483:17, Spitzley T1630:23, Olson T2052:21, Stay T2589:24.

¹¹¹ P12DDpp9, 10; Student T2796:6

spring quarter. The Student and Parent were provided draft IEPs prior to the meeting. The Student did not participate in this IEP meeting but instead wished her letter to be shared with the team. Among the meeting participants were Ms. Frohlich, Dr. Richards, Ms. Chapman, Ms. Gilkey, Ms. Stay, and Ms. Golding. The District stressed that a current general education teacher would not attend as all of the Student's classes were at Bellevue College. The Parent and Student requested the meeting be scheduled in-person, but their request was denied. The Parent was permitted to come into a District building to participate remotely. The Parent and Ms. Stay did not log on to the meeting at the scheduled start time. This delay was caused by building staff being unaware of the room to send them and connection to the videoconference not being immediately available. The meeting started about 20 minutes before the Parent and Ms. Stay joined. The District did not review with the Parent what had been discussed prior to their arrival. The Parent and Student requested to tape the meeting to accommodate the Student's inability to attend the meeting and the Parent's own disabilities. Their requests to tape the meeting were initially denied. Ms. McMinimee did not permit the Parent to read the Student's letter to or discuss it with the IEP team members during the meeting. The team was unable to finish developing an IEP and a second meeting was scheduled for April 21, 2023.¹¹²

80. Beginning April 2023, the Student was enrolled and participated in the Spring 2023 quarter at Bellevue college in ASL II, Self-Advocacy, and Life Fitness Training I.¹¹³

81. On April 14, April 21, and May 9, 2023, the District released records personally identifying the Student to Mr. Karatov. Included among what was released to Mr. Karatov were special education records pertaining to the Student that were attached to email communications. No redactions of the Student's name or other personal information were made other than to redact the name of her siblings. No records responsive to Mr. Karatov's request were withheld by the District. Among the records released were documents related to the Student's March 3, 2021 reevaluation and the IEP dated April 15, 2021. The special education records released to Mr. Karatov were electronic copies of records retained by the District in the IEP Online database. Coinciding with its release of records to Mr. Karatov, the District also released student records to the Parent, responsive to her requests for records.¹¹⁴

82. The release of the Student's personally identifiable information to a third party, Mr. Karatov, caused the Student to feel violated and compounded her distrust of the

¹¹² P12p53, P13Jp661, P15pp1-5, D26pp1-21, 25; Parent T416:15, 417:25, 2757:7, Richards T1113:17, Golding T2348:17, Gilkey T2515:24, Stay T2571:3.

¹¹³ D59p4; Student T303:5.

¹¹⁴ P13Dpp8-105, 229-233; Kolpacoff T:1476:15-1482:20, 2216:15.

District. The special education records contained information that was deeply personal to her, including details that she did not want her estranged father and any future employers to know. The District's disclosure of her special education records felt like an egregious violation of her security and privacy. This further impacted her distrust of the District.¹¹⁵

83. On April 19, 2023, the Student wrote another letter, four pages in length, to her IEP team. The Student wrote the letter in lieu of attending the April 21, 2023 meeting, because her conflict with the District was causing her too much distress to participate, she was unable to self-advocate remotely, and her request for an in-person meeting was denied. The letter stated that she learned that Ms. McMinimee had refused to allow the Parent to read the letter at the March 29, 2023 IEP meeting and she felt silenced and helpless. The letter detailed the Student's challenges regarding completing her IEP and post-secondary goals. It detailed her current performance at Bellevue College from her perspective. It included her need for alternative transportation, a career assessment, and self-advocacy support. The letter detailed her feelings about her current special education services. She explained she was experiencing frequent and persistent migraines during the school week. The letter stated the most prominent and debilitating challenge she was experiencing was the stress stemming from her disagreement with the District.¹¹⁶

84. During the second IEP meeting on April 21, 2023, the Parent was again delayed by the District in logging in. The Parent began taping the meeting as she mistakenly believed she had been given permission from the District 504 coordinator and District administration. The attendees of the meeting were roughly the same as the prior meeting except the Student's aunt attended virtually. The District refused to read or permit the Parent to share or discuss the Student's April 19, 2023 letter with the IEP team. Ms. Stay shared the Student wanted an adaptive goal in transportation. Prior to the completion of the meeting the Parent and Ms. Stay were disconnected from the Zoom meeting by the District after Ms. McMinimee learned the Parent was taping the meeting. The meeting proceeded after the Parent and Ms. Stay were disconnected without an effort to reconnect¹¹⁷

85. The District completed the Student's annual IEP with a start date of April 30, 2023. The IEP included a revised social/emotional goal that stated that when given or experiencing real-life circumstances that cause the Student to feel anxiety, she would implement anxiety-management strategies improving her ability to manage her anxiety

¹¹⁵ P12p54; Student T2791:23, DiNoto T1010:9, 1013:10, Swanson T1748:1, Stay T2582:20.

¹¹⁶ P12DDpp12-16; Parent T1839:1, Student T2796:17.

¹¹⁷ P12p52, D25pp1-17; Parent T424:11, 443:21, Stay 943:14, 2702:2, Gilkey T2521:1.

from a base line of zero to three out of three trials. This goal was to be measured by monthly data collected by her contract and service provider and provided to her special education teacher. Progress toward this goal was to be reported quarterly. The IEP included a goal in adaptive skills that when given practice finding a dining location and anxiety management strategies the Student would independently eat a meal in public improving from a baseline of zero measured over four consecutive weeks to three out of three trials measured by staff collected data. Progress on this goal was to be reported quarterly. The IEP stated that due to the limited time that the Student had accessed special education services during the 2022-2023 school year the team did not have sufficient data to update her transition needs. The IEP stated that because the Student did not have a general education teacher as part of Running Start a current teacher was unable to participate in developing her program.¹¹⁸

86. The IEP provided 60 minutes per quarter of consultation between the contracted service provider delivering social emotion services to the District special education teacher and social worker and an additional 60 minutes per quarter with the contracted services provider supporting the social skills group. The IEP provided 60 minutes per week of one-to-one services from a doctorate-level psychologist and 90 minutes per week of participation in a social skills group run by a contract service provider year-round (concurrent services for adaptive and social-emotional). The Student was also offered 30 minutes per week of SDI in adaptive skills from a paraeducator under supervision of a special education teacher, 30 minutes per week of counseling support from a social worker and 15 minutes per week of dedicated paraeducator time supervised by a PT (to help support her Movement program). She was also offered 30 minutes of consultation support from a PT per quarter. The IEP identified the Student's LRE as 80-100% in general education.¹¹⁹

87. The District issued a PWN, dated April 24, 2023, proposing to implement the IEP. The PWN dated April 24, 2023, did not contain any explanations of other options considered or rejected proposals.¹²⁰

88. On or around May 17, 2023, the District received a letter from Dr. Swanson listing specific accommodations to support the Student during IEP meetings. Among these recommendations was to provide the Student the opportunity to take notes

¹¹⁸ D26pp25-28; Richards T1113:20.

¹¹⁹ D26pp34-37; Parent T3172:18, Strehle T1136:4

¹²⁰ D26p39.

and/or record IEP and other meetings. After receiving Dr. Swanson's May 17, 2023, letter the District permitted the Student and Parent to record IEP meetings.¹²¹

89. The Student did not receive special education services from the District during the months of March through June 2023. In part this was due to the Student's fear of Ms. Chapman and the Parent's and the Student's objection to Ms. Whitaker being the Student's paraeducator. The District continued to offer the Student the opportunity to access her assigned teacher, providers and paraeducators during this period.¹²²

90. On June 5, 2023, the Student filed her initial hearing request (Complaint).¹²³

91. As of June 21, 2023, the District did not have sufficient information to provide a quarterly report of progress toward the Student's IEP goals due to her lack of attendance. The District had not provided the Student special education services since at least January 2023.¹²⁴

Summer 2023

92. During the Summer of 2023 the Student attended Bellevue College independent of the District.¹²⁵

93. On or around July 17, 2023, the Student was assessed for SLP and PT services by Melinda Bohrer, PT; Heather Maillet, SLP; and Kimi Reiner, RN of Rehab Without Walls. The evaluation was based exclusively on observation without a standardized assessment. The Student presented with moderate cognitive communication deficits related to attention, complex problem solving, insight into deficits, processing speed, pragmatics, initiation, and working memory. Her functional deficits varied greatly, ranging from mild to severe and were impacted by cognitive fatigue, internal and external distractions and anxiety. The evaluation recommended the Student receive services through Rehab Without Walls for 4-6 weeks consisting of (1) weekly PT for exploration and to set up an exercise/movement program; and (2) weekly SLP services to address cognitive communication deficits. The services of Rehab Without Walls allowed the Student to develop the ability to independently access Uber and swim at a public pool.¹²⁶

¹²¹ P13lpp1, 2; Swanson T1864:16.

¹²² Parent T454:5; Student T585:2.

¹²³ Complaint.

¹²⁴ D27pp1, 2; Chapman T2449:2.

¹²⁵ P12p55; Student T2781:8.

¹²⁶ P12p55, D68pp1-5, D69pp1-4; Ugelstad T674:17, Trescott T719:3, Swanson T1761:16, Parent T2925:13.

94. On or around July 22, 2023, a psychological assessment was completed by Lionel Enns, PhD.¹²⁷, BCBA-Doctoral (BCBA-D). Dr. Enns initially completed his assessment as an IEE at the request of the Student and Parent beginning in April 2023. He conducted his evaluation on four separate dates occurring in April, May and July. The goal of his evaluation was to gauge the Student's current level of function and make recommendations regarding her education. He completed a clinical interview of the Student and the following assessments BASC-3, Repeatable Battery for the Assessment of Neurological Status (RBANS-Updated), Weschler Individual Achievement Test, Fourth Edition (WIAT-4), and WAIS-IV. Dr. Enns observed the Student over two days during testing at his office and through his clinical interview. The Student answered questions directly and was engaged in having success. Her responses to testing were valid and reliable.¹²⁸

95. Based on the WAIS-IV the Student showed very highly developed verbal intelligence, reflective of profound giftedness. Her perceptual reasoning reflected nonverbal intelligence in the average range. The Student demonstrated capable nonverbal reasoning although her scores may have underestimated her true abilities. Her overall intelligence quotient (IQ) calculated at 110 in the high average range, however, Dr. Enns cautioned this was unhelpful in understanding the Student's range of strengths and weaknesses particularly in light of her highly developed verbal reasoning skills suggestive of intellectual giftedness. On the RBANS, the Student showed overall average ability within the range of her cognitive functioning. The Student's most notable strength was her immediate memory skills, while delayed memory skills appeared somewhat weaker. Her greatest weakness was attention skills. On the BASC-3 the Student's and Parent's reports were consistent other than discreet challenges with self-reliance reported by the Student and significant symptoms related to anxiety and autism reported by the Parent. The WIAT-4 showed the Student was highly capable in math. She showed a range of moderate to severe difficulties in social sensitivity that very likely impacted her social behavioral and academic performance in a consistent manner. Dr. Enns evaluation confirmed the diagnoses of Autism Spectrum Disorder and anxiety and provided evidence of ADHD, predominantly inattentive type and Persistent Depressive Disorder. He described her

¹²⁷ In 2012, Dr. Enns obtained a Doctor of Philosophy from the School of Psychology and Doctor of ABA from the College of Education, each from the University of Washington. Since September 2017 he has been in private practice as a clinical psychologist as owner of Under One Roof Psychological Services in Seattle Washington. Prior to that he worked as a Child Psychologist, Clinical Supervisor, Behavior Analyst for Mosaic Children's Therapy in Bellevue, Washington, beginning in November 2013. He was similarly employed for A.P.P.L.E. Consulting in Bellevue Washington from March 2011 through November 2013. P5pp1-4

¹²⁸ Enns T824:21, 832:10.

cognitive profile as someone who is exceptionally intelligent but held in place by her anxiety. The District received Dr. Enns's report in December 2023.¹²⁹

96. Dr. Enns's evaluation made the following recommendations for educational support:

- a. ABA support: Dr. Enns recommended applied behavior analysis (ABA) as it could provide a very high level of support to the Student. He recommended specific programs in the community, including Crescent Behavior Consulting and Engage ABA Seattle. The reason Dr. Enns recommended ABA in his report was because the Student required a team experienced in working with young adults with autism who could support both her school and transition plan. During his testimony, Dr. Enns clarified the Student could "absolutely" benefit from an individual therapy doctorate level provider such as Anna DiNoto, Psy.D. LMHC.¹³⁰ He also recommended a social skills group through an appropriate provider. He encouraged that the Student's preference of provider be prioritized.¹³¹
- b. SDI in Organizational Services: Dr. Enns recommended SDI in organizational support. These services would provide the Student with services to show that she can employ materials and learning tools independently.
- c. BT Services: Dr. Enns recommended a trained behavior technician (BT) who can help the Student navigate her school day by regulating and expanding her social and extra-curricular activities. He recommended that decisions to fade out the BT be based on data demonstrating her progress.¹³²
- d. PE: Dr. Enns recommended communication between the Student's current OT with Rehab Without Walls and the school team to determine an effective program for physical education. His report and testimony were neutral as to Adaptive PE delivered as SDI. His testimony endorsed a program consistent with the personalized movement program developed by Ms. Ugelstad. He

¹²⁹ D37pp71-93; Enns T830:7, 1577:5.

¹³⁰ Dr. DiNoto obtained a Bachelor of Science in Psychology from Towson University. In 2011, she obtained a Master of Arts degree, and in 2014 she obtained her Doctorate in Clinical Psychology from Argosy University in Seattle Washington. She is a licensed clinical psychologist in Washington State. She has a board certification in forensic mental health assessments. In 2023 she completed her post-doctorate experience with Sandbox Therapy Group in Monroe Washington where she provided clinical training and supervision conducting clinical therapeutic work and neuropsychological evaluations. P3pp1-3; DiNoto T747:25.

¹³¹ Enns T845:18, 1582:24.

¹³² Enns T861:14, 1590:1.

emphasized that the Student's choice of activities and trust in provider was foundational.¹³³

e. Transition Services: Dr. Enns recommended a qualified provider including but not limited to those ABA providers he specifically recommended be central to transition planning for the Student, to direct the complex matrix of services required. His testimony clarified a team approach was essential for decision making to brainstorm responses to developments in her community services.¹³⁴

97. On or around July 31, 2023, Liz McHugh, OT of Rehab Without Walls conducted an OT evaluation of the Student. Ms. McHugh set up a weekly PT exercise program for the Student. The purpose of the treatment was for the Student to progress in her individual activities of daily living (IADL)s both in the home and in the community. This treatment was to be assessed on a week or two-week basis. The treatment was to last four to six weeks. The report included progress notes through September 2023, regarding the Student's motor-based capabilities. This report was received by the District with Dr. Enns's report in December 2023.¹³⁵

98. On August 21, 2023, the Student and Parent obtained an IEE from Kellie Kreft, CCC-SLP of Seattle Therapy Services – Skills for Life. Ms. Kreft's report was provided to the District by February 2, 2024. Ms. Kreft conducted the Clinical Evaluation of Language Fundamentals-5 (CELF-5) to assess the Student's receptive and expressive language skills. The purpose of the CELF-5 is to identify, diagnose and update assessment of language and communication disorders in students ages 5-21 years old. Based on the CELF-5 results the Student's expressive and receptive language skills were within the average to above average range compared to her same-age peers. Ms. Kreft conducted a comprehensive assessment of spoken language, second edition (CASL-2) to assess the Student's pragmatic language skills. Only the pragmatic judgement subtest was administered. The results of the CASL-2 were that the Student possessed average ability to comprehend and apply rules that are generally recognized to be appropriate for a given context compared to same-age, neurotypical peers.¹³⁶

¹³³ Enns T843:23.

¹³⁴ Enns T1546:14, 1581:24.

¹³⁵ D37pp1-5; Werth T1176:8.

¹³⁶ P24p1, D37p11; Trescott T720:23, Werth T1175:14.

2023-2024 School Year

99. In September 2023, the Student continued attending Bellevue College for Fall quarter without accessing or receiving special education services from the District. During this period the District continued to offer the services in the Student's IEP of April 30, 2023.¹³⁷

100. On December 19, 2023, the District convened an IEP meeting to review the recommendations in the evaluation report from Dr. Enns. Attendees at the meeting included the Student, Parent, Dr. DiNoto, Ms. Gilkey, Ms. Chapman, Mr. Ford, the Parent's and Student's attorney, Ms. McMinimee, and Ms. Ugelstad. The Student and Parent were provided a recording and transcript of the meeting. The meeting was held remotely due to the Student's request with speaking participants, other than the Student and Parent, keeping their cameras on. During this meeting Dr. Ens explained his recommendation. He explicitly recommended further evaluation in the area of communication and expressed concerns about the Student's hearing and vision that were not previously known to the District. The District issued a PWN dated January 2, 2024, that indicated it was proposing to explore the services that Crescent Behavior Consulting and/or Engage ABA Seattle have available that may be appropriate for the Student.¹³⁸

101. In December 2023, on the recommendation of Dr. Enns, Dr. DiNoto began providing 1:1 doctorate-level mental health services to the Student that targeted her social-emotional goal. Dr. DiNoto also began providing the Student 30 minutes per week of social skills group, weekly individual counseling, and telehealth as needed, generally several times per week for a planned total of 90 minutes per week. Dr. DiNoto reported her progress at least twice per month and frequently on a weekly basis. In her work toward the Student's goal, she reported the focus of her services, strategy implemented, trial outcomes and summary of results. She also reported the focus of her counseling, living situation adjustments, community resources, behavioral intervention strategies, and social developmental history. The Student was able to develop a relationship of trust with Dr. DiNoto who served as a buffer between her and District staff. The Student found this support from Dr. DiNoto invaluable in order to communicate with the District despite the extreme difficulty this posed to her due to her past experiences. By agreement of the parties, the District began contracting with Dr. DiNoto to provide direct and consultative services in January 2024 and reimbursed her for her attendance at the December 2023 IEP meeting.¹³⁹ After building a

¹³⁷ P12p58; Parent T2899:5.

¹³⁸ P12p59; D28p1, D30p1, D82pp1-29; Enns T827:19, Parent T1408:8, Gilkey T2528:9.

¹³⁹ P12p60, D32p1, D33p1, D54pp1-18; DiNoto T748:22, Parent T458:17, Gilkey T2532:9.

relationship with the Student and providing services over a few months, Dr. DiNoto was able to increase the amount and frequency of her services to the Student. Prior to the Summer of 2024, the record was not clear about the extent Dr. DiNoto's services were increased or the dates when increases occurred.¹⁴⁰

102. In December 2023, the District provided the Parent with a letter stating that it would not continue to produce the Student's records to Mr. Karatov.¹⁴¹

103. On January 16, 2024, the Student and Parent provided written consent for the District to conduct a reevaluation of the Student. The reevaluation proposed by the District was a comprehensive evaluation in audiology, social/emotional, behavior, academic, fine motor, vision/orientation, mobility, recreation, sensory processing/regulation, FBA, medical-physical, general education, adaptive, cognitive, communication, gross motor, student observation, and age-appropriate transition services.¹⁴²

104. The District issued two PWNs dated January 22, 2024. One PWN proposed implementing the April 2023 IEP. The reason for this proposal was that the Parent and Student agreed that services should be provided under the April 2023 IEP as the Student's stay-put while her due process hearing was pending. The other PWN stated the District denied the Student's request to amend the Student's IEP without meeting, retain a person without social worker credentials to provide the social work services in the Student's IEP, and provide a Driver's Education class to the Student. In addition to the services provided by Dr. DiNoto, the District began implementing stay-put services for the Student at the end of January 2024 consistent with the April 2023 IEP. The District assigned Kamila Tomaszewski¹⁴³ as the Student's IEP case manager as replacement of Ms. Chapman. However, Dr. DiNoto remained the Student's primary service provider.¹⁴⁴

105. In February 2024, Genevieve "Genny" Olson¹⁴⁵ was assigned as the Student's social worker. Ms. Olson coordinated with Dr. DiNoto to provide indirect services in

¹⁴⁰ DiNoto T1041:14.

¹⁴¹ Parent T2866:21.

¹⁴² D30p1; Parent T1237:9, Gilkey T2529:11.

¹⁴³ Ms. Tomaszewski obtained a Bachelor of Arts in education from the University of Toronto in 2009. She received a Master of Arts specializing in autism and social skills from Concordia University in Montreal in 2016. She has a special education teacher certification from OSPI. She has over 15 years of experience as a special education teacher and worked with the District for four years. Tomaszewski T2246:22.

¹⁴⁴ D33p1; Student T1854:6, Tomaszewski T2247:18.

¹⁴⁵ In May 2014, Ms. Olson obtained her Bachelor of Arts degree from Duke University. In May 2016, she received her Master of Arts in public health from the University of North Carolina at Chapel Hill. In August 2020, she received

support of the Student. Ms. Olson did not work directly with the Student due to the Student's request.¹⁴⁶ During this month Dr. DiNoto helped to gradually lead the Student's connection and development of a relationship with Ms. Tomaszewski. After this introduction the Student and Ms. Tomaszewski began meeting 1:1 via Teams to support her receipt of SDI in social/emotional and adaptive skills in coordination with Dr. DiNoto and Ms. Stay. Up to the time of the hearing, she and the Student continued to meet regularly. By March 2024 and through May 2024, Ms. Tomaszewski provided services towards the Student's social/emotional and adaptive goals in addition to Dr. DiNoto and Ms. Stay. Ms. Tomaszewski's services included building rapport, identifying what the Student needed to do, and supporting the Student's completion of assessment and coordination with Ms. Stay's services to the Student. The Student benefitted from the instruction provided by Ms. Tomaszewski in addition to her other providers during the stay-put.¹⁴⁷

106. On February 16, 2024, the District convened the Student's IEP team. During this meeting Ms. McMinimee muted Mr. Ford when the family tried to raise the issue of the Student's discomfort with Ms. Ugelstad. Although they were not muted, the Student and Parent left the meeting due to this.¹⁴⁸

107. On February 23, 2024, Jennifer Wright conducted an OT evaluation of the Student. Ms. Wright has a master's degree in OT (MOT) and is a registered and licensed OT (OTR/L) employed by Seattle Therapy and was contracted to work with the Student by the District. Ms. Wright conducted a Canadian Occupational Performance Measure (COPM). The Student reported to her that she was hypersensitive to light and motion causing her to wear dark glasses and move her head and neck carefully to avoid too much sensory input. Ms. Wright found the Student needed sensory tools and would benefit from consultation services within an academic setting for sensory processing. The District received Ms. Wright's evaluation on March 28, 2024.¹⁴⁹

108. Beginning February 29, 2024, the parties agreed to include participation in an exercise program of the Student's choosing as part of the Student's transition plan. The parties further agreed that the program did not need to be implemented by a PT.

her master's degree in social work from the University of Southern California. She has an ESA certification to work as a social worker in an education setting from OSPI. She began working for the District in September 2023 assigned to BHS as the school social worker. Olson T2043:14.

¹⁴⁶ Olson T2046:14.

¹⁴⁷ Tomaszewski T2248:5, 2282:15.

¹⁴⁸ P22pp16-25; Tomaszewski T2286:1, Parent T2369:12, Gilkey T2533:7.

¹⁴⁹ D37pp24, 40; Ugelstad T676:5, Werth T1178:9.

Based on this agreement the District agreed to fund a swim membership and transportation to and from the local pool through the end of the Summer of 2024.

109. In early March of 2024, the District held a series of IEP meetings to develop the Student's annual IEP. However, the IEP for the 2024-2025 school year was not finalized until August 29, 2024. During that time the Student received services through agreed adjustments to the Student's stay-put services.¹⁵⁰

110. On or about March 18, 2024, the District received an evaluation summary from members of Alderwood Vision Therapy Center, PLLC. The summary indicated that the Student was receiving vision therapy from the center. The team diagnosed the Student with convergence excess, fusion with defective stereopsis, suppression of binocular vision, hypermetropia, and myopia. The symptoms of these diagnoses were reduced binocular vision and flare ups causing stress, sickness or lack of sleep. The summary stated the Student required 1-1.5 years of vision therapy to maximize her skills. Recommended treatment was weekly sessions ranging from 30-40 minutes either in-person or remotely. The summary detailed school-based accommodations that involved, making classroom materials more accessible, limiting screen time, accommodating testing, visual breaks, reducing visual tracking demand, and adjusting the classroom environment.¹⁵¹

111. By May 1, 2024, the Student had reached her adaptive goal to eat a meal in public. The Student wanted her next goal to focus on ordering a meal.¹⁵²

112. On May 3, 2024, the Student and Parent met with Ms. Olson. The Student continued to meet with Ms. Olson for 45 minutes to an hour to discuss her completion of graduation requirements. Ms. Olson assisted the Student in identifying volunteering opportunities. However, the Student did not identify a volunteering activity she was able to engage in.¹⁵³

113. On May 24, 2024, the Student was referred by Dr. DiNoto to Emily Clark Jascha Florentino of "ACES" an ABA program in Bellevue. The purpose of the referral was to complete an autism treatment plan. ACES completed a Vineland II Adaptive Behavior Scales (Vineland II) assessment with the Student via a telehealth appointment. The treatment plan identified the Student as a mild level of risk and recommended a focused level of ABA services to address her maladaptive behavior and skill deficits.

¹⁵⁰ Tomaszewski T2550:4.

¹⁵¹ D37p61, Frohlich T1674:12.

¹⁵² D43p6, DiNoto T783:22, Student T1874:21.

¹⁵³ Olson T2047:18.

ACES proposed to provide the services 6 hours per week via telehealth. A copy of the plan was provided to Dr. DiNoto and the District soon after it was developed.¹⁵⁴

114. On or about May 24, 2024, the Student met with Leihua Edstrom, PhD, Licensed Psychologist with NW School of Neuropsychology. The Student continued to meet with Dr. Edstrom for testing and follow up several times a month until October 2024, for the completion of a neuropsychological IEE. The District paid the cost for this evaluation in the amount of \$7,750.¹⁵⁵

115. On or about May 31, 2024, the District paid for and obtained an addendum to Dr Enns prior report. The addendum was based on the Adaptive Behavior Assessment System, Third Edition (ABAS-3) assessment Dr. Enns had recently completed based on on-line questionnaires provided by the Student and Parent. The overall general adaptive composite indicated functioning within the extremely low range and substantially below age-based expectations. Dr. Enns recommended that the Parent, Student and Dr. DiNoto work together to identify targets for intervention and support based on the strengths and weaknesses identified by the ABAS-3 and other data.¹⁵⁶

116. The District convened the Student's IEP team. The meeting followed on March 29, 2024, May 9, 2024, and May 31, 2024. Dr. DiNoto and Dr. Enns attended at least one of these meetings together as part of their contracts with the District. There was some discussion during these meetings regarding adding support from an ABA team responsive to recommendations in Dr. Enns IEE. Dr. DiNoto stated this could introduce a new variable that undermined consistent support. The District shared draft IEPs with the participants at these meetings. Prior to the meetings Dr. DiNoto and Ms. Tomaszewski spoke with the Student about what goals she wanted. During the IEP meetings the team discussed Dr. Enns' and Ms. Florentino's recommendations regarding ABA services for the Student. The IEP team decided to wait for additional information before determining whether or not to add additional services such as an ABA provider.¹⁵⁷

117. During the IEP meetings, the team discussed whether to add BCBA services. A BCBA has either master's or doctorate level training to manage and supervise the development and implementation of BIPs for student's with intensive social/emotional and behavioral needs. The IEP team did not reach a decision on this point prior to the

¹⁵⁴ D39pp1-8; DiNoto T777:3.

¹⁵⁵ D78pp9, 10.

¹⁵⁶ D36pp1-7; Enns T854:15, Parent T473:10.

¹⁵⁷ D86pp1-59, D85pp1-88, D35pp1-18; DiNoto T774:2, Enns T851:16, Student T1876:25, Tomaszewski T2255:2.

conclusion of the 2023-2024 school year. While Dr. DiNoto worked closely with the Student over several months, she ultimately developed the opinion that the complexities of her presentation required an individual trained to know how to clinically pivot in the moment, which is a higher level of training from traditional BCBA training. She saw this as important, because if the Student was experiencing a mental health crisis the provider would be able to manage that in the moment in a way that best supports the Student.¹⁵⁸

118. At the end of May 2024, the Student's IEP team proposed ESY services that included continuing the 60 minutes per week of SDI in adaptive skills delivered 1:1 by Dr. DiNoto and 90 minutes of concurrent SDI in adaptive and social/emotional skills through participation in a social skills group.¹⁵⁹

119. On June 18, 2024, the District convened a reevaluation team to review the District's reevaluation report. Participants in the meeting included the Student, Parent, Ms. Frohlich; Amy Fowler, SLP; Breanna Werth,¹⁶⁰ OT; Shaun Wargowsky, Special Education Teacher of Vision, Orientation and Mobility; Ms. Bacerdo; Jocelyn Alexander, Assistant Principal; Ms. Gilkey; Ms. Olson; Dr. Enns; Dr. DiNoto; Mr. Ford; and Ms. McMimiee. The District did not invite a general education teacher as the Student was not accessing any general education classes. Dr. Enns and Dr. DiNoto discussed the need for an FBA. Dr. Enns said that a FBA would not provide additional information. The evaluation team decided to change the Student's special education disability category from HI to multiple disabilities. In addition to existing data and assessments conducted by District staff the evaluation team reviewed the report and addendum of Dr. Enns, as well as the reports from Alderwood Vision Therapy Center, Seattle Therapy Life Skills, Dr. Swanson, Ms. Kennedy, and Ms. Wilde.¹⁶¹

120. The reevaluation included an audiological evaluation completed by Kristen Oulton, CCC-A a District Educational Audiologist.¹⁶² Her evaluation noted that the Student was hypersensitive to loud and/or repetitive sounds with some difficulty tuning out background noise. Other concerns were sound hypersensitivity related to her

¹⁵⁸ DiNoto 1055:7, 2076:25.

¹⁵⁹ D42p1; DiNoto T1042:3

¹⁶⁰ Ms. Werth has an ESA certificate to provide OT services in an education setting through OSPI. She obtained a master's degree in OT from the University of British Columbia in 2015 and an undergraduate degree from Washington State University. She has worked in the District for almost nine years. Werth T1172:16.

¹⁶¹ D37pp1-4; Frohlich T1674:12, Enns T848:13, 855:13.

¹⁶² Ms. Oulton has a certificate of clinical competency (CCC) from the American Speech and Hearing Association (ASHA). She has an ESA certificate from OSPI stating she is qualified to work as an audiologist in a school setting. She is also a licensed audiologist with the Washington State Department of Health. She has worked as an education audiologist for a total of 26 years. For 23 of those years, she was employed with the District. Oulton T1223:12.

Autism and ADHD diagnosis and infrequent tinnitus. Amy Trescott, District SLP¹⁶³ concluded that the difficulties in communication exhibited by the Student were likely due to her anxiety. The results of the testing from the private evaluators and providers along with their findings were included in the report for those respective areas in addition to testing from previous reevaluations.¹⁶⁴

121. Ms. Werth conducted a file review of the Student's fine motor needs including the Rehab Without Walls evaluations, Ms. Wright's assessment of February 23, 2024, and Dr. Enns evaluation. Based on Ms. McHugh's and Ms. Wright's evaluations and her own file review, Ms. Werth recommended OT support for school personnel, which would allow her to consult and collaborate with anyone who worked with the Student and provide education regarding sensory accommodation, tools and modifications related to the Student's ability to regulate sensory stimuli within the academic environment.¹⁶⁵

122. The reevaluation team determined the Student was eligible for SDI in the areas of adaptive, social/emotional, and executive functioning skills. The team concluded the Student was not experiencing an adverse educational impact and, therefore, did not qualify for SDI services in Communication and fine motor skills. However, the team recommended the Student's IEP team consider OT support for school personnel and any tools or strategies necessary relating to her ability to regulate sensory stimuli within the academic environment. In the area of gross motor, Ms. Ugelstad conducted a file review of existing information including her performance with the support of Rehab with Walls. The team recommended continued consultation and support in the areas of gross motor and PT; and accommodations such as self-limiting activities, an independent exercise program, and alternative seating. The evaluation report also included written statements from the Parent and the Student. The Student's statement reiterated much of what she included in her letters of March 29, 2023, and April 19, 2023, and expressed that she did not feel heard as the letters were not read at the IEP meetings corresponding to those dates.¹⁶⁶

123. In the area of Vision and Mobility the reevaluation included a review of existing data conducted by Mr. Wargowsky. This included recent medical information and private evaluations. After this data review Mr. Wargowsky conducted an in-person

¹⁶³ Ms. Trescott has worked as an SLP for the District since 2014. She has an ESA certificate from OSPI to allow her to work as an SLP in an educational setting. She also holds CCC from ASHA. She has a Master of Science Degree from the University of Washington and a Bachelor of Arts in Speech and Hearing Sciences from Washington State University. Trescott T717:6.

¹⁶⁴ D37pp1-37; Trescott T718:11, Oulton1225:25.

¹⁶⁵ D37pp25, 26; Werth T1180:16.

¹⁶⁶ D37pp10-36; Ugelstad T672:1, Frohlich T1678:23

assessment of the Student at BHS. Also, present was Faith Yeung, a teacher of the visually impaired and Ms. Olson. In addition to observation of the Student, Mr. Wargowsky conducted the Michigan Orientation and Mobility Severity Scale standardized assessment. Based on this information, the reevaluation team recommended that as a related service the Student receive 120 minutes per month of orientation and mobility services. The District paid for glasses screening for the Student as recommended by Mr. Wargowsky.¹⁶⁷

124. The reevaluation included an age-appropriate transition assessment based on documentation from Bellevue College, other existing data, and input from the Student. On personality testing the Student rated herself as lower in conscientiousness, agreeableness, and extraversion. She rated higher in nervousness and the following tendencies to be; disorganized, critical, reserved and anxious. The post-secondary goal identified in her assessment was to continue on a path towards associate and bachelor's degrees.¹⁶⁸

125. The District issued a PWN dated June 20, 2024. The PWN indicated the District proposed to change the Student's disability category to multiple disabilities and that the Student was eligible for SDI in the areas of adaptive, social/emotional, and executive functioning skills.¹⁶⁹

126. By late June 2024, Dr. DiNoto had reported consistent progress toward her social/emotional goal. Each time she met with the Student, they worked on different functional areas, broadening and expanding overtime. She was demonstrating repeated success in her ability to manage her anxiety through successive trials without fail, assessed on a weekly basis over the last 10 weeks of the school year.¹⁷⁰

Summer 2024

127. Through July and August 2024, Dr. DiNoto continued to provide the Student individualized services toward her social-emotional goal, reporting progress on a near weekly basis. The Student continued to progress toward her goal throughout the summer showing progress in identifying and discussing anxiety management strategies and partial success at implementing these strategies. She also continued to progress in working with Dr. DiNoto in her counseling sessions.¹⁷¹

¹⁶⁷ D37p29; Frohlich T1678:9.

¹⁶⁸ D37pp36, 37; Frohlich T1679:13.

¹⁶⁹ D38pp1, 2; Frohlich T1680:18.

¹⁷⁰ D53pp1-12; Tomaszewski T2264:10.

¹⁷¹ D53pp3, 4, 13; Tomaszewski T2264:2.

128. During the summer of 2024, the District hired Ms. Stay to work with the Student to complete the Seattle University Center for Change in Transition Services' Five Unit T-Folio assessment (T-Folio). Ms. Stay delivered 62.75 hours of special education services to the Student during the months of July and August 2024. Ms. Stay also accompanied the Student when she used the HopSkipDrive service to complete Smarter Balance math testing at BHS. Ms. Stay delivered the bulk of her services to the Student remotely. Her comfortable relationship with the Student was a reason for the Student's success.¹⁷²

129. Ms. Stay also supported the Student through other instructional activities, Department of Vocational Rehabilitation (DVR) and IEP meetings, and consultation services. Dr. DiNoto assisted the Student to successfully apply to and obtain eligibility from DVR and at least one other social services agency. The Student also obtained eligibility for benefits through the Social Security Administration (SSA).¹⁷³

130. On July 23, 2024, the District convened the Student's IEP team to consider her request for additional services due to anxiety and depression experienced since the end of the school year. The District contracted with Ms. Stay to serve as the special education teacher for this meeting. Other participants were the Student, Parent, Kristin Lierheimer, Special Education Director,¹⁷⁴ Mr. Wargowsky, Dr. Enns, Dr. DiNoto, Mollie Yates, the Student's private OT, Mr. Ford and Ms. McMinimee. Dr. DiNoto recommended a comprehensive approach focusing on reducing burnout and trauma to alleviate her anxiety and depression using autism-specific strategies to create structured routines and develop social skills. She proposed revised goals for the Student in the areas of social/emotional, executive functioning, and adaptive skills. The services matrix provided that Dr. DiNoto's portion of services totaled 270 minutes weekly.¹⁷⁵

131. The District issued a PWN dated July 23, 2024, explaining its proposal to provide these additional ESY services. It explained that the Student's request to add another social worker was rejected as the additional 30 service minutes could be delivered by Dr. DiNoto who already had a relationship with the Student.¹⁷⁶

¹⁷² P12p61, D63pp1-63, D64pp1, 2, D48p15; Stay T880:14, 956:17, Student T1875:10.

¹⁷³ Student T1882:22.

¹⁷⁴ Ms. Lierheimer obtained her Bachelor of Science degree from the University of Missouri in Elementary Education in 1995. In 2009 she obtained a master's degree focused on autism from the University of Missouri. In 2016 she earned her certification as an education administrator from OSPI. She worked in special education leadership in other school districts prior to join the District in July 2024. Lierheimer T3287:23.

¹⁷⁵ D40p1, D42pp1-4; D44p1, DiNoto T785:15, 1091:1 Stay T946:7.

¹⁷⁶ D42p3; DiNoto T799:13, Stay T946:15.

132. On or around July 30, 2024, Dr. DiNoto increased the time she worked with the Student. She added time so that she got to the point of meeting with her three or more times a week for longer periods of time. At Dr. DiNoto's request, the District approved an increase in the amount of her services in all the areas the Student qualified. She also provided 60 minutes per month of consultation services in support of District staff.¹⁷⁷

2024-2025 School Year

133. On August 29, 2024, the District convened the Student's IEP team to update the Student's IEP. Team members included Ms. Strehle, Ms. Tomaszewski, the Parent, the Student, Ms. Lierheimer, Ms. McDonald, Mr. Gager, Sherri Spitzley, Social Worker,¹⁷⁸ Ms. Frohlich, Ms. Yates, OT, Ms. Alexander, Ms. Stay, Dr. DiNoto, Ms. McMinimee, Mr. Ford and Mr. Wargowsky. The Parent, Student and Dr. DiNoto were provided IEP drafts prior to the meeting. The team updated the Student's present levels of performance, updated her social/emotional and adaptive skills goals, and added an executive functioning goal. The IEP team considered and included in the IEP documentation a seven-page Student IEP input form, two-page Parent IEP input form, and the Student's letter of March 28, 2023. There was significant back and forth until the goals were finalized. The team considered written input from Ms. Stay. The goals the team developed incorporated Student input. At hearing Dr. Enns identified the services contained within the IEP as appropriate for the Student.¹⁷⁹

134. The team determined the Student would receive:

- 180 minutes per week of SDI from a doctorate-level-psychologist in the areas of social/emotional and adaptive skills.
- 90 minutes per week of concurrent SDI in adaptive and social skills by way of participation in a social skills group run through a contract service provider.
- 90 minutes per week of the concurrent supplementary aid and support of the doctorate-level psychologist participating in the social skills group with her.

¹⁷⁷ DiNoto T759:3.

¹⁷⁸ Ms. Spitzley has an ESA certificate from OSPI to work as a school social worker. She is a licensed clinical social worker (LCSW) in the states of Michigan and Colorado. She has a Master's of Social Worker from the University of Michigan, Ann Arbor and a Bachelor's in Spanish and psychology from the University of Michigan, Ann Arbor. She has been employed as a social worker for four years, one and a half of those years with the District. Spitzley T1628:10.

¹⁷⁹ D47pp1-4, D48pp1-26; DiNoto T787:20, Enns T859:23, Stay T951:25.

- 30 minutes per week of SDI in social-emotional skills from a special education teacher during the school year.
- 30 minutes per week of concurrent adaptive services in social work in school delivered by both a social worker and special education teacher.
- 600 minutes per quarter of SDI in executive functioning through participation in remote adult sessions from Executive Functioning Success using the Seeing My Time curriculum with concurrent behavior support from a BT. This was to begin with an initial set of 10 weekly sessions.
- 30 minutes per week of 1:1 related services from a social worker during the school year.
- 120 minutes per month of one-to-one related services in orientation and mobility from an orientation and mobility specialist during the school year.
- 360 minutes per week of adult support from a BT to support the Student's implementation of social, adaptive, and executive function strategies and skills outside of the special education setting.¹⁸⁰

135. The District issued a PWN dated September 3, 2024, that indicated its proposal to provide services under the revised IEP. The Student remained assigned to Ms. Tomaszewski as a case manager whom she met with on a weekly basis. She received services from Ms. Olson on a weekly basis. The Student's providers were flexible in scheduling with her and made up time missed.¹⁸¹

136. In August 2024, the District proposed executive function instruction with ABA support for the Student. Several weeks prior to the hearing the Student identified her availability to participate in this service. Providing these services to the Student on a timeline the Student identified is consistent with Dr. Enns recommendation.¹⁸²

137. During the 2024-2025 school year, the District continued to contract with Dr. DiNoto to work with the Student on her social/emotional skills and adaptive skills goals up to the time of the hearing. In adaptive skills the Student was showing growth toward independent living. In social-emotional skills the Student steadily advanced toward her self-advocacy goal. The guided supports Dr. DiNoto provided were crucial to the

¹⁸⁰ D48pp21-26; DiNoto T766:15, 793:24, Werth T1182:9, Tomaszewski T2259:11.

¹⁸¹ D48p29; Student T339:19, Spitzley T1642:14.

¹⁸² Enns T1597:4, Spitzley T1634:5.

Student's success. Dr. DiNoto worked with the Student directly toward her goals for 4 hours per week. These direct services did not include other supports provided to the Student by Dr. DiNoto such as social skill group. The Student benefitted from the services delivered by Dr. DiNoto, Mr. Wargowsky, Ms. Tomaszewski, Ms. Spitzley, and Ms. Stay and progressed toward her IEP and post-secondary goals.¹⁸³

138. Beginning October 2024 through at least December 2024 the District funded and the Student participated in the online UCLA PEERS® social skills program for 90 minutes per week under the supervision of Dr. DiNoto who provided prompts and guidance in peer interactions as her social coach. At times Dr. DiNoto's services in support of the Student's participation in the group exceeded the 90 minutes allotted per week, for which she was compensated by the District. Dr. DiNoto provided this service in addition to her other services. UCLA PEERS® is an evidence-based social skills program for teens and young adults for handling conflict and rejection. The Student showed steady growth in her social skills and communication strategies in support of her social/emotional skills goal. The District offered the Student the base level 16-week program and an additional 5-week class about dating with Dr. DiNoto's support. The Student benefitted from receiving these services. Dr. DiNoto was able to help her generalize those skills into day-to-day life. In addition to the UCLA PEERS® program the Student participated in Delphi Young Adults and Aspiring Youth (Aspiring Youth) social skills group classes a District expense. After participating in the group, the Student determined Aspiring Youth was not a good fit for her. The Student also participated in another group, Rainbow Heads. The group did not have enough members to continue beyond an initial session.¹⁸⁴

139. At the time of hearing Dr. DiNoto believed the services the Student required would be someone like herself "to hand off the baton" from the services she was providing at the secondary level to the post-secondary level.¹⁸⁵ Ms. Tomaszewski described the services the Student had received from the District as "robust." She did not believe the Student required any additional educational services.¹⁸⁶

140. Jospeh Kempisty¹⁸⁷ is a District administrator who is responsible for assisting with credit recovery and is familiar with alternative pathways and online learning. On

¹⁸³ D53pp15-17; DiNoto T796:5, 998:13, Student T317:17.

¹⁸⁴ D74p1; DiNoto T753:19, Student T328:10.

¹⁸⁵ DiNoto T2087:7.

¹⁸⁶ Tomaszewski T2265:19.

¹⁸⁷ Mr. Kempisty has a principal certificate and k-12 teaching certificate in music from OSPI. He obtained a bachelor's degree in music education from the Ohio State University and a master's degree in educational leadership and policy studies from the University of Washington. He has past experience as an assistant principal in both elementary and secondary education. Kempisty T595:8.

October 4, 2024, the Student was awarded 5.6 credits for college courses she had completed at Bellevue College. Awarding the Student grades for college courses on her high school transcript was consistent with the Student's desire to maintain her cumulative grade point average (GPA) of 4.0.¹⁸⁸

141. On December 4, 2024, the Student's IEP team met. The team decided to add BCBA and BT services to the SDI she was receiving in the area of executive functioning.¹⁸⁹

142. On December 18, 2024, the District contracted with ABLE Opportunities, Inc. to provide an IEE focusing on transition planning. The cost of the IEE was \$3,000.00.¹⁹⁰

143. On December 23, 2024, the Student's GPA was 4.0 including the grades she was awarded through Bellevue College. She had met all the graduation requirements of her High School and Beyond Plan, Washington State History and Graduation Pathway. She had met credit requirements to obtain her high school diploma through the District. At the time of the hearing, she was enrolled in a U.S. government class at Bellevue College to complete her Civics requirement for high school graduation. The only other District high school graduation requirement that she had not yet met was the 40-hour volunteer community service requirement which the District was willing to waive but had not yet done so because the Student wanted to complete it. The Student has been accepted to attend Seattle University, a four year college, and was waiting to hear the results of other applications at the time of the hearing.¹⁹¹

144. At the time of the hearing the Student was arranging to schedule an online program called Seeing My Time Executive Functioning Success. The District offered to provide the Student individualized ABA support to partner with her for the class. The Student had begun to work with a BCBA at District expense.¹⁹² At the time of hearing, Ms. Wright had completed a transition assessment at District expense.¹⁹³

145. Professor Suzanne Dillon, Ph.D.,¹⁹⁴ is an expert on Adaptive PE. She reviewed the Student's special education records. She has not met or assessed the Student. In

¹⁸⁸ D57pp1-3; Kempisty T600:1.

¹⁸⁹ D52p3; Lierheimer T3292:7.

¹⁹⁰ D78pp4-8; Parent T3123:17.

¹⁹¹ P12p61, D57pp1-3, D59p5, D60p3; Student T289:20, 292:4, 304:4, T1877:14, Kempisty T632:21, Olson T2054:9.

¹⁹² D76p1; Student T336:25, 2809:18.

¹⁹³ Parent T3124:5.

¹⁹⁴ Dr. Dillon is a professor at the School of Health Promotion and Kinesiology at Texas Women's University. She received her Ph.D. in Developmental and Adapted Physical Education from Texas Women's University. She obtained

her opinion, based on the Student's disability profile, physical symptoms, and her lack of progress toward the PE curriculum, a PT could not oversee the Student's PE program. The basis for her opinion was because a PT would not have the requisite knowledge of the PE curriculum to design a program and oversee the paraeducators that implement the program.¹⁹⁵ Based on her review of the Student's March 2021 reevaluation and April 2021 IEP, Dr. Dillon opined that the Student should have been referred for an Adaptive PE evaluation because the evaluation and IEP teams concluded adaptations or modifications to the Student's PE curriculum were required due to the Student's lack of progress.¹⁹⁶

Reimbursements

146. The District offered to reimburse the Parent for Uber transports to Bellevue College beginning in 2022. Through the time of the hearing, the Parent's total cost was \$4,045.34. The District did not receive receipts for these costs other than those submitted as exhibits for this hearing.¹⁹⁷

147. The District offered to reimburse the Student and Parent for costs, including fees related to direct attendance at Bellevue College that were not funded through Running Start. Among these reimbursements are \$1,098.60 for the Student's enrollment in NDN classes during the 2022-2023 and 2023-2024 school year. Also included for reimbursement was any tuition not paid for the Student's Civics class during the 2024-2025 school year. The Parent has not provided the District with complete receipts of the Student's costs related to her enrollment at Bellevue College.¹⁹⁸

148. The District reimbursed the Parent \$586.25 for her NDN class during the summer of 2022.¹⁹⁹

a Master of Arts in Physical Education from Western Michigan University and a Bachelor of Science degree in Biology from Alma College. In 2000, Dr. Dillon became Nationally Certified in Adapted Physical Education and continues to hold this certification. She obtained tenure in 2015 and prior to that has been an Associate or Assistant Professor in her field beginning August 2000. P6pp1-43; Dillon T1940:1.

¹⁹⁵ Dillon T1951:23.

¹⁹⁶ Dillon T1961:21.

¹⁹⁷ P13Mpp86-300; Student T1870:1, Gilkey T2535:17, Parent T2955:21, Lierheimer T3296:9.

¹⁹⁸ Parent T3001:16, Lierheimer T3298:17.

¹⁹⁹ P13Mp379, Parent T190:10, 251:6, 3025:21, Student T355:21, 582:11.

149. The District reimbursed the Parent for the cost of Dr. Enns's evaluation in an amount of \$13,535.00. The District also reimbursed him for prior services to the Student in the amount of \$6,040.00.²⁰⁰

150. The District reimbursed the Parent for services with Seattle Therapy – Skills for Life provided beginning August 21, 2023, totaling \$1,562.50.²⁰¹

151. The District reimbursed the Parent \$278.00 for cost related to her pool membership from February 16, 2024, through the end of June 2024.²⁰²

152. The District agreed to reimburse the Parent for an audiology IEE from Evergreen Speech and Hearing center. It also agreed to reimburse OT and PT IEEs from Cole Pediatric Physical Therapy.²⁰³

153. The District reimbursed the Parent's insurance company \$440.00 for the cost of the Alderwood Vision Therapy evaluation. The Parent's co-pay for this report was \$80.00. The Parent was unaware whether she was reimbursed by her insurance company for the co-pay.²⁰⁴

154. The Student's Uber travel to BHS for assessments, meetings and testing were reimbursed by the District.²⁰⁵

155. The Parent's cost for Rainbow Heads was \$360.00. The District offered to reimburse the Parent for Rainbow Heads.²⁰⁶ The Parent's cost for Aspiring Youth was \$525.00. The District offered to reimburse the Parent for this cost.²⁰⁷

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

²⁰⁰ D78pp1, 2, D78p11; Parent T471:12, Enns T826:16.

²⁰¹ D78p3; Parent T2933:19.

²⁰² P13Mp350, P13Npp24-27, D37p27, D79pp4, 5; Parent T1440:10, Gilkey T2534:18, Parent T2929:8.

²⁰³ Parent T3130:5, 3246:3.

²⁰⁴ P28p100; Parent T2910:12, 3075:7.

²⁰⁵ Student T1870:8.

²⁰⁶ Student T2813:10, Parent T2934:22, 3088:2.

²⁰⁷ P13Mp351; Parent T3091:5.

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.²⁰⁸ In a due process hearing, the burden of proof is a preponderance of the evidence.²⁰⁹

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.”²¹⁰

4. In *Bd. Of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the IEP developed under these procedures is reasonably calculated to enable the child to receive educational benefits. As stated in *Rowley*, “[i]f these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.”²¹¹ 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.²¹²

5. 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.²¹³

²⁰⁸ RCW 28A.155.260(1).

²⁰⁹ RCW 28A.155.260(3).

²¹⁰ *Bd. Of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

²¹¹ *Rowley*, 458 U.S. at 206-07.

²¹² *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001).

²¹³ WAC 392-172A-05105(2); 34 CFR § 300.513(a)(2).

6. In *Endrew F. v. Douglas County Sch. Dist. RE-1*, the U.S. Supreme Court stated, “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”²¹⁴ The determination as to whether an IEP is reasonably calculated to offer a student a 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.²¹⁵ The “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.”²¹⁶ Accordingly, an IEP team is charged with developing a comprehensive plan that is “tailored to the unique needs of a particular child.”²¹⁷ Additionally, the Student’s “educational program must be appropriately ambitious in light of his circumstances . . .”²¹⁸

7. In reviewing an IEP, “the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.”²¹⁹ The determination of reasonableness is made as of the time the IEP was developed. An IEP is “a snapshot, not a retrospective.”²²⁰

Parent Participation

8. The IDEA requires that parents have the opportunity to “participate in meetings with respect to the identification, evaluation, and educational placement of the child.”²²¹ To comply with this requirement, parents must not only be invited to attend IEP meetings but must also have the opportunity for “meaningful participation in the formulation of IEPs.”²²²

IEP Requirements

9. An IEP must contain a statement of a student’s present levels of academic and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum.²²³ Present levels must include baseline measurements for goals.²²⁴

²¹⁴ 580 U.S. 386, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017).

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Endrew F.*, 580 137 S. Ct. at 1000.

²¹⁸ *Id.*

²¹⁹ *Endrew F.*, 137 S. Ct. at 999 (emphasis in original).

²²⁰ *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).

²²¹ WAC 392-172A-03100; 34 CFR §300.322.

²²² *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007).

²²³ WAC 392-172A-03090(1)(a); 34 § CFR 300.320(a)(1).

²²⁴ *Northshore Sch. Dist.*, 114 LRP 2927 (SEA WA 2013).

10. An IEP must include a statement of the program modifications and supports that will be provided to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students.²²⁵

11. An IEP must also contain a statement of annual goals, including academic and functional goals designed to meet the student's needs that result from his disability. For students who take alternate assessments aligned to alternate achievement standards, the IEP must include a description of benchmarks or short-term objectives.²²⁶ There must be a relationship between the present levels of performance and the goals and objectives. Goals must be stated with enough specificity that they are understandable and must be measurable in order to determine whether a student is making progress toward the goals.²²⁷

12. An IEP must include a statement of the special education and related services to be provided to the student to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students.²²⁸

Postsecondary Goal and Transition Services

13. IEPs must include, beginning not later than the first IEP to be in effect when a student turns 16, "appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills. They must also include the transition services, including courses of study, needed to assist the student in reaching those goals.²²⁹ A District may include college classes as part of a student's postsecondary transition services if the classes are necessary for the student to reach his transition goals and receive FAPE.²³⁰ The student must be invited to the IEP team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those

²²⁵ WAC 392-172A-03090(1)(c)-(d); 34 § CFR 300.320(a)(4)(ii).

²²⁶ WAC 392-172A-03090(1)(b)(i); 34 § CFR 300.320(a)(2).

²²⁷ Seattle Sch. Dist., 34 IDELR 196, 34 LRP 226 (SEA WA 2001).

²²⁸ WAC 392-172A-03090(1)(d); 34 CFR § 300.320.

²²⁹ WAC 392-172A-03090(1)(k).

²³⁰ Letter to Dude, 62 IDELR 91 (OSEP 2013).

goals. If the student does not attend the IEP team meeting, the school district must take other steps to ensure that the student's preferences and interests are considered.²³¹

Behavior Intervention Plan

14. A BIP must be included in a Student's IEP if determined necessary by the IEP team to receive a FAPE. At a minimum, it must describe the pattern of behavior that impedes the student's learning or the learning of others; the conditions or circumstances that contribute to the pattern of behavior; the positive behavioral interventions and supports that will be used and the skills the student will learn.²³²

Educational Placement

15. WAC 392-172A-02060(1) and (2) require that an IEP team, including the parents, decide the educational placement of a student at least annually after formulating the IEP. The team determines placement based on the Student's IEP, LRE, probability of the student attaining the IEP goals, and consideration of any potential harmful effect on the student or on the quality of services which he or she needs.²³³

16. The Ninth Circuit has defined educational placement to mean the general educational program of the student.²³⁴

17. WAC 392-172A-02050 requires school districts to ensure that students who receive special education are served in their LRE. This means students should be served "(1) to the maximum extent appropriate in the general education environment with students who are nondisabled; and (2) special classes, separate schooling, or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily."²³⁵

Issues for Hearing

18. The issues in this case are underlined and addressed as they appear in the Order Establishing Issues for the Due Process Hearing dated October 21, 2024. When

²³¹ WAC 392-172A-03095(2).

²³² WAC 392-172A-01031.

²³³ *Clover Park School District*, 122 LRP 46581 (SEA WA 2022).

²³⁴ *N.D. v. State Dep't of Educ.*, 600 F.3d 1104, 1116 (9th Cir. 2010).

²³⁵ *Id*; see also, 34 CFR 300.116(b)(2).

analysis of issues overlaps, they are addressed together.

a. Beginning August 8, 2021, through the 2022-2023 school year, whether the District violated the IDEA and denied the Student a FAPE by:

- i. Nonconsensual Destruction of Records: The District violated IDEA when it failed to inform the Parent and/or the Student that personally identifiable information collected, maintained, or used for Student's special education was no longer going to be retained by the District and destroyed the information without a request from the Parent or the Student to do so.
- ii. Failure to Follow Record Retention Procedures: The District violated the IDEA when it failed to follow its own record retention procedure pursuant to WAC 392-172A-05235 after it collected, maintained, or used for the Student's special education information that it destroyed prior to the Student being separated from special education services through the District for at least six years.

19. The Student alleges the District destroyed Student records during the time period at issue and failed to inform her or the Parent before doing so.²³⁶ The District argues that the evidence in this case did not establish that the District destroyed education records.²³⁷

20. Each school district must inform parents and adult students when personally identifiable information collected, maintained, or used in compliance with this chapter is no longer needed to provide educational services to the student, or is no longer required to be retained under state or federal law. State procedures for school district records retention are published by the secretary of state, division of archives and records management, and specify the length of time that education records must be retained. The information shall be destroyed at the request of the parent or student.²³⁸

21. The evidence in this case did not establish that Student records were destroyed by the District during the time period at issue. The specific documents the Student alleges destroyed were testing protocols related to her March 2021 reevaluation. The protocols would have been developed prior to the time period at issue, and the District did not retain protocols as a part of the Student's educational record. Therefore, the evidence in this case does not support a conclusion that the District destroyed testing protocols that were related to the Student during the time period at issue.

²³⁶ Student's Post-Hearing Brief p4.

²³⁷ District's Post-Hearing Brief p2.

²³⁸ WAC 392-172A-05235.

22. The District established that its procedures provided for informing parents or adult students when personally identifiably information of the Student that was collected, maintained, or used by the District would no longer be retained by the District. The District proved by a preponderance of the evidence that it met its obligations under the IDEA and met its burden of proof with respect to both these issues.

iii. Produced Records to Third Party: The District violated the IDEA when it failed to protect the confidentiality of the Student's personally identifiable information at the collection, storage, disclosure, and destruction stages when the District produced and continued to produce the Student's records, including special education records, as part of Public Records Act requests submitted by a law firm located in California.

23. The Student alleges that the District violated the IDEA when it produced records that identified the Student to Mr. Karatov without her consent.²³⁹ The District argues that because the records were attached to emails that were not maintained in the Student's file, the attachments were not educational records or subject to disclosure under Washington's Public Records Act (PRA).²⁴⁰ WAC 392-172A-05225 requires that consent from a parent or adult student must be obtained by a school district before personally identifiable information contained in the student's education records is disclosed to other parties, unless authorized without parental consent under 34 C.F.R. Part 99.

24. The Ninth Circuit Court of Appeals has considered whether a district committed a procedural violation when it only turned over emails that had been printed and added to the Student's physical file. The court held an "education record" under IDEA is defined by the regulations implementing the Family Educational Rights and Privacy Act ("FERPA").²⁴¹ Under FERPA, an education record includes records, files, and documents that "(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution."²⁴² In *West v. TESC Board of Trustees*, FERPA records were determined exempt from disclosure under Washington's PRA.²⁴³

25. In *Owasso Indep. Sch. Dist. No I-011 v. Falvo*, the U.S. Supreme Court interpreted the word "maintained" in FERPA as "to keep in existence or continuance;

²³⁹ Student's Post-Hearing Brief p7.

²⁴⁰ District's Post-Hearing Brief p3.

²⁴¹ *Burnett v. San Mateo Foster City Sch. Dist.*, 739 F. App'x 870, 873-74 (9th Cir. 2018); 34 C.F.R. § 300.611(b).

²⁴² 20 U.S.C. § 1232g(a)(4)(A).

²⁴³ 3 Wash. App. 2d 112, 117-26 (2018).

preserve; retain" and reasoned that "[t]he word 'maintain' suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database."²⁴⁴ Based on this interpretation, the Court determined the school district was not required to turn over the emails that were maintained as part of a student's educational records.²⁴⁵ As noted by the District, Owasso, was relied on in a more recent case, *S.A. v. Tulare County Office of Educ.*, for the premise that emails that are not in a student's personal file are not "educational records."²⁴⁶

26. In the present case, the District provided a third party, Mr. Karatov, with unredacted portions of the Student's education records that were maintained in the District's secure special educational database "IEP Online" without consent from the Student or Parent to do so. The District argues that, under Owasso and S.A. when those records were attached to emails that were not maintained as part of the Student's education records, the District was required to release the attachments in response to Mr. Karatov's public records request. The Parent argues the attachment documents were protected from disclosure as the Student or Parent had not consented to the release of records and no other exception applied permitting the release. It was undisputed that the attachments to the emails contained information that was directly related to the Student.

27. Owasso held that emails kept as part of the student's educational records in a permanent secure database were "maintained" under FERPA and, therefore, personally identifiable information contained in those records were protected from disclosure under IDEA. The Court made a distinction for emails that were maintained in a student's education record and determined those emails were protected from disclosure where other emails that were not maintained as part of a student's education records were not protected under IDEA. S.A. followed the same rationale. Owasso and S.A. are distinguished from the case at hand as the documents attached to the emails that were released were maintained by the District in its secure special educational database, "IEP Online." Unless an exception exists, such as consent from the Parent or Student, the IDEA explicitly protects from release the education records of the Student contained in the attachments. Storing a student's educational records in another location in addition to the secure database in which those records are stored does not make those educational records exempt from disclosure. The email attachments the District released were special education records directly related to the delivery of special education services to the Student, including her March 2021

²⁴⁴ 534 U.S. 426, 432-33, 122 S. Ct. 934, 151 L. Ed. 2d 896 (2002).

²⁴⁵ *Id.*

²⁴⁶ 53 IDELR 143 (E.D. Cal. 2009).

reevaluation report and the related IEP. These documents were confidential education records as defined under FERPA which extends to the IDEA and protected from disclosure. Therefore, a preponderance of the evidence established that the District violated the IDEA when it released these records.

28. The records released to Mr. Karatov contained personal information pertaining to the Student. The release of these records caused the Student to feel violated and compounded her distrust of the District. The District was aware at the time of the disclosure that the Student's disabilities included symptoms of anxiety. These symptoms were contributing to school avoidance and shut down when she felt betrayed or ambushed and caused her pain from migraines when she experienced distress. When the Student's educational records were released to Mr. Karatov the Student's relationship with the District had broken down as she was refusing to work with her teachers and paraeducators and did not feel comfortable attending IEP meetings. The distrust created by the District's release of her education records was deeply personal to the Student and further contributed to her school avoidance and disengagement with her education. Therefore, the District's release of the Student's education records impeded her right to FAPE and caused her loss of educational benefit. Either of these factors can establish a deprivation of FAPE due to a procedural violation as provided under WAC 392-172A-05105. Because these factors have been met a preponderance of the evidence supports the conclusion that the District violated the IDEA and deprived the Student of a FAPE by releasing her education records to Mr. Karatov. Based on the forgoing conclusions, the District failed to meet its burden of proof on this issue.²⁴⁷

b. Beginning August 8, 2021, through July 12, 2024, (unless otherwise stated) the District denied the Student and/or Parent meaningful participation in the IEP team meeting process by:

i. By failing to convene an IEP team meeting to discuss placing the Student in Evergreen Transitions program and/or otherwise failing to allow Student/Parent to meaningfully participate in the District's decision to place Student in the Evergreen Transitions program through the end of the 2022-2023 school year.

29. The Student's complaint alleges that the District failed to convene an IEP meeting to address placing her in the Evergreen Transition program and failed to allow

²⁴⁷ Because the Student has prevailed on this issue her motion to admit evidence to impeach Ms. Kolpacoff's testimony is moot.

the Student or Parent to meaningfully participate in that decision.²⁴⁸ The District argues that the evidence does not support the Student's assumption that a decision was made "placing" the Student in the Evergreen Transition program.²⁴⁹

30. The evidence establishes that the Student was not placed in the Evergreen Transition program but was assigned to the separate Connections program. The Parent participated in the March 2022 IEP meeting that identified the Student's placement prior to her being identified for the Connections program. There was no evidence that during or after the meeting the Student or Parent were limited in their participation or misled as to the location of where the Student's placement would occur. Therefore, a preponderance of the evidence establishes that the Student was provided a meaningful opportunity through the Parent to participate in the IEP meeting in which the Connections program was discussed. The District, therefore, did not violate the IDEA with respect to this issue.

ii. By transferring the Student to the Evergreen Transitions program without informed consent.

31. The Student alleges that she was transferred to the Evergreen Transition program without "informed consent."²⁵⁰ The District argues that the law does not require "informed consent" regarding the Student's receipt of services in a particular location.²⁵¹ As explained above, the evidence at hearing established the Student was in fact transferred to the Connections program. The IDEA requires parental consent for initial evaluation, new assessments conducted as part of a reevaluation, and the initial provision of special education services.²⁵² As correctly argued by the District, there is no requirement to obtain parental consent for a change in location of special education services. A district must provide PWN to a parent or adult student before it proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.²⁵³ Thus, to determine this issue the undersigned must analyze whether the Student was properly informed with respect to her identification for the Connections program.

32. The District issued a PWN on March 18, 2022. The notice included an explanation of the Student's LRE, her partial day schedule due to her fatigue, the

²⁴⁸ The Student's Post-Hearing Brief does not specifically address this issue.

²⁴⁹ District's Post-Hearing Brief p4.

²⁵⁰ The Student's Post-Hearing Brief does not specifically address this issue.

²⁵¹ District's Post-Hearing Brief p4.

²⁵² WAC 392-172A-03000.

²⁵³ WAC 392-172A-05010; 34 CFR 300.503(a).

paraeducator and related services supports she would receive, and that she may benefit in Running Start classes. The notice also explained that her transition services would be provided in support of her postsecondary goal of entering a four-year college. In June 2022, Ms. Chapman reached out to the Student and met with her along with Ms. Strehle and Ms. Stay to explain the Connections program to her before she began in the program in September 2022. Considering these facts, the District established, by a preponderance of the evidence, that the District properly informed the Student and provided PWN of the placement identified for her by the IEP team and that the location of that placement would be in the Connections program. The District, therefore, did not violate the IDEA with respect to this issue.

- iii. By refusing to accommodate the Student's and Parent's disabilities in order to allow each of them to meaningfully participate in IEP team and other meetings related to the Student's special education services.
- iv. Requiring the attendance of District staff at meetings related to the Student's special education services that the District was on notice caused the Student and Parent substantial anxiety and created a barrier to be able to conduct special education related meetings for Student.
- v. Not reading Student's letters to the IEP team and during other meetings related to the Student's special education services.
- vi. Not allowing the Parent to record IEP team and other meetings related to the Student's special education services to allow the Parent and Student to meaningfully participate in meetings related to the Student's special education services to which the Student does not currently attend due to her anxiety related to District staff meeting participants through December 2023.
- vii. By failing to have at least one general education teacher of the Student attend all of the Student's IEP team meetings.
- viii. By holding IEP team meetings and/or special education related team meetings without the Student and/or the Parent in attendance and/or excluding the Student and/or the Parent from meeting related to the Student's special education services through December 2023.
- ix. Material Revisions, Amendments to IEP Without Participation: From August 1, 2021, to the end of April 2023, by making material revisions or amendments to the Student's IEPs without her participation or the participation of her agents acting on her behalf at the IEP or other meetings

related to the Student's special education services in which the revisions or amendments to the Student's IEPs were made.

33. The Student alleges that the District prevented the Parent and Student from meaningfully participating in IEP meetings and not taking other steps to ensure that the Student's preferences and interests are considered by: (1) failing to accommodate her and the Parent's disabilities by denying their request for an in-person IEP meeting; (2) insisting that Ms. Chapman, and Ms. McMinimiee attend IEP meetings after being made aware their presence made the Student feel unsafe; (3) refusing to read the Student's letters during IEP meetings; (4) not permitting the Parent to record IEP meetings; (5) failing to have a general education teacher at IEP meetings; and (6) holding IEP meetings without the Student or Parent present.²⁵⁴ The District argued the Parent, and consequently the Student had the opportunity to participate in IEP meetings and that the Student and Parent were provided alternate opportunities for the Student and the Parent, including sharing draft IEPs with the Student, the Parent and the professionals working with them.²⁵⁵

34. Neither the IDEA nor Washington special education law specifically define "meaningful participation" for the purpose of ensuring parent participation under WAC 392-172A-03100. Determining what is "meaningful" requires balancing of the totality of the circumstances specific to an IEP meeting. In reviewing and balancing the totality of the circumstance, a tribunal may consider items including whether the parents received notice of the meeting, received draft documents before the meeting, were represented by an attorney, engaged in discussion, posed questions, and had opportunities to comment.²⁵⁶

Request for In-Person IEP Meetings

35. The Student and Parent requested the IEP meetings occurring on March 29, and April 21, 2023, be held in-person. The District attempted to partially accommodate this request by providing a room at the school for them and their invitees to participate from and a computer with which they could sign in for the virtual meeting.

36. A school district must ensure that a parent or adult student is present at each IEP meeting or afforded the opportunity to participate. IEP meetings must be scheduled at a mutually agreeable time and place. If the parent (or adult student) cannot attend an IEP meeting, a District must use other methods to ensure parent

²⁵⁴ Student's Post-Hearing Brief pp11, 14, 16, 19, 20.

²⁵⁵ District's Post-Hearing Brief pp5, 6.

²⁵⁶ *Mercer Island Sch. Dist.*, 121 LRP 1640 (SEA Wash. 2020).

participation which may include videoconference.²⁵⁷

37. In this case the District insisted on holding the IEP meeting by videoconference despite the requests of the Student and Parent for an in-person IEP meeting. The District was aware that the Student could not participate in an IEP meeting held by videoconference and that the Student had an appointment that conflicted with the meeting time. The District attempted to meet their desire for an in-person meeting by providing the Parent and Ms. Stay with a room and videoconference connection in a District office. On March 29, 2023, the room and computer connection were not readily available, and they did not have an opportunity to log in timely causing her and Ms. Stay to attend the meeting 20 minutes late. The District refused to update the Parent on what was discussed during the portions of the meeting she missed. This refusal prevented the Parent and by extension the Student, from meaningfully participating in the portion of the IEP meeting that the Parent was not a part of on March 29, 2023. The District scheduled the March 29, 2023 IEP meeting at a time the Student could not be there and by videoconference over their objection; this was not mutually agreeable as required by WAC 392-172A-03100. By not making the meeting room and videoconference connection readily available to the Parent at the time scheduled for the start of the meeting, beginning the meeting without the Parent, and refusing to catch her up after she finally connected to the meeting, the District undercut its own effort to accommodate the request for an in-person meeting.

Presence of District Staff at Meetings

38. The District argues that the Student objected to a long list of District staff attending IEP meetings.²⁵⁸ The IDEA does not give parents or the adult student the right to select which staff members will work with a particular student.²⁵⁹

39. Prior to the IEP meeting of March 29, 2023, the Student informed the District, through her letter, that Ms. Chapman and Ms. McMinimee's presence made her feel unsafe. At other points the Student refused to have contact with Ms. Ugelstad and Ms. Gilkey. Her letter also explained, due to a conflicting medical appointment, that she would not attend the meeting. Prior to the April 21, 2023, IEP meeting, the Student submitted another letter in lieu of participating in the meeting because she could not self-advocate during a videoconference meeting or endure the distress caused by participating during the meeting. For each of these meetings the Student did not attend the meetings for reasons not exclusive to the presence of particular District

²⁵⁷ WAC 392-172A-03100; *Doug C. v. Haw. Dep't of Educ.*, 720 F.3d 1038 (9th Cir. 2013).

²⁵⁸ District's Post-Hearing Brief p7.

²⁵⁹ *Longmeadow Pub. Schs.*, 110 LRP 39167 (Mass SEA 2010).

staff. Therefore, Ms. Chapman's, Ms. Gilkey's, Ms. Ugelstad's and Ms. McMinimee's presence at the IEP meeting was not a factor that deprived the Student and Parent of the opportunity to meaningfully participate in the IEP meetings. The District met its burden of proof on this issue.

Student's Letters to the IEP Team

40. The District argues that it attached the Student's letters to her July 2024 IEP, and this was identified as appropriate by Dr. Swanson.²⁶⁰ However, the District did not attach her letters to her April 30, 2023, IEP. The letters were not made a part of the Student's IEP until more than a year after the Student provided them to the District, which Dr. Swanson testified was not appropriate.

41. The Student submitted her letters of March 28, 2023, and April 19, 2023, to be shared at each upcoming IEP meeting in lieu of her attendance. The Student's March 28, 2023 letter made it clear that she felt unable to self-advocate through a virtual IEP meeting and that the March 29, 2023 meeting was scheduled at a time that conflicted with a health related appointment. The letter was the Student's attempt to participate and share information with the IEP team at the March meeting despite her objection that it was not scheduled at a mutually agreeable time. For the April meeting the Student again provided a letter, with additional information about her IEP and transition needs. The April 19, 2023 letter stated that she felt silenced when the District refused to read her previous letter.

42. Because the Student was unable to participate in the March and April 2023, IEP meetings, WAC 392-172A-03095(2) and 392-172A-03100(5) required that the District use other methods to ensure her post-secondary preferences and interests were considered and provide her with an opportunity to participate in the IEP meeting through alternate means. At a minimum, this would include sharing her letters prior to or during the meetings and permitting discussion of the letters during the meetings. Dr. Swanson's and Dr. Kennedy's letters emphasized how much stress the Student experienced from feeling unheard and the anxiety she experienced in interactions with the District. The decision not to grant her request to read or share her letters at the March and April 2023 IEP meetings in a manner that permitted discussion among IEP team members, prevented the Student from meaningfully participating in the IEP meetings. Therefore, a preponderance of the evidence supports the conclusion that the District did not meet its obligations under the IDEA by failing to share her letters in a manner that permitted discussion during the March and April 2023 IEP meetings.

²⁶⁰ District's Post-Hearing Brief p8.

Request to Record IEP Meetings

43. The District argues that it did not obtain verification of the Student's need to record meetings until receiving Dr. Swanson's May 17, 2023 letter. And that after receiving her letter it permitted the Student and Parent to record meetings.²⁶¹ A school district must take whatever action is necessary to ensure that a parent or adult student understands the proceedings of the IEP meeting.²⁶² Office of Special Education Programs (OSEP) guidance on tape recording IEP meetings, provides “[i]f a public agency has a policy that prohibits or limits the use of recording devices at IEP meetings, that policy must provide for exceptions if they are necessary to ensure that the parent understands the IEP or the IEP process or to implement other parental rights guaranteed under Part B.”²⁶³

44. In this case, the evidence at hearing did not establish that the Student and Parent provided sufficient information to the District that they required the recording of meetings prior to the March 29, 2023 and April 21, 2023 meetings. Therefore, the District's was not required to permit the Student and Parent to record the March 29, 2023 and April 21, 2023, IEP meetings. A preponderance of the evidence supports the conclusion that the District has met its burden on this issue.

General Education Teacher at IEP Meetings

45. Under the plain language of WAC 392-172A-03095, when a student is or may be participating in the general education environment, at least one of the student's general education teachers must be part of the student's IEP team. In *M.L. v. Federal Way Sch. Dist.*, the United States Court of Appeals for the Ninth Circuit held that this requirement is mandatory.²⁶⁴ In *M.L.*, the court emphasized that Congress, in defining the necessary members of an IEP team, recognized that “[v]ery often, regular education teachers play a central role in the education of children with disabilities...and have important expertise regarding the general curriculum and the general education environment.”²⁶⁵ However, when it is not possible to have a student's current teacher present at an IEP meeting, the Ninth Circuit has concluded that in some circumstances a former teacher of a student may serve on the IEP team

²⁶¹ District's Post-Hearing Brief p8.

²⁶² WAC 392-172A-03100(7).

²⁶³ Letter to Anonymous, 103 LRP 49595 (OSEP 2003); See also, Issaquah School District, 2003-SE-0133 (May 10, 2003).

²⁶⁴ 394 F.3d 634, 643 (9th Cir.), cert. denied, 545 U.S. 1128, 125 S. Ct. 2941 (2005).

²⁶⁵ *Id.* at 643.

without violating IDEA regulations.²⁶⁶

46. The District convened IEP meetings on October 7, 2022, March 29, 2023 and April 21, 2023, without a current general education teacher of the Student. However, Ms. Day, a former general education teacher of the Student, attended the October 7, 2022 IEP meeting. Ms. Golding, a former general education teacher of the Student, attended the IEP meetings on March 29, 2023, and April 21, 2023.

47. The District argues that it was not possible for a current general education teacher to attend meetings when the Student was attending Bellevue College because the college campus was not a general education setting.²⁶⁷ Under WAC 392-172A-03095(1)(b), the District was required to include a general education teacher in IEP meetings if there was a possibility that the Student could be “participating in the general education environment.” During the 2022-2023 school year the Student’s IEP provided that her LRE was 80-100% in general education. At times during the year the Student and Parent were advocating that the location of the Student’s transition services be returned to a District school outside of the college setting. And there was no evidence that the Student was prevented from withdrawing from Bellevue College and pursuing her education wholly within the District. Therefore, throughout the 2022-2023 school year there was a possibility the Student could participate in the general education environment. Ms. Golding and Ms. Day were former teachers of the Student and were knowledgeable about her needs. They could provide input to the Student’s placement needs and provide an opportunity to the Student and Parent to ask questions from a general education teacher so that they could understand their options within the District. Therefore, the Student was not harmed without the presence of a current general education teacher at her IEP meetings given that the Student did not have a current general education teacher at that time.

48. A preponderance of the evidence supports the conclusion that the Student’s IEP team was properly constituted with respect to the presence of a general education teacher. The District, therefore, met its burden of proof with respect to this issue.

IEP Meetings Without the Student or Parent Present

49. During a portion of the IEP meeting held on March 29, 2023, the District discussed the Student’s IEP without the Parent present and refused to summarize for her the information that was shared after she joined the meeting. During the April 14, 2023 IEP meeting the District continued to discuss the Student’s IEP after the Parent

²⁶⁶ *R.B. v. Napa Valley Unified Sch. Dist.*, 496 F.3d 932, 938 n.4 (9th Cir. 2007).

²⁶⁷ District’s Post-Hearing Brief p9.

was disconnected from the meeting. The IDEA requires that the IEP team include a parent or adult student and mandates that the IEP consider the concerns of the parent throughout the IEP process.²⁶⁸ A school district may only conduct a meeting without a parent or adult student present if it is unable to convince them that they should attend and the school district makes a record of its attempts as provided under WAC 392-172A-03100(6). In the present case, the District continued to conduct the April 21, 2023 IEP meeting after the Parent was disconnected. The District did not make efforts to reconnect with the Parent or persuade her to continue with the meeting. By continuing with the meeting without taking or documenting the steps in WAC 392-172A-03100(6) the District significantly impeded the Student's opportunity to meaningfully participate in the April 21, 2023, IEP meeting.

Deprivation of FAPE

50. Considering the totality of the circumstances of the March and April 2023 IEP meetings, it is concluded that the District deprived the Student of a FAPE by not allowing her and the Parent to meaningfully participate. The failure to adequately share the Student's letters with the IEP team on its own interfered with the Student's ability to participate as the District was aware the Student could not self-advocate virtually and had submitted her letters in lieu of attending. The District's refusal to hold an in-person meeting, at a mutually agreeable time, and hold portions of the meetings without the Parent present deprived the Student and Parent of the opportunity to meaningfully participate in the meetings. When taken together, these were significant violations of special education procedures that deprived the Student of an opportunity to meaningfully participate in the development of the IEP dated April 30, 2023, and caused her a deprivation of educational benefit. Thus, both independently and combined, the procedural violations the District committed in developing the IEP dated April 30, 2023, deprived the Student a FAPE as provided under WAC 392-172A-03100. Therefore, a preponderance of the evidence supports the conclusion that the Student prevailed on the issues (b)(iii) not accommodating the Student's request for in-person IEP meetings, (b)(v) not sharing and providing for discussion of the Student's letters with her IEP team, (b)(viii) conducting IEP meetings without the Student or Parent present and (b)(ix) making material changes to the Student's IEP without permitting the Student to meaningfully participate. The Student has prevailed on these four issues. The District met its burden of proof with respect to the other issues discussed above; (b)(iii), (b)(v), (b)(viii) and b(ix).

²⁶⁸ *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834, 2019 WL 2023567 (W.D. Wash 2019), aff'd sub nom. *Crofts v. Issaquah Sch. Dist.* No. 411, 2022 U.S. App. LEXIS 907 (9th Cir. 2022).

- x. From February 16, 2024, to July 12, 2024, by muting the Student, the Parent, and/or the Student's agents acting on her behalf during virtual IEP team and other meetings related to the Student's special education services.

51. The Student alleges the District prevented her and the Parent from meaningfully participating in the February 16, 2024, IEP meeting due to the District's muting of their attorney Mr. Ford during the meeting.²⁶⁹ The District argues that the meeting concerned a list of all evaluations the District was planning to arrange for the Student, and it was not a meeting in which decisions were made to reject proposed changes to or revise her IEP.²⁷⁰

52. The Student and Parent were not muted at any meetings. The IEP meeting of February 16, 2024, was the only time the mute feature was used against Mr. Ford. That meeting did not result in a revision or amendment or rejection of proposed changes to the Student's IEP. Although the Student and Parent disconnected from the meeting due to the muting of their attorney, additional meetings were held before the Student's IEP was developed and they were able to participate in those meetings with their attorney. Therefore, the evidence failed to show a deprivation of FAPE resulting from the District's conduct.²⁷¹ The District met its burden of proof on this issue.

- xi. During the 2022-2023 school year, by providing the Parent and the Student with inaccurate progress monitoring data as it relates to present levels of performance and Student's IEP goal progress reports. Specifically: Progress reports dated February 9, 2023, August 19, 2022, November 15, 2022, and January 24, 2023 quarters contain inaccurate progress monitoring data for all areas. Thus, any other document containing the same progress monitoring data addressed in the February 9, 2023, progress report would also have inaccurate data.
- xii. During the 2022-2023 school year by failing to timely produce or produce at all, all data and records related to Student that was requested by Parent to inform their decision-making process as it relates to the Student's special education services. Specifically, quarterly reports produced during February 2023, BIP daily data and reports, and all supporting data from the IEP progress monitoring report from February 9, 2023.

²⁶⁹ Student's Post-Hearing Brief p22.

²⁷⁰ District's Post-Hearing Brief p6.

²⁷¹ See, *Cashmere School District*, 80 IDELR 205 (WA SEA December 29, 2021) (School district's limited use of mute feature during one of four meeting IEP meetings held to develop a student's IEP did not deny the parents of FAPE).

53. The Student's complaint alleges that progress reports issued by the District during the 2022-2023 school year inaccurately stated her present levels of performance. Her complaint also alleges that during the 2022-2023 school year, the District failed to produce daily data reports provided for in her BIP and used to report progress to the Student in February 2023.²⁷² The District argues that accurate quarterly progress reports were issued during the 2022-2023 school year and that it was not required to produce the data it used to measure and develop the progress reports.²⁷³

54. WAC 392-172A-03090(1)(c) provides that a student's IEP must contain a description of how the school district will measure the student's progress toward meeting annual goals, and when the district will provide periodic reports on the student's progress toward meeting their annual goals. A district's failure to provide progress reporting data can be a procedural violation that results in a denial of FAPE.²⁷⁴ Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated ESA.²⁷⁵

55. The Student's IEPs that were in effect during the 2022-2023 school year required that the Student's progress toward her IEP goals be assessed during regular periods of measurement and to be reported to the Student on a quarterly basis. The District collected available data and made reports of the Student's progress on November 15, 2022, January 24, 2023, and June 21, 2023. The progress report completed on January 24, 2023, was provided to the Student on February 9, 2023. The Student's objection to this report was that it presented a misleading picture of the situation as it omitted and failed to acknowledge the bullying and harassment she was experiencing from the District. The requirements of WAC 392-172A-03090(1)(c) are that the District report on the Student's progress toward her IEP goals. The reports the District compiled and provided to the Student met these requirements and were completed by District employees with the requisite certifications. The evidence also does not support the conclusion that the District ignored the breakdown in the relationship between the Student and the District. At the time the January 24, 2023 progress report was developed, the District requested consent from the Parent and Student to conduct a reevaluation and FBA to determine why the Student was no longer accessing the special education services it made available to her.

56. WAC 392-172A-02090(1) does not require the data collected to assess IEP goals be provided along with the progress report to the parent or adult student. The

²⁷² The Student's post hearing brief does not address these issues. Student's Post-hearing Brief p2.

²⁷³ District Post-hearing Brief p.10.

²⁷⁴ *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 855-856 (9th Cir. 2014).

²⁷⁵ WAC 392-172A-02090(1)(i).

District was, therefore, not required to produce the data when it reported the Student's progress to her.

57. Therefore, the District proved by a preponderance of the evidence that it provided accurate progress reports to the Student as required by her IEP during the 2022-2023 school year and was not required to produce additional data. The District met its burden of proof on these issues.

xiii. During the 2021-2022, 2022-2023, and 2023-2024 school years, failing to consider all recommendations and professional opinions regarding the Student included in documentation provided by the Student or Parent to the District when making determinations related to the Student's special education programming.

58. The Student's complaint alleges that the District failed to consider the opinions provided to the District over the school years of 2021-2022, 2022-2023, and 2023-2024.²⁷⁶ The District argues that when it received information from outside experts from the Student or Parent, that information was incorporated into her IEPs.²⁷⁷ Upon receipt of a private evaluation a school district is obligated to review that information and determine whether an evaluation is necessary.²⁷⁸

59. Over the time periods alleged, the District received a significant number of opinions from private providers and evaluators. These included letters and IEEs. A complete review of each instance when the District received an opinion supports the conclusion that the opinion was considered by the District through a reevaluation or by the Student's IEP team. Although the IEE of Dr. Enns was initially conducted privately in July 2023, the District was not made aware of his report until December 13, 2023, and convened the IEP team on December 19, 2023, to discuss a reevaluation that would review Dr. Enns IEE. The recommendations of Dr. Swanson, Dr. DiNoto, Rehab Without Walls, Seattle Therapy – Skills for Life, and others were also timely considered when received by the District. Therefore, the District has, by a preponderance of the evidence, met its burden of proof on this issue.

xiv. From October 2022 through the end of the 2023-2024 school year, the District's communication plan for the Parent interfered with her ability to advocate, provide the District with relevant information related to the

²⁷⁶ The Student's post hearing brief does not address this issue. Student's Post-hearing Brief p2.

²⁷⁷ District's Post-hearing Brief p11.

²⁷⁸ *N.N. v. Mountain View-Los Altos Union High Sc. Dist.*, 122 LRP 26190 (N.D. Cal. August 4, 2022).

Student that was considered by the District and to meaningfully participate in communication related to the Student's special education.

60. The Student alleges the communication plan established in February 2023 for the Parent's emails deprived her of the opportunity to meaningfully participate in communications related to her special education.²⁷⁹ The District argues that there was no evidence its communication plan interfered with the Student's or Parent's ability to provide or receive communications and that the communication plan was a reasonable approach to the Parent's threatening emails to staff.²⁸⁰

61. In *L.F. v. Lake Washington Sch. Dist.*, the Ninth Circuit Court of Appeals determined that a school district did not violate a parent's right to participate when the parent's conduct had become hostile or intimidating toward staff. The court determined the school district could set reasonable limits through a communication plan that still allowed that Parent to meet regularly with District administrator.²⁸¹

62. By February 9, 2023, the Parent had sent a series of emails that District staff, particularly Ms. Chapman, found threatening. The communication plan the District established did not limit the number of emails the Parent sent and it provided she received a response to each communication. It also permitted the Parent to email administrators directly. The communication plan did not limit the Student from emailing staff directly. The District further mitigated the potential for interference to the Parent or Student from the communication plan when Dr. DiNoto assumed the role of intermediary. Because the District's use of the communication plan did not unduly limit the Student's or Parent's opportunity for communication with the District, it was reasonable in light of the Parent's hostile communications with staff. Therefore, the District has, by a preponderance of the evidence, met its burden of proof on this issue.

xv. The District failed to adequately document through a PWN the following:

a. Changes or modifications to Student's transition programming and services occurring in August 2021, September 2021, March 2022 and October 2022, through the end of the 2022-2023 school year.

63. The Student alleges the District did not provide PWNs on August and September 2021, March 2022 or from October 2022 through the end of the 2022-2023 school year, that explained changes or modifications to her transition

²⁷⁹ Student's Post-hearing Brief p24.

²⁸⁰ District's Post-hearing Brief p2.

²⁸¹ 947 F.3d 621, 75 IDELR 239 (9th Cir. 2020).

services.²⁸² The District argues it did not change the Student transition services in a manner that was not explained through a PWN.²⁸³

64. A school district must provide a PWN to the adult student or parent of a child eligible or referred for special education a reasonable time before it proposes to initiate or change the identification, evaluation, or educational placement of the student, or the provision of FAPE to the student, or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The PWN must include an explanation of why the agency proposes or refuses to take the action.²⁸⁴ A PWN must be provided “a reasonable time” prior to the effective date.²⁸⁵ The purpose of the notice is to provide sufficient information to protect the parents’ rights under the IDEA.²⁸⁶

65. The evidence at hearing showed that there were no changes to the Student’s IEP in August 2021. The District issued a PWN explaining the decisions regarding the agreed September 29, 2021 IEP amendment. The IEP amendment did not change or modify her transitions services. The District issued a PWN dated March 18, 2022, that detailed the IEP team’s decisions and intent to implement the revised IEP which included the Student’s transition plan. The District issued PWNs in October 2022 that explained its decision to maintain the Student’s assignment to the Connections program in support of her transition services plan and rejected the Student’s request to be reassigned to BHS. The evidence establishes that the PWNs sufficiently informed the Student about decisions regarding her transition services.

66. The District issued a PWN, dated April 24, 2023, explaining its decision to implement her annual IEP. This PWN did not include any explanation of the Student’s and Parent’s objections to the postsecondary goal or transition services contained within the IEP or its refusal to take the actions they requested. Among the Student’s requests was for a postsecondary goal and transition services regarding adaptive transportation as the Student’s letter from April 19, 2023, detailed, and Ms. Stay relayed to the IEP team. The PWN failed to explain the District’s action regarding her requests. Therefore, the PWN dated April 24, 2023, was deficient to meet the requirements of WAC 392-172A-0501. This was a significant IDEA deficiency that deprived the Student of a FAPE as it did not inform the Student of the basis for the District’s decision. By issuing an inadequate PWN, without a written explanation of its

²⁸² Student’s Post-hearing Brief p25.

²⁸³ District’s Post-hearing Brief p12.

²⁸⁴ WAC 392-172A-05010; 34 CFR 300.503(a).

²⁸⁵ WAC 392-172A-05010(1); 34 CFR §300.503(a); *Letter to Chandler*, 59 IDELR 110 (OSEP 2012).

²⁸⁶ *Kroot v. District of Columbia*, 800 F. Supp. 976, 982 (D.D.C. 1992).

decision responsive to her requests regarding her transition services, the District further compounded its failure to provide the Student an opportunity to meaningfully participate in the development of her IEP dated April 30, 2023. Therefore, a preponderance of the evidence establishes that the District failed to meet its burden of proof that the PWN dated April 24 2023 was issued as required by the IDEA. The Student prevailed on this issue.

b. Fading out and/or removal of the Student's paraeducators during the 2022-2023 school year.

67. The Student's complaint alleges the District did not issue a PWN concerning the decision to fade paraeducators. The Student's post-hearing brief does not address these allegations. The District argues paraeducators were not faded and this was addressed in the Student's IEP and through a PWN.²⁸⁷ The District issued a PWN in October 2022 that explained its refusal to amend her IEP to remove reference to the potential need to fade dedicated paraeducator support in the future. Therefore, the District met its obligation to explain its decision to fade paraeducators by issuing a PWN. The District has, by a preponderance of the evidence, met its burden of proof on this issue.

xvi. That the District's procedural violations independently and in their totality rise to the level of a substantive violation of IDEA and, thus, constitute a denial of FAPE.

68. The Student alleges the District's procedural violations deprived the Student a FAPE in their totality by rising to the level of a substantive violation. Neither the Student's nor District's post-hearing brief address this issue. Even though a district might fail to comply with the IDEA, it will not be liable for a procedural violation that doesn't result in educational harm to the student or impede the parents' opportunity to participate in the IEP process. Procedural flaws do not automatically require the finding of a denial of a FAPE. A procedural violation denies a child a free appropriate public education ("FAPE") only if the violation (1) impedes the child's right to a FAPE; (2) significantly impedes the parents' opportunity to participate in the IEP process; or (3) deprives the child of educational benefits.²⁸⁸

69. The Student and Parent were denied an opportunity to participate in the development of the Student's April 30, 2023, IEP and not provided a proper PWN of the decisions related to her requests regarding transition services. The District

²⁸⁷ District's Post-hearing Brief p12.

²⁸⁸ *D.O. ex rel. Walker v. Escondido Union Sch. Dist.*, 59 F.4th 394, 416 (9th Cir. 2023); WAC 392-172A-05105(2).

released confidential information of the Student in April and May 2023. These violations separately and collectively denied the Student educational opportunities in addition to depriving her of education benefit and, in instances specified above, hindered her ability to participate in the IEP process. The Student was not participating in education services during the time period these violations occurred. The violations undermined her trust in the District and contributed to her refusal to work with her assigned paraeducators, special education teachers and service providers. Therefore, a preponderance of the evidence showed that the District failed to meet its burden of proof. The Student has prevailed on this issue.

- xvii. The District applied different criteria to the Student's requested IEE providers than the criteria the District uses when it initiates an evaluation, to the extent those criteria are consistent with the Student's or Parent's right to an IEE.
- xviii. The District failed to fully fund a comprehensive IEE in all areas of suspected disability and need for Student or timely file and maintain its due process complaint after the Student or her agents notified the District of their disagreement with the District's reevaluation from 2021.

70. The Student's complaint alleges that the District applied criteria to the Student's chosen IEE provider that was different from the criteria the District uses when it initiates an evaluation. The Student's complaint also alleges that the District has failed to fund a comprehensive IEE that in all areas of suspected disability that were responsive to their disagreement with the District's reevaluation of 2021. The Student's post-hearing brief provides no further argument regarding these issues.²⁸⁹ With respect to both of these issues the District argues that evidence established that Parent was reimbursed for all amounts that she personally paid for the IEEs.²⁹⁰

71. The criteria a school district uses for an IEE at public expense must be the same as the criteria that the school district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an IEE. A school district may not impose conditions or timelines related to obtaining an IEE at public expense.²⁹¹ Parents of a student eligible for special education have the right to obtain an IEE if they disagree with the school district's evaluation.²⁹²

²⁸⁹ Student's Post-hearing Brief p27.

²⁹⁰ District's Post-hearing Brief p12.

²⁹¹ WAC 392-12A-05005.

²⁹² WAC 392-172A-05005(1); 34 CFR 300.502.

72. The District agreed to the Student's IEE requests at issue in 2023-SE-0030. The District reimbursed the Parent for the IEEs conducted by Dr. Enns and Seattle Therapy – Skills for Life. The District also reimbursed the Student's insurance company for the Alderwood evaluation. The District also funded the IEE conducted by Dr. Edstrom and ABLE Opportunities. There was no evidence that the District had determined that evaluators chosen by the Student for an IEE the District had agreed to fund, had been determined to not meet criteria. The evidence at hearing was that the evaluators identified by the Student were unavailable. Therefore, the District has, by a preponderance of the evidence, met its burden of proof on the issue regarding IEE criteria.

73. The primary disagreement at hearing regarding reimbursement was whether the District was obligated to reimburse the Parent for her Alderwood co-pay. The Parent was unsure whether she had been paid back by the insurance company for the co-pay. Because the District reimbursed the Student's insurance company and all other IEE providers it proved, by a preponderance of the evidence, that it met its obligation to fully fund the IEEs requested by the Student and agreed to by the District. The District has met its burden of proof and prevailed on the issue of fully funding the Student's requested IEEs.

c. Beginning June 5, 2021, through July 11, 2024, (unless otherwise stated) materially failing to implement the Student's IEP by:

i. Failing to provide paraeducator services with fidelity, through January 12, 2024.

74. The Student's complaint alleges the District failed to provide paraeducator services with fidelity beginning June 5, 2021, through January 12, 2024.²⁹³ The District argues that it offered the paraeducator services provided for in the Student's IEP and implemented those services when the Student was available.²⁹⁴

75. As stated in *Van Dyun v. Baker Sch. Dist.* a school district's obligation to provide the special education and related services provided in a student's IEP does not require "perfect adherence to the IEP."²⁹⁵ Failure to implement an IEP constitutes a denial of FAPE only "when the services provided to a disabled child fall significantly

²⁹³ The Student's post hearing brief does not address this issue. Student's Post-hearing Brief p2.

²⁹⁴ District's Post-hearing Brief p12.

²⁹⁵ *Van Dyun v. Baker Sch. Dist.* 5J, 481 F.3d 770, 779 (9th Cir. 2007).

short of those required by the IEP," so as to constitute a material failure.²⁹⁶ In circumstances where a school district is hindered from implementing the IEP due to the actions of a parent, courts have found that the school district was not responsible for a material failure to implement the IEP.²⁹⁷

76. The evidence at hearing was that during the 2021-2022 school year there was some inconsistency in the delivery of paraeducator supports due to staffing issues and the need to pair the Student with paraeducators that were a good fit so that the Student could work with them without experiencing stress. The Student avoided working with paraeducators with whom she had not developed rapport or did not trust. The District attempted to mitigate her experience of stress by having the Student meet with her paraeducators in advance. Despite the inconsistencies in delivering paraeducator support, the Student was able to progress toward her IEP goals during the 2021-2022 school year. Therefore, the District proved that the inconsistencies to provide paraeducator services during the 2021-2022 school year were the result of reasonable delays and did not constitute a material failure.²⁹⁸

77. During the 2022-2023 and the 2023-2024 school years the District was unable to deliver paraeducator services beginning several months after the Student began attending Bellevue College. This was due to the Student being unwilling to work with the paraeducators assigned to her. By January 2023, the Student disengaged fully from work with her assigned paraeducators and told the District to quit sending them to Bellevue College. Because the District was ready and able to provide the Student paraeducator support during these school years, the District proved by a preponderance of the evidence that it did not materially fail to implement the paraeducators services required by her IEP. The District has met its burden of proof and prevailed on this issue.

ii. During the 2021-2022 and 2022-2023 school years, failing to implement the Student's BIP.

78. The Student alleges that beginning March 1, 2022, through the end of the 2022-2023 school year the District failed to implement the Student's BIP.²⁹⁹ The District argued that when the Student began attending Bellevue College it provided sufficient support through a paraeducator to attend her college classes as required

²⁹⁶ *Id.* at 773.

²⁹⁷ *J.S. v. Shoreline Sch. Dist.*, F. Supp. 2d 1175, 1189; *Tracy N. v. Haw. Dep't of Educ.*, 715 F. Supp. 2d 1093, 1112 (D. Haw. 2010).

²⁹⁸ *J.S.*, 220 F. Supp. 2d at 1189 (finding that implementation delay that occurred at "behest of the parents ... was reasonable and was not ... error").

²⁹⁹ Student's Post-hearing Brief p33.

by her BIP.³⁰⁰ A BIP is included in a Student's IEP if determined necessary by the IEP team to receive a FAPE.³⁰¹ When a student's IEP contains a BIP it must be implemented as an element of the IEP.³⁰²

79. Beginning March 1, 2022, the Student's IEP contained a BIP. The Student's BIP targeted school attendance with support of her paraeducators designed to increase her physical stamina. As discussed above there were some inconsistencies in the Student's paraeducator support. Despite these inconsistencies the Student was able to progress toward her IEP goals and by the end of the 2021-2022 school year, the Student had improved her attendance and increased her physical stamina. Therefore, the District proved that any inconsistencies to implement the BIP during the 2021-2022 school year were the result of reasonable delays and did not constitute a material failure.

80. During the 2022-2023 school year the Student met with Ms. Ugelstad and a paraeducator at Bellevue College as part of her exercise/movement program in her BIP until the Student refused to work with Ms. Ugelstad. The District provided paraeducators to coach and support her transition to Running Start, as provided under her BIP, until she refused to work with them in January 2023. The District continued to offer the services in the Student's BIP when the Student attended Bellevue College and took steps to address the Student's avoidance such as reassigning her from Ms. Ugelstad to Dr. Richards. Because the District offered to implement the elements of the Student's BIP when she attended Bellevue College and attempted to address her school avoidance it made reasonable efforts to implement her BIP during the 2022-2023 school year. Therefore, the District proved that it did not materially fail to implement the Student's BIP during the 2022-2023 school year. The District has met its burden of proof and prevailed on this issue.

iii. Failing to implement the Student's IEP during the pendency of complaints filed by the District and the Student that are currently before OAH.³⁰³

81. The Student's complaint alleges that the District failed to implement the Student's IEP while this due process hearing was pending. The Student's and District's post-hearing briefs did not address this issue. During the pendency of the due process hearing proceedings, the student involved in the hearing request must remain in his

³⁰⁰ District's Post-hearing Brief p13.

³⁰¹ WAC 392-172A-01031.

³⁰² *Van Dyun*, 481 F.3d at 779.

³⁰³ The District hearing request, 2023-SE-0030, is no longer consolidated with this matter and not addressed in this decision.

or her current educational placement unless the school district and the parents of the child agree otherwise.³⁰⁴ This is commonly referred to as the “stay-put” provision. Its purpose is to maintain the status quo while an administrative or judicial dispute about a student’s education is pending.³⁰⁵

82. After the Student’s due process hearing was filed in June 2023, the Student continued to refuse the special education services offered by the District and provided for by her IEP. Beginning in January 2024, the Student began receiving services from Dr. DiNoto by agreement of the parties to modify the stay-put services. The evidence at hearing supports the conclusion that the District continued to offer services under the Student’s IEP of April 30, 2023, by party agreement. The parties agreed to add additional services as part of the Student’s stay-put during the 2023-2024 school year, through the time period at issue. Therefore, the District demonstrated by a preponderance of the evidence that it offered the Student services consistent with her agreed stay-put while this complaint was pending. The District has met its burden of proof on this issue.

iv. Materially failing to provide the Student with all of the general education and special education minutes she was entitled to as part of her IEP by:

a. Failing to allow the Student to participate in PE.

83. The Student alleges that from June 5, 2021, through July 11, 2024, the District failed to follow her IEP by not allowing her to participate in PE.³⁰⁶ The District argues the Student was given an opportunity to participate in PE as required by her IEPs and completed the PE credits required for graduation with a regular high school diploma.³⁰⁷

84. Each student eligible for special education services must be afforded the opportunity to participate in the general PE program available to nondisabled students unless the Student requires specially designed PE as described in their IEP.³⁰⁸

85. The Student’s IEPs of April 15, 2021, and April 14, 2022, provided the Student would participate in general education PE and receive supplementary aids and services through an exercise/movement program with a PT. The Student’s IEP provided the Student would participate in a general education PE class with detailed

³⁰⁴ WAC 392-172A-05125(1). See also 20 USC § 1415(j); 34 CFR § 300.518(a).

³⁰⁵ See, e.g., K.D. ex rel. C.L. v. Haw. Dep’t of Educ., 665 F.3d 1110, 1120 (9th Cir. 2011).

³⁰⁶ Student’s Post-hearing Brief p32.

³⁰⁷ District’s Post-hearing Brief p14.

³⁰⁸ WAC 392-172A-02030(2).

adaptations and/or modifications provided for both in the IEP and her BIP. During the 2021-2022 school year the District modified the Student's general education PE classes under direction of the PT, and she met her PE requirement for graduation. During the 2022-2023 school year, consistent with her IEP and BIP, the District continued to offer her an exercise/movement program. There were some reasonable delays in implementing this program because the District needed to train her paraeducators and the Student eventually refused to work with Ms. Ugelstad and the paraeducators. During the 2023-2024 school year, while this complaint was pending, the District continued to offer the modified exercise/movement program consistent with her stay-put IEP.

86. Therefore, the District proved, by a preponderance of the evidence, that it implemented the PE components of the Student's IEPs without a material failure. On this issue, the District met its burden of proof.

- b. (Stricken)
- c. During the 2021-2022 school year, granting the Student credit for courses she did not physically attend or participate in during the 2021-2022 school year including PE and the Student's special education class to which Amy Stay was the special education instructor responsible for the class.

87. The Student's complaint alleges she was awarded graduation credit for a PE class and special education class she did not participate in during the 2021-2022 school year.³⁰⁹ Neither the Student's nor the District's closing briefs directly address this issue.

88. In the present case, the District established that the Student was offered and participated in a PE class and special education class with Ms. Stay during the 2021-2022 school year. The Student's IEP permitted modified credit which was provided to her. Therefore, the District proved by a preponderance of the evidence that it granted the Student credit for a course she attended during the 2021-2022 school year. The District met its burden of proof with respect to this issue.

- d. Failing to initiate and follow State required High School and Beyond provisions and requirements.

89. The Student's complaint alleges that the District failed to initiate and follow

³⁰⁹ Student's Post-Hearing Brief p32.

state graduation requirements with respect to high school and beyond plans. Neither the Student's nor the District's closing briefs directly address this issue. In Washington State, a "High School and Beyond Plan" is a graduation requirement. For students with an IEP, the plan must be developed and updated in alignment with the student's postsecondary goals and transition services.³¹⁰

90. In the present case, the District conducted an age-appropriate transition assessment in April 2021. It updated that assessment through the reevaluation of June 18, 2024, the T-Folio, and transition assessment conducted by Ms. Wright. The Student's postsecondary goals included enrollment in a four-year college upon graduation, part-time employment, career interest surveys and community service. Her transition services included building her physical endurance to complete longer school days and college and career counseling. The District provided transition services including support in her attendance at Bellevue College through her IEP, services through Dr. DiNoto and Ms. Smart, exercise through a PT, membership at the local pool, and providing connections with social services agencies. The Student was successfully admitted to at least one four year college. Based on these services and outcomes, the District established, by a preponderance of the evidence, that it developed and updated a High School and Beyond Plan for the Student that was aligned with the postsecondary goals and transition services in her IEP. The District met its burden of proof with respect to this issue.

e. Failing to provide adequate transportation services.

91. The Student's complaint alleges that the District failed to provide transportation services as required by her IEP.³¹¹ The District argues that specialized transportation was not required by the Student's IEP during the "vast majority" of the time period at issue. It argues that, nevertheless, it set up transportation for the Student via ride services while she was at Bellevue College.³¹²

92. Transportation as a related service may be required if it is necessary for the Student to receive a FAPE.³¹³ An IEP team is responsible for determining if transportation is required for a student to benefit from special education and related services, and how transportation services should be implemented.³¹⁴ If transportation

³¹⁰ RCW 28A.230.212.

³¹¹ The Student's post hearing brief does not address this issue. Student's Post-hearing Brief p2.

³¹² District's Post-hearing Brief p15.

³¹³ WAC 392-172A-02025(2); 34 C.F.R. § 300.34(a).

³¹⁴ *Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, 53 IDELR 268 (OSERS 2009).

is identified by a student's IEP team as a related service, it must be provided at no cost to the parent.³¹⁵

93. The Student's IEPs did not provide for specialized transportation to and from school. However, in order for the Student to benefit from her transition services, the District agreed to provide or reimburse the Parent for transportation to transition services and assessments consistent with the transition plan in her IEP and the exercise/movement elements of her BIP. These included support in using HopSkipDrive, and Uber rides to and from Bellevue College, swimming, and assessments. There was no evidence that the District failed to provide or refuse to reimburse the Student and Parent for transportation services provided for in her IEP. Therefore, the District proved, by a preponderance of the evidence, that it provided appropriate transportation services as required by her IEP. The District met its burden of proof with respect to this issue.

f. Failing to provide SDI minutes in the areas of Social/Emotional, Communication, Executive Functioning, adaptive PE, Sensory Support and Services, and Transition Services and Plan that are tied to her IEP goals.³¹⁶

94. The Student's complaint alleges that the District failed to provide the SDI minutes required in the areas of social/emotional, communication, executive functioning, adaptive PE, sensory support and services, and transition services tied to her IEP goals.³¹⁷ The District argues that it did not materially fail to implement the SDI minutes provided for in her IEPs and that the Student benefitted from these services.³¹⁸

95. Beginning October 1, 2021, through April 14, 2022, the Student's IEP provided she receive 480 minutes per week of SDI in the special education setting delivered by a special education teacher to progress toward her adaptive and social/emotional goals. It did not require SDI for adaptive PE or sensory support and services. In June 2021, September 2021 and from April 14, 2022 through the end of the 2021-2022 school year, the requirement was 240 minutes per week. During this period of time, the Student received services in a special education class taught by Ms. Stay. Despite substantial absences the Student progressed toward her IEP goals and benefited from the SDI provided by the end of the 2021-2022 school year. Therefore, the District

³¹⁵ WAC 392-172A-02095.

³¹⁶ Conclusion of law about the District's implementation of the Student's paraeducator, PT services, and services under stay-put are completed above and, therefore, not repeated in this section.

³¹⁷ The Student's Post-hearing Brief does not address this issue with respect to services directed toward her social/emotional goals. Student's Post-hearing Brief p2.

³¹⁸ District's Post-hearing Brief p15.

proved, by a preponderance of the evidence, that it provided the SDI minutes required by her IEP during the 2021-2022 school year without a material failure.

96. From September 19, 2022, through October 20, 2022, the requirement was 240 minutes per week of SDI in the special education setting delivered by a special education teacher to progress toward her adaptive and social/emotional goals. Beginning October 21, 2022, the Student's IEP required she receive 150 minutes per week of SDI in a special education setting. During this time, the District offered services through the Connections program. The Student refused to access services through the Connections program after meeting with Ms. Chapman and despite the District's offer of services and reasonable steps to alleviate the Student concerns. This refusal continued until the parties agreed to adjust the Student's stay-put and Dr. DiNoto became the primary provider of the Student's services. After the agreements were made to the Student's stay-put, she engaged in services and progressed toward her IEP goals. Therefore, the District proved, by a preponderance of the evidence, that it offered the Student the SDI minutes required by her IEP during the 2022-2023 and 2023-2024 school years. The reason that the Student did not access services was not due to the District's material failure to implement her IEP.

97. Because the District established that beginning June 1, 2021, through July 11, 2024, it offered the SDI minutes as provided for in her IEPs, it proved by a preponderance of the evidence that no material failure to implement those services occurred. The District has met its burden of proof on this issue.

g. Failing to work on the following IEP goals:

- i. The Social/Emotional goals listed in her April 2021, April 2022 and April 2023 IEPs.
- ii. The Adaptive goals listed in her April 2021, April 2022, April 2023, and April 2024 IEPs.
- iii. All goals Ms. Tomaszewski was unable to work on with fidelity since becoming the Student's case manager or primary staff contact.

98. The Student alleges that the District failed to work on the social/emotional and adaptive behavioral goals in her April 2021, April 2022, and April 2023 IEPs.³¹⁹ The Student argues the District was the reason she disengaged in special education services and gives the example claiming she was not offered an appropriate exercise

³¹⁹ The Student's Post-hearing Brief does not address this issue with respect to IEP goals the Student worked on with Ms. Tomaszewski. Student's Post-hearing Brief p2.

program.³²⁰ The District argues that the evidence in this case does not support the conclusion that it committed a material failure to implement the Student's IEP goals.³²¹

99. The Student's April 15, 2021, IEP included a social/emotional goal that provided the Student would use strategies to improve her participation in an in-school class from 44% of the time. It also included an adaptive behavioral goal that the Student would improve transitioning from the school entrance to class from 1 time out of 10. The Student was provided a special education class through Ms. Stay and paraeducator support. The Student improved her in-class attendance to 61% and her independent transition from class to class by 50% by April 2022. Therefore, the District established by a preponderance of the evidence that the Student was given an opportunity to work on the social/emotional goal and adaptive behavioral goal listed in her April 2021 IEP and benefited from the special education services that were provided.

100. The Student's April 14, 2022, IEP included a social/emotional goal that provided the Student would use coping strategies to improve her ability to participate in two in-person classes. It also included an adaptive behavioral goal that the Student would improve transitioning from the school entrance to class. The Student continued to progress toward these goals during the 2021-2022 school year. During the 2022-2023 school year the Student was provided a special education class through Ms. Chapman and paraeducator support at Bellevue College. The Student was able to walk to her college classes independently and with paraeducator support. The Student refused to work with Ms. Chapman after September 2022, and with the paraeducators after the fall quarter. The Student was also offered an exercise/movement program through Ms. Ugelstad during this period consistent with her IEP. The evidence in this case did not demonstrate that the District staff assigned to work directly with the Student, specifically Ms. Chapman, Ms. Ugelstad, nor any of the assigned paraeducators, behaved in a manner that interfered with the Student's opportunity to work toward her IEP goals. The District proved that it offered the Student the services identified in her April 14, 2022 IEP to allow her to progress toward the social/emotional and adaptive behavior goals until she refused to do so. Therefore, the District established by a preponderance of the evidence that the Student was given an opportunity to work on the social/emotional goal and adaptive behavioral goal listed in her April 14, 2022 IEP.

101. The Student's IEP dated April 30, 2023, included a social/emotional goal that provided for the Student to improve her use of anxiety-management strategies in real-

³²⁰ Student's Post-hearing Brief p35.

³²¹ District's Post-hearing Brief p15.

life circumstances that caused the Student anxiety and an adaptive skills goal of independently eating a meal in public. Each goal was to be measured from a baseline of zero. From April 2023 through the end of the 2022-2023 school year and September 2023 through January 2024, the District continued to offer the services in the Student's April 30, 2023, IEP as the Student's stay-put. Beginning January 2024, with the agreement of the Student, the District offered the services of Dr. DiNoto as her primary provider in support of her stay-put IEP. By May 1, 2024, with Dr. DiNoto's support, the Student completed the adaptive skills goal stated in her April 2023 IEP.

102. The Student's complaint also alleged that she was not able to work with fidelity on her IEP goals with Ms. Tomaszewski. The District assigned Ms. Tomaszewski as the Student's case manager in January 2024. With the agreement of the Student, in support of her stay-put IEP, Ms. Tomaszewski gradually developed rapport with the Student, led by Dr. DiNoto. She and the Student worked 1:1 on the Student's social/emotional goal and the Student benefitted from this instruction.

103. The evidence in this case showed that the District offered the Student an opportunity to make progress on the social/emotional and adaptive skills goals in her April 2023 IEP and enter into agreement with the Student to deliver those services as part of her stay-put IEP. Therefore, a preponderance of the evidence supports the conclusion that the Student was given an opportunity to work on the social/emotional goal and adaptive skills goal listed in her April 2023 IEP.

104. The District and Student agreed the Student's stay-put was the April 2023 IEP. They also agreed to add services through the time period at issue in this case. Based on these agreements the District did not violate special education procedures in not developing and implementing an annual IEP in April 2024.

105. The District met its burden and proved, by a preponderance of the evidence, that it provided the Student an opportunity to work on the social/emotional and adaptive goals listed in her April 2021, 2022, and 2023 IEP. The District has also met its burden and proved that, with the Student's agreement, she was provided an opportunity to work with fidelity on her social/emotion goal with Ms. Tomaszewski while Dr. DiNoto helped the Student complete her adaptive skills goal. Therefore, the District has met its burden of proof regarding these issues.

d. Additional substantive violations beginning August 8, 2021, through July 11, 2024:

i. Failing to offer a transition program and services that were reasonably calculated to meet the Student's needs.

- ii. Beginning June 5, 2021, through July 11, 2024, providing the Student with an IEP that the District knew or should have known it would not be able to implement on account of the Student's school refusal or avoidance.
- iii. Failing to provide the Student with an IEP that adequately accounted for and supported the Student's pain management needs.
- iv. Failing to develop IEPs for the Student that were reasonably calculated to meet the Student's needs due to being based on a reevaluation that was not appropriate and failed to adequately identify areas of need for the Student.
- v. Failing to develop IEPs for the Student, including her BIPs, that were reasonably calculated to meet the Student's needs due to the Student's documented challenges with school refusal and missed instructional minutes and socialization opportunities.
- vi. The District's exercise/movement program was not reasonably calculated to meet the Student's needs for the reasons generally stated in the Student's Amended Complaint.

106. The Student alleges the District failed to offer the Student an IEP and BIP, supported by an appropriate reevaluation, that was reasonably calculated to meet her needs in the areas of transition, school refusal or avoidance, pain management, and exercise/movement.³²² The District argues that each element of the Student's IEP was reasonably calculated and when the Student refused to engage in services it proposed to reevaluate the Student.³²³

Post-secondary Goals and Transition Services

107. The Student's April 14, 2022, IEP contained a postsecondary goal of a four-year college upon graduation, part-time employment, career interest surveys and community service. Her transition services included building her physical endurance to complete longer school days and college and career counseling. The postsecondary goal and transition services were based on an age-appropriate transition assessment that included input from the Student. The postsecondary goal and transition services offered through the IEP of April 14, 2022, were appropriate and reasonably calculated based on the information that the Student's had available at the time the IEPs were developed. The District was aware that the Student was capable of college level work

³²² Student's Post-hearing Brief p35. The Student's Post-hearing Brief does not address the issue of pain management.

³²³ District's Post-hearing Brief p19.

and required improvement in her physical stamina. The District was also aware that the Student required career counseling and employment support to live independently. The Student's IEP goals also supported her transition plan. The District, therefore, established by a preponderance of the evidence that the postsecondary goals and transition services stated in the Student's April 14, 2022, IEP, were reasonably calculated.

108. The Student argues that by December 2023 the District was aware that Dr. Enns recommended that the District provide services through a BCBA and BT technician and that it delayed providing these until the July 2024 reevaluation was completed. The Student maintains these services were appropriate and necessary to support the Student's transition services consistent with Dr. Enns recommendation.³²⁴ The District requested authorization to conduct a reevaluation on January 23, 2023, but did not receive written consent from the Student until January 16, 2024 almost an entire year later. The lack of written consent delayed the District in obtaining necessary new assessments, including the May 2024 adaptive behavior assessment conducted by Dr. Enns. Because the District did not have full information, the Student's arguments that it was required to implement Dr. Enns' recommendations into her IEP in December 2023 are not supported.

School Refusal

109. The Student argues that when the Student's IEP team met in March and April 2023 she had completely disengaged and was not accessing special education services and the District was aware it "needed to overhaul" her IEP.³²⁵ The District correctly recognized that it did not have sufficient data to update the Student's postsecondary goals and transition needs when developing her April 30, 2023, IEP and was requesting written consent from the Student to conduct a reevaluation. However, the IEP team did not consider or incorporate the information the Student shared in her March and April 2023 letters when developing her April 30, 2023, IEP. These letters contained vital information for the District to develop an age-appropriate transition plan, until a more detailed assessment could be obtained. For example, the Student was requesting more services toward adaptive transportation. The letters also provided information as to why she was not accessing school. Dr. Swanson's letter to the District supports the conclusion that it was critical for the Student's engagement that the IEP team consider the Student's explanation as to what the District could do to meet her needs. Had the IEP team reviewed the Student's letters it may have developed annual IEP and postsecondary goals, SDI, and transition services for her IEP

³²⁴ Student's Post-hearing Brief p36.

³²⁵ Student's Post-hearing Brief p38.

that appropriately incorporated the Student's concerns. This is illustrated by the services later revised and added to the Student's stay-put IEP after obtaining information from her through her participation at IEP meetings and engagement in services. Because the IEP team did not consider the information provided to it by the Student, a preponderance of the evidence supports the conclusion that the IEP of April 30, 2023, was not reasonably calculated to address her school refusal and avoidance. Therefore, the District did not meet its burden of proof on this issue.

Pain Management

110. The Student's IEPs of April 14, 2022, and April 30, 2023, included modifications to monitor her sensitivity to light, sound, and heat. Her schedule was also limited to three classes to minimize her fatigue. Her PE program was limited to light weight activity that was within her strength and endurance limits. These steps helped to limit the stressors that were known to the Student's IEP teams to contribute to her experiencing pain. Therefore, the District demonstrated by a preponderance of the evidence that the Student's IEPs were reasonably calculated to address her needs for pain management.

IEPs Based on a Comprehensive Reevaluation

111. The Student argues that beginning August 8, 2021, the Student's IEPs were not reasonably calculated as they were not based on an appropriate reevaluation that adequately identified the needs of the Student. The reevaluation in place during the time period at issue was the March 3, 2021 reevaluation which identified eligibility in the areas of social/emotional skills and adaptive skills and consultation services in PT. The March 3, 2021 reevaluation was developed outside of the statute of limitations and is not at issue. The IEPs of April 14, 2022, and April 30, 2023, included social/emotional and adaptive behavioral goals designed to improve her in-person class participation and her transition from the school entrance to class. This was consistent with her needs identified by the March 2021 reevaluation that improvement of the Student's stamina could help her participate in class. The annual goals and related services of her April 2021 and 2022 IEPs were also supported by her reevaluation. The IEPs also included the exercise/movement program, individually designed for her by a PT with specially trained paraeducator support. Based on the information available to the April 2022, and April 2023 IEP teams, the District has demonstrated, by a preponderance of the evidence, that IEPs were reasonably calculated to address her needs as identified in the March 2021 reevaluation.

112. A school district must obtain informed parental consent, prior to conducting any reevaluation of a student eligible for special education services that would involve

conducting new assessments. If the parent or adult student refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the due process procedure to override the parent's refusal to provide consent. The school district does not violate its child find obligations or the reevaluation procedures if it declines to pursue the reevaluation.³²⁶

113. By January 23, 2023, the District recognized that an updated reevaluation was necessary. The Student and Parent did not provide written consent to the District until January 16, 2024, after the IEPs at issue in this case were developed. The District needed to conduct new assessments to determine the Student's current needs and potentially new areas of eligibility and could not do so without written consent. Therefore, the Student's arguments that the IEPs at issue in this case were not based on an appropriate reevaluation are not persuasive as the Student and Parent had not consented to allow a new reevaluation.

Exercise/Movement Program

114. The Student argues that her exercise program was not appropriate as the Student required an Adaptive PE program and that Dr. Dillon's testimony supported this conclusion.³²⁷ The District argued that it continually offered an exercise/movement program developed and monitored by a PT consistent with the March 2021 reevaluation as a supplementary aid/service in support of her social/emotional goal and school attendance.³²⁸ The Student's October 2021 IEP team amended her IEP to provide for either Adaptive PE or modified PE curriculum/grading with paraeducator support. The team also recommended an Adaptive PE evaluation. The Student's IEP team also incorporated movement into her BIP to address her school attendance. After the Student completed her general education PE requirements and began attending Bellevue College, the District rescinded the proposal to conduct an Adaptive PE evaluation but continued to offer the exercise/movement program. When the Student refused to participate in the exercise/movement program with Ms. Ugelstad, the District again offered to conduct a reevaluation, in part to resolve the dispute over Adaptive PE.

115. Based on the evidence in this case, the Student's IEP was reasonably calculated to meet her exercise needs. Adaptive PE was not supported as an Adaptive PE evaluation was not completed for the Student despite offers by the District to do so. Dr. Dillon's opinion that a PT could not oversee the Student's exercise/movement

³²⁶ WAC 392-172A-03000(3)(a)-(c).

³²⁷ Student's Post-hearing Brief p38.

³²⁸ District's Post-hearing Brief p20.

program was not persuasive. Dr. Dillon did not meet or assess the Student, which undermines the amount of weight given her opinion. Prior to attending Bellevue College, the Student was able to progress with PT support. She was also able to progress with support of her PT with Rehab Without Walls. Dr. Enns opined the PT designed program was appropriate. These facts support that conclusion that a PT was able to oversee her exercise/movement program.

116. A preponderance of the evidence supports the conclusion that the Student's exercise/movement program as incorporated in the Student's IEP amendment of October 2021, IEPs of April 2022, and April 2023, along with her BIP, were reasonably calculated to allow her to progress toward her IEP goals and participate in the general education curriculum based upon the information the team had available at the time her IEPs were developed. Therefore, the District demonstrated that it met its burden of proof with respect to this issue.

Summary Regarding Substantive Issues

117. The testimony and exhibits in this case demonstrated, beyond a preponderance of the evidence, that the Student's April 30, 2023, IEP was not reasonably calculated to meet her needs regarding school avoidance and refusal as it did not consider the information in the Student's letters which contained vital information about her current needs. Therefore, the District failed to satisfy its burden of proof on issue (d)(ii). The District met its burden of proof and prevailed on all other substantive issues alleged in issue (d.).

e. Beginning the 2022-2023 school year through May 1, 2024, the District's and its employees behavior and conduct towards the Student and her representatives constituted bullying in that there is a power imbalance and as one or more District employees were aggressive towards the Student and her representatives through the written word and verbally communications using their position of power to psychologically inflict discomfort on the Student, which resulted in a denial of FAPE in that that Student could not meaningfully participate in the formulation of her special education programming and access her special education and related services due to her fear and anxiety.

118. The Student alleges that Ms. McMinimee bullied and intimidated the Student and Parent resulting in the denial of a FAPE to the Student. Specifically, the Student alleges that the District was aware that interactions with Ms. McMinimee caused her severe emotional distress and that Ms. McMinimee's presence at IEP meetings was not justified as the Parent was not acting as the Student's attorney. She further alleges Ms. McMinimee's conduct during IEP meetings caused the Student fear and anxiety to

the point that she was unable to engage in her educational programming or meaningfully participate in the development of her IEP.³²⁹ The District argues that regardless of the Student's perceptions of bullying, she was not denied a FAPE.³³⁰

119. The undersigned is not aware of any special education cases where school staff or administration were alleged to have directly engaged in bullying a student. However, some cases have found that if a District is deliberately indifferent to teasing of a disabled child and the abuse is so severe that the child can derive no benefit from the services that he or she is offered by the school district, the child has been denied a FAPE.³³¹

120. The evidence in this case indicated that by November 15, 2022, the District was aware that the Student was experiencing severe emotional stress and debilitating migraines caused by interactions with District staff including Ms. Chapman, Ms. McMinimee, Ms. Gilkey and Ms. Ugelstad. The District did not receive durable power of attorney to communicate directly with the Parent as the education decision maker in this case until December 19, 2022. Prior to that time the District was obligated to communicate with the Student as she was an adult during the time period at issue. The District took steps to mitigate the Student's negative interactions with staff that included communicating with the Parent, proposing a facilitated IEP meeting, proposing a reevaluation, providing the Student time and opportunity to build rapport with staff directly providing services to her, and reassigning staff and administrators when possible. Aside from the IDEA violations that occurred during IEP meetings that have been previously addressed in this decision, the behavior of the District administrators and staff did not consist of bullying that was so severe that the Student could derive no benefit from the services offered by the District. This conclusion is supported by evidence that the District staff that worked directly in delivering education services to the Student did not interact unreasonably with the Student or in a manner that could be construed as bullying.

121. Considering all of the facts of this case, a preponderance of the evidence does not support the conclusion that the District engaged in or permitted bullying of the Student that was so severe that she could derive no benefit from the services offered by the District. Therefore, the District met its burden of proof with respect to this issue.

³²⁹ Student's Post-hearing Brief pp13, 28.

³³⁰ Student's Post-hearing Brief p22.

³³¹ *M.L. v. Federal Way Sch. Dist.*, 394 F.3d 634, 650 (9th Cir. 2005).

Summary of Violations

122. The Student has prevailed on issues: a) iii, b) iii, v, viii, ix, xv(a.), xvi, and d) ii. The District met its burden of proof on all other issues. The FAPE violations in this case occurred beginning April 2023. Therefore, the undersigned must analyze what remedy, if any, is required.

Compensatory Education

123. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place."³³² It is intended to place the student in the same position they would have occupied if the District had honored its obligation to provide FAPE.³³³ Compensatory education is not a contractual remedy, but an equitable one. As stated by the Ninth Circuit in *Parents of Student W. v. Puyallup Sch. Dist.*, "there is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA."³³⁴ Compensatory education is an equitable remedy, calling for flexibility rather than rigidity, meaning the tribunal must consider the equities existing on both sides of the case.³³⁵ Compensatory education is determined by weighing the equitable factor based on the preponderance of the evidence standard.³³⁶ Mitigating factors that may support a reduction in compensatory education include "the general cooperative or uncooperative position of the school district."³³⁷ Other factors may be the delay or refusal to cooperate with the delivery of special education services on the part of the parent or student.³³⁸

124. In the current case the District has developed a new IEP for the Student and provided extensive services and reimbursements that are relevant to the award of compensatory services. These extensive services and reimbursements are equitable considerations that favor the District and have been factored in determining the remedy needed to restore the Student to the position she would have occupied if she had not been denied a FAPE.

³³² *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), cited with approval in *R.P. v. Prescott Unif'd Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011).

³³³ *Id.*; *Letter to Riffel*, 34 IDELR 292 (OSEP 2000).

³³⁴ *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994).

³³⁵ *Reid v. District of Columbia*, *supra*, 401 F.3d at 524.

³³⁶ *Forest Grove Sch. Dist. v. T.A.*, 638 F.3d 1234 (9th Cir. 2011).

³³⁷ *Forest Grove Sch. Dist. v. T.A.*, 523 F.3d 1078, 1088-89 (9th Cir. 2008).

³³⁸ *J.T. by Renee and Floyd T. v. Dept. of Educ., State of Hawaii*, 72 IDELR 95 (U.S. Dist. of Hawaii 2018).

125. Dr. DiNoto spent considerable time working with the Student. She conducted her own assessments of the Student and reviewed the substantial amount of evaluations of her completed by the District and private providers in this case. Her opinion is, therefore, given significant weight and considered persuasive in this case. The services Dr. DiNoto recommended someone like herself “to hand off the baton” from the services she was providing at the secondary level to the post-secondary level. The Student’s postsecondary goals included an element of community service which is the only unfinished element of the Student’s graduation requirements. Considering Dr. DiNoto’s recommendation and that the community services element that is not yet completed, the Student shall be provided with the following compensatory education designed to put her in the position she would have been in had the FAPE violations not occurred.

126. Compensatory Education: The Student is awarded 50 hours of compensatory education delivered by a doctorate-level psychologist such as Dr. DiNoto or person of similar qualifications agreed to by the Student. These services shall be designed to help the Student complete her transfer from the services she received at the secondary level. Of the compensatory education award, the provider may spend up to 10 hours planning and developing the services which may include time consulting with the Student. The compensatory education services may, but are not required to, include a community service component as identified by the Student and provider. The District shall provide this compensatory education within two years of the date of this order.

127. Reimbursement: The Student also requests reimbursement for costs that the District already committed to funding but had not yet done so due to being in “flux” at the time of the hearing.³³⁹ Those reimbursements are listed in this decision and were considered when balancing the equities in this case. Ordering payment of those reimbursements through this order could create confusion over what may have already been paid to the Student and Parent since the time of the hearing. Therefore, this request for relief is denied.

128. Record Keeping: The Student did not provide authority under the IDEA for additional relief with respect to her requests regarding an audit of the District’s record keeping practices. Additionally, the District provided the Parent with a letter stating that it would not continue to produce the Student’s records to Mr. Karatov and there was no evidence of the release of records violation continuing. The undersigned’s authority to grant relief with respect to the records release is limited to the IDEA and encompassed within the compensatory education ordered above. Therefore, the

³³⁹ Student’s Post-hearing Brief p41.

request for an audit or independent review is denied.

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

ORDER

1. The District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student an opportunity to receive a free appropriate public education (FAPE) as set forth above.
2. The Student is awarded 50 hours of compensatory education as provided above.
3. The Student's remaining requested remedies are denied.

SERVED on the date of mailing.



Paul Alig
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/Adult Student

[REDACTED]

via E-mail and
via First Class Mail

[REDACTED]

Karen DeJong
Kristin Lierheimer
Bellevue School District
PO Box 90010
Bellevue, WA 98009

via E-mail
dejongk@bsd405.org
lierheimerk@bsd405.org
lutzm@bsd405.org

Ryan Ford
Anna "Mickey" Moritz
Cedar Law PLLC
600 1st Ave Ste 330
PMB 96563
Seattle, WA 98104

via E-mail
ryan@cedarlawpllc.com
mickey@cedarlawpllc.com
levi@cedarlawpllc.com
chloe@cedarlawpllc.com

Lynette M. Baisch
Porter Foster Rorick LLP
601 Union Street, Ste 800
Seattle, WA 98101

via E-mail
lynette@pfrwa.com
sedona@pfrwa.com

Dated October 7, 2025, at Olympia, Washington.

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

cc: Administrative Resource Services, OSPI