

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Seattle School District

Docket No. 12-2024-OSPI-02438

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2024-SE-0186

A due process hearing was held before Administrative Law Judge (ALJ) Jill H. Brown on September 24 and September 25, 2025, via videoconference. The Parent of the Student whose education is at issue¹ appeared and represented herself. The Seattle School District (District) was represented by Susan Winkelman, attorney at law. Also present for the District were Gordon Fowlds, Special Education Supervisor, and Andy Jennings, Senior Assistant General Counsel.

STATEMENT OF THE CASE

Procedural History

The Parent filed a Due Process Hearing Request (Complaint) with the Office of Administrative Hearings (OAH) on December 30, 2024. The Complaint was given Cause No. 2024-SE-0186 and assigned to ALJ Brown. The District filed its Response to the Complaint on January 30, 2025. On January 31, 2025, ALJ Brown granted the Parent leave to amend her Complaint and the Parent filed an amended Complaint on February 3, 2025.

ALJ Brown issued a prehearing order on February 5, 2025, which set the hearing dates for June 23 through June 25, 2025. On June 11, 2025, ALJ Brown issued a second prehearing order in which she granted the Parent's motion to continue the due process hearing and set hearing dates of September 23 through September 25, 2025. On September 16, 2025, ALJ Brown issued two orders partially granting the Parent's subpoena requests. Also on September 16, 2025, ALJ Brown issued an order denying Parent's motion to extend the filing deadline for exhibits, exhibit lists, and witness lists. On September 22, 2025, ALJ Brown issued an order granting the

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

District's motion to continue hearing start date, denying District's motion in limine, and overruling Parent's objection to the partial denial of requests for subpoenas.

ALJ Brown conducted the hearing on September 24 through September 25, 2025. ALJ Brown issued an order setting a due date for post-hearing briefs on September 25, 2025.

Due Date for Written Decision

The deadline for a written decision was extended at the District's request, without objection by the Parent, to thirty (30) days after the record of the hearing closes. The record of the hearing closed on November 5, 2025, at 5:00 p.m., when the parties timely submitted post-hearing briefs. The due date for a written decision is December 5, 2025.

EVIDENCE RELIED UPON

Exhibits Admitted:²

District's Exhibits: D1–D16.

Parent's Exhibits: P1, P2 (pages 3-10 only), P4–P8, P9 (page 2 only), P11–P14.

Witnesses Heard:

Martie Binkow, General Education Teacher

William Wood, School Psychologist

Maki Ichikawa, Special Education Program Specialist

Shawna Prynne, General Education Teacher

Parent

Gordon Fowlds, Special Education Supervisor

Matthew Legacki, Special Education Teacher

Kathyrn Silsby, Speech Language Pathologist

² Citations to the exhibits of record are by party (P for the Parent; D for the District) and page number. For example, a citation to P6 p1, refers to page 1 of Parent's Exhibit 6. Citations to the transcript of record are to "T" followed by the page number. For example, a citation to T214, refers to page 214 of the transcript.

ISSUES

The issues for hearing, as set out in the February 5, 2025, Prehearing Order, are:

Dating back two years from the date of filing of Parent's original Complaint, whether the District violated the Individuals with Disabilities Education Act (IDEA) by failing to offer the Student a free appropriate public education (FAPE) as follows:

1. Failing to provide the Student with promised special education services, resulting in significant academic delays;
2. Inappropriately placing Student in the English language learner (ELL) program resulting in the delay of necessary interventions for her specific learning disabilities;
3. Failing to provide adequate resources, services, or tutoring to address Student's reading deficits;
4. Failing to resolve bullying, discrimination, and ongoing harassment, resulting in a negative impact to Student's social and emotional well-being;
5. Failing to provide meaningful parental participation in individualized education program (IEP) meetings as required by WAC 392-172A-03100 when the special education supervisor declined to attend the last IEP meeting, but made significant edits to the IEP, and disregarded important information provided by Parent, including Parent's intent to enroll Student in a private school at public expense; and
6. Failing to timely provide speech therapy services for Student.

And whether the Parent is entitled to her requested remedies:

1. A reading program at Hamlin Robinson School with full tuition coverage as compensatory education;
2. A specialized tutor for one-on-one support in reading, writing, and speech;
3. Placement at a school with adequate special education resources tailored to Student's needs;
4. Reconvening an IEP team meeting with active participation from the Special Education Supervisor to ensure that the IEP reflects the full scope of Student's needs and parental input without omission;

5. Anti-bullying intervention with implementation of strict anti-bullying protocols;
6. Ensuring all interventions and services comply with WAC and RCW codes, with transparency and accountability moving forward;
7. Funding of Student's education, tuition, and speech therapy while attending Hamlin Robinson School;
8. Reimbursement for the cost of private tutoring services paid by the Parent; and
9. Other equitable remedies, as appropriate.

FINDINGS OF FACT

1. The Student is currently [REDACTED] and attends [REDACTED] at Hamlin Robinson, a private school.³ The Student has a diagnosis of dyslexia.⁴
2. The Student attended kindergarten through fifth grade at Roxhill Elementary School (Roxhill) in the District.
3. In February 2020, the District school psychologist, Dr. William Wood,⁵ performed an initial evaluation of the Student (2020 Evaluation).⁶ Dr. Wood determined the Student was eligible for special education services under the specific learning disability category.⁷ Dr. Wood recommended specially designed instruction (SDI) for the Student in the areas of math, reading, and written language.⁸
4. The Student's general background in the 2020 Evaluation shows the Student was served in the ELL program in first grade.⁹ General background also shows the Parent did not report any difficulty with the Student's language in English or [REDACTED].¹⁰

³ T90; T165.

⁴ D4 10; D5 p5; T165.

⁵ Dr. Wood is a school psychologist in the District. He earned a bachelor's degree in psychology, a master's degree in education, and a Ph.D. in educational psychology, all from the University of Georgia. Dr. Wood is a certified school psychologist in the state of Washington and has a national certification with the National Association of School Psychology. He has held his current position in the District for 26 years. T50.

⁶ D1.

⁷ D1 p4.

⁸ D1 p5.

⁹ D1 p7.

¹⁰ D1 p7.

5. In February 2022, the District reviewed and developed the Student's IEP (February 2022 IEP).¹¹ The IEP team set goals for the Student in math, reading, and written language.¹²

6. The February 2022 IEP notes no communication needs or concerns for the Student.¹³

7. The February 2022 IEP service matrix provided for the following special education services for the Student from February 10, 2022, through February 10, 2023:¹⁴

Services 02/10/2022 - 02/09/2023

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	MATH	Special Education Staff	Special Education Teacher	150 Minutes / Weekly	Special Education	02/10/2022	02/09/2023
No	READING	Special Education Staff	Special Education Teacher	250 Minutes / Weekly	Special Education	02/10/2022	02/09/2023
No	WRITTEN LANGUAGE	Special Education Staff	Special Education Teacher	150 Minutes / Weekly	Special Education	02/10/2022	02/09/2023
No	WRITTEN LANGUAGE	Special Education Staff	Special Education Teacher	100 Minutes / Weekly	General Education	02/10/2022	02/09/2023

Total minutes per week student spends in school: 1775 minutes per week
Total minutes per week student is served in a special education setting: 550 minutes per week
Percent of time in general education setting: 69.01% in General Education Setting

8. There is no evidence showing that any IEP team member objected to the SDI provided to the Student under the February 2022 IEP or to the frequency of services.

The 2022-2023 School Year

9. In the 2022-2023 school year, the Student was in fourth grade at Roxhill.¹⁵ Her general education teacher was Martie Binkow¹⁶ and her special education teacher was Matthew Legacki.¹⁷

¹¹ D2.

¹² D2 pp5-7.

¹³ D2 p4.

¹⁴ D2 p10.

¹⁵ T85.

¹⁶ T35; Ms. Binkow is currently a general education teacher in the District, teaching art for grades K-5. She obtained a bachelor's degree in elementary education from the University of Arizona. In 2012 she earned a master's degree in trauma and resilience in the school setting. She has a teaching credential in elementary education. Ms. Binkow taught in Arizona for three years and has been teaching in the District for almost eight years. For nine years of her career, she taught fourth and fifth grade and for the last two years she had taught K-5. T34-35.

¹⁷ T120; Since August 2025, Mr. Legacki has worked as the extended special education resource teacher at Seattle Waldorf School. He earned a bachelor's degree in history and psychology in 2011 from the University of Washington. He earned a master's degree in special education, including a special education certification, from the University of Alaska Southeast. Prior to his current position, Mr. Legacki worked as an elementary school instructional assistant in Alaska before working for the District at Rising Star Elementary in 2015 and Roxhill in 2020. T118-119.

10. In the general education classroom, Ms. Binkow taught reading, writing, math, history, and science.¹⁸ The Student participated in the general education curriculum “as much as she was able to.”¹⁹ Ms. Binkow observed at times that the Student struggled in class after meeting with her special education instructor. Ms. Binkow reported those struggles to the Student’s IEP team.²⁰

11. For reading instruction, Ms. Binkow provided the District’s grade-level standard curriculum, which focused mainly on reading comprehension.²¹ Ms. Binkow also applied the District’s two curriculums, Ruler and Second Step, to work with her students on learning social/emotional skills.²² The Ruler program focuses on skills to manage big feelings and emotions, and the Second Step program involves watching videos and reading stories about problems experienced by similar-aged children and learning how to talk through feelings.²³ Ms. Binkow also worked with her fourth grade students to help them learn how to deal with bullying, including learning how to speak up when they observe bullying and telling an adult if they experienced bullying directly.²⁴

12. During her fourth grade year, the Student did not report any incidents of bullying to Ms. Binkow and Ms. Binkow did not witness the Student being bullied by other students.²⁵ Ms. Binkow did not recall either of the Student’s parents reporting incidents of bullying to her.²⁶ During the Student’s fourth and fifth grade years, Ms. Binkow talked to the Student about whether she felt safe at school and how she was being treated by other students. The Student did not share any specific examples with Ms. Binkow about bullying she may have been experiencing.²⁷

13. During the Student’s fourth grade year, Ms. Binkow worked “a lot” with the Student directly to encourage her to talk with other students, socialize, and make friends.²⁸ The Student was comfortable interacting with adults, but did not have a very close friend in her class.²⁹ Ms. Binkow helped the Student practice what she could say

¹⁸ T36.

¹⁹ T44.

²⁰ T47.

²¹ T36-37.

²² T37.

²³ T37-38.

²⁴ T38.

²⁵ T41-42.

²⁶ T41.

²⁷ T43.

²⁸ T39.

²⁹ T39-40.

to someone to start a conversation and worked with other students to encourage them to include the Student in classroom groups.³⁰

14. The Student did not receive any ELL services in the fourth grade.³¹

15. During the Student's fourth grade year, Mr. Legacki delivered the Student's reading, math, and writing SDI in a small group, special education setting.³² For reading, Mr. Legacki served the Student in 30-minute sessions and followed the District's special education reading curriculum, SIPPS,³³ which focuses on phonics. He also added instruction specifically for the Student, addressing "pseudoword decoding," which focuses on whether a student understands phonics and grammar rules, rather than simply memorizing words.³⁴ Mr. Legacki worked with an instructional assistant to provide the Student's math and writing SDI.³⁵

16. The District learned in or around February 2022 that the Student had a diagnosis of dyslexia.³⁶ During her fourth and fifth grade years, the Student's special education team provided her with the curriculum that the District uses for students with dyslexia.³⁷ The District does not have a specific program that serves only student's with dyslexia. The SIPPS curriculum is designed for students who have a dyslexia diagnosis and for those students who have similar struggles with phonics, fluency, and decoding, but have not been officially diagnosed with dyslexia.³⁸

17. In January 2023, when the Student was in fourth grade, the District reevaluated the Student (2023 Reevaluation).³⁹ The Student was reevaluated in the areas of math, written language, cognitive, and reading.⁴⁰ Neither the Parent nor another member of the IEP team requested that the reevaluation address any other areas.⁴¹

18. As part of the 2023 Reevaluation, Mr. Legacki reported that the Student read at a first-grade level, struggled with multiplication and place value, and struggled with handwriting.⁴² Ms. Binkow noted that the Student had a decline in her reading test

³⁰ T44.

³¹ T39; T85; T132.

³² T126-127.

³³ Mr. Legacki did not recall what the acronym SIPPS stands for.

³⁴ T122; T126.

³⁵ T126-127.

³⁶ D2 p5; T142.

³⁷ D2 p5; T142-143.

³⁸ T142-143.

³⁹ D4.

⁴⁰ D4 p3.

⁴¹ T51-52.

⁴² D4 p10.

score from fall to winter, she increased her math test scores, and writing was the Student's strongest subject.⁴³

19. The team determined that the Student made progress in math since her evaluation three years prior. The Student's math assessment showed an increase from nine standard score points to 40 standard score points.⁴⁴ The team determined the Student read below age and grade level expectations.⁴⁵ The Student's scores for written language assessment were below average.⁴⁶

20. As part of the 2023 Reevaluation, Dr. Wood observed the Student in her general education class.⁴⁷ Dr. Wood did not observe any inappropriate interactions between the Student and her peers, and he did not receive reports of the Student having inappropriate interactions with peers.⁴⁸

21. Dr. Wood administered the Dyslexia Index as part of the 2023 Reevaluation.⁴⁹ That index is administered when a student is suspected of having difficulty in reading or if a student has been identified as needing services in reading.⁵⁰ Dr. Wood determined the Student was performing well below age and grade level expectations in reading.⁵¹

22. The 2023 Reevaluation showed the Student remained eligible for special education services in the area of specific learning disabilities and recommended SDI for the Student in the areas of math, reading, written language, and study/organizational skills.⁵²

23. On June 23, 2023, the Student's IEP team met to amend the Student's IEP (June 2023 IEP Amendment).⁵³ The IEP was amended to correct an error in the Student's math goal.⁵⁴

⁴³ D4 p11.

⁴⁴ D4 p13.

⁴⁵ D4 p14.

⁴⁶ D4 p17.

⁴⁷ T52.

⁴⁸ T53

⁴⁹ D4 p14; T54-55.

⁵⁰ T55.

⁵¹ D4 p14; T55.

⁵² D4 pp6-8, 18.

⁵³ D5 p1.

⁵⁴ D5 p15; T121.

24. The IEP team set goals for the Student in math, reading, written language, and study/organizational skills.⁵⁵

25. The June 2023 IEP service matrix provided for the following special education services for the Student from June 26, 2023, through February 28, 2024:⁵⁶

Services 06/26/2023 - 02/28/2024

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	READING	Special Education Staff	Special Education Teacher	120 Minutes / Weekly	Special Education	06/26/2023	02/28/2024
No	MATH	Special Education Staff	Special Education Teacher	60 Minutes / Weekly	Special Education	06/26/2023	02/28/2024
No	WRITTEN LANGUAGE	General Education Teacher	Special Education Teacher	60 Minutes / Weekly	Special Education	06/26/2023	02/28/2024
No	STUDY/ORGANIZATION SKILLS	Special Education Staff	Special Education Teacher	30 Minutes / Weekly	General Education	06/26/2023	02/28/2024
No	STUDY/ORGANIZATION SKILLS	General Education Teacher	Special Education Teacher	30 Minutes / Weekly	General Education	06/26/2023	02/28/2024

Total minutes per week of building instructional time available for this student (excluding lunch): 1775 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: 86.48% in General Education Setting

26. There is no evidence showing that any IEP team member objected to the SDI provided to the Student under the June 2023 IEP or to the frequency of services.

27. According to a 2023 amended IEP goal progress report (2023 Progress Report), the Student made the following progress on her IEP goals in the period of April 2023 through December 2023:⁵⁷

GOAL	04/06/2023	06/21/2023	12/13/2023
Math⁵⁸ By 02/28/2024, when given a word problem with 2 to 3 steps [Student] will be able to solve improving math reasoning and organization skills from 0/5 math problems to 3/5 math problems as measured by teacher based assessment	Some progress made	Some progress made	Significant progress made
Math⁵⁹ By 02/28/2024, when given a single digit and three digit multiplication and division problem [Student] will be able to solve the math problem improving	Some progress made		Some progress made

⁵⁵ D5 pp6-7.

⁵⁶ D5 p12.

⁵⁷ D14.

⁵⁸ D14 p1.

⁵⁹ D14 p1.

computation from 1/10 problems to 7/10 problems as measured by teacher based assessment			
Reading⁶⁰ By 02/28/2024, when given a set of 20 real and pseudo words [Student] will be able to read short vowels with consonant blends and long words with long vowels improving decoding from 20% accuracy to 80% accuracy as measured by teacher based assessment	Some progress made	Some progress made	Goal/Objective Met
Written Language⁶¹ By 02/28/2024, when given a piece of writing from [Student], [Student] will be able to follow a rubric to add appropriate punctuation, capital letters, and other conventions improving self editing skills from 0/5 observable occasions to 3/5 observable occasions as measured by teacher based assessment		Some progress made	Some progress made
Written Language⁶² By 02/28/2024, when given a prompt [Student] will be able to write sentences that uses two syllabic words (reading, written, spelled) improving phonetical spelling from 0/5 words to 3/5 words as measured by teacher based assessment	Some progress made	Significant progress made	Some progress made
Study/Organization⁶³ By 02/28/2024, when given material, either school or personal [Student] will be able to keep it organize enough to find a given material improving organization skills from taking a minute or more to being able to find an object in 10-30 seconds as measured by teacher observation	Some progress made	Some progress made	Some progress made

The 2023-2024 School Year

28. The Student attended fifth grade at Roxhill in the 2023-2024 school year. The Student's fifth grade general education teacher was Shawna Prynne.⁶⁴ Mr. Legacki continued to serve as the Student's special education teacher.⁶⁵

29. For reading instruction, Ms. Prynne provided the District's grade-level standard curriculum, which focused mainly on comprehension, inference, and understanding themes.⁶⁶ The Student was reading below grade level during her fifth grade year. She

⁶⁰ D14 p3.

⁶¹ D14 p2.

⁶² D14 p3.

⁶³ D14 p2.

⁶⁴ T76; Ms. Prynne currently teaches fifth grade at Roxhill in the District. She earned a bachelor's degree in environmental studies from Western Washington University. In 2004 she earned a master's degree in teaching from Washington State University. In 2010 Ms. Prynne earned a middle childhood generalist national board certification. She also has a general education teaching certification for grades K-5. She has been a general education teacher in the District for ten years.

⁶⁵ T120.

⁶⁶ T77.

struggled with spelling, decoding, and reading fluency. She was unable to access the same material as her peers without additional support.⁶⁷

30. The Student did not receive ELL services in the fifth grade.⁶⁸

31. In her fifth grade general education class, Ms. Prynne provided social/emotional learning activities to students on a daily basis.⁶⁹ Addressing bullying and harassment was part of the social/emotional instruction she provided.⁷⁰ Ms. Prynne followed the District's curriculum on bullying, which required her to talk about what constitutes bullying, how to identify it, and discussing why people bully. She also discussed with her students what to do when they witness bullying, what strategies to use when dealing with a bully, and who to talk to when they witnessed or experienced bullying.⁷¹

32. During the Student's fifth grade year, the Parent reported to Ms. Prynne that the Student experienced bullying.⁷² After she received the report, Ms. Prynne responded to the Parent and communicated with the school's administrator. She also spoke with the Student directly. The Student reported being made fun of, that there was a "bullying situation," and that "everything was fine."⁷³ After the Parent's initial report of bullying, there were no other incidents of bullying reported to Ms. Prynne.⁷⁴

33. Ms. Prynne did not witness any students in her class bullying the Student.⁷⁵ Ms. Prynne did not observe external negative interactions experienced by the Student related directly to her disability. Ms. Prynne found the Student's peers to be understanding and accommodating to the Student's needs.⁷⁶

34. During Ms. Prynne's fifth grade general education class, the Student sometimes partnered with other students, but more often she chose not to partner with others and seemed to prefer doing things on her own. On the playground, it appeared to Ms. Prynne that the Student tended to enjoy talking to adults more than socializing with other students.⁷⁷

⁶⁷ T83.

⁶⁸ T79; T132.

⁶⁹ T78.

⁷⁰ T78.

⁷¹ T78-79.

⁷² T41; T80.

⁷³ T81.

⁷⁴ T82.

⁷⁵ T81.

⁷⁶ D6 p15; T80.

⁷⁷ T79.

35. During the Student's fifth grade year, Mr. Legacki continued delivering the Student's reading, math, and writing SDI in a small group, special education setting.⁷⁸ Support for study/organizational skills was provided by the special education team in the general education classroom, concurrent with the Student's other instruction.⁷⁹

36. In the period of September 2023 through November 2023, Mr. Legacki did not have an instructional assistant available to assist him in providing special education services. As a result, the Student missed 1,200 minutes of special education services she was due to receive under her IEP.⁸⁰

37. By email dated September 29, 2023, Mr. Legacki notified the Parent that the Student was not receiving the full services outlined in her IEP due to a lack of staffing. The email noted that Roxhill's special education team at that time did not have a speech language pathologist or an instructional assistant in the Resource program to help provide academic, social emotional, and study skills services.⁸¹

38. In a November 20, 2023 email from Mr. Legacki to Regional Special Education Supervisor Gordon Fowlds,⁸² Mr. Legacki notified Mr. Fowlds that the Parent requested compensatory services "because of staffing issues at the Resource Program at Roxhill."⁸³ The Parent wanted to know if private tutoring or private school tuition could be considered as part of compensatory services for the Student.⁸⁴ Mr. Fowlds responded on December 15, 2023, writing that a decision on compensatory education would be a "building based" decision and would be funded "through the building."⁸⁵ Mr. Fowlds noted that, based on his review of the Student's records, he did not see a material failure to implement the Student's IEP and noted that the Student had been making progress toward her IEP goals.⁸⁶

39. On January 12, 2024, the Parent emailed Mr. Fowlds to follow-up on her request for compensatory services.⁸⁷ In the email, the Parent reported what she

⁷⁸ T129.

⁷⁹ T127; T130.

⁸⁰ T135-136.

⁸¹ P2 p9.

⁸² Mr. Fowlds is a regional special education supervisor in the District. He earned an associate's degree from Olympic Community College, a bachelor's degree in education from Eastern Washington University, and a master's degree in special education – high incidence disabilities from the University of Washington. He has an administration certificate from City University and a teaching certification with endorsements in K-12 special education and K-8 elementary education. Mr. Fowlds has held his current position for approximately seven years. Prior to becoming a supervisor, he served six years as an elementary special education teacher for grades K-5. T97-98.

⁸³ P2 p3.

⁸⁴ P2 p3.

⁸⁵ P4 p1.

⁸⁶ P4 p1.

⁸⁷ P5 pp1-2.

believed were failures by the District to provide the Student with FAPE. The Parent noted that in November 2021, she met with the school principal and the Student's special education teacher and expressed a desire to enroll the Student in KUMON for private tutoring. In her email, the Parent asserted that she was told she would receive assistance in paying tuition for a private tutor, so she enrolled the Student in KUMON.⁸⁸ According to the Parent, after she paid an enrollment fee and paid for several months of tutoring, the District informed the Parent that she would not receive financial assistance for the private tutoring from the District.⁸⁹

40. The record does not include written documentation showing the District committed to provide financial assistance for the Student's independent tutoring in or around November 2021. Independent tutoring is not included in any of the Student's IEPs as a District-funded support.

41. Also in her January 12, 2024, email, the Parent reported that the Student had experienced bullying by other students at Roxhill. According to her email,⁹⁰

[The Student] has been bullied and made fun of because she "cannot read". Her classmates call her "stupid", they do not want to engage with her or have her on "their" team, lunchtime is a nightmare for her because other students make fun of the way she eats- she has had another male student throw ketchup in her face- all of this bullying, taunting, misbehavior, and harassment has been reported to teachers, staff and the principal and it continues to happen. Fifth grade camp was an awful experience due to the ridicule that she had to face from peers. The Seattle School district has ruined [the Student]'s childhood and what should be some of the happiest moments of her educational career. [The Student] has endured many levels of discriminatory harassment from school staff and students at Roxhill Elementary School- I must emphasize that all such incidents have been reported numerous times and no action or investigation have been taken. You are literally in violation of WAC 392-190-065, WAC 392-190-070, and WAC 392-190-075.

42. In a January 22, 2024, email to principal Susan Lorow, Michelle Giacomino with the District's Office of Student Civil Rights inquired as to whether the Parent's concerns about bullying had ever been reported and/or addressed by Roxhill. Ms.

⁸⁸ P5 p2.

⁸⁹ P5 p2.

⁹⁰ P5 p2. Because this section contains the exact language from the Parent's email, it contains the same grammatical, typographical, and spelling errors that appear in the original.

Giacomino asked for an update and advised the principal that the school should look into “anything within the last year” if they had not done so already.⁹¹

43. On January 22, 2024, Ms. Lorow emailed Ms. Prynne, Mr. Legacki, Ms. Binkow, and three other District employees and asked if the Student or the Parent had reported bullying and asked for details of any complaint and how it was addressed.⁹²

44. The record does not include evidence of any responses to Ms. Giacomino’s or Ms. Lorow’s January 22, 2024, emails.

45. Mr. Fowlds was aware of the Parent’s report of bullying.⁹³ In a monthly check-in with the principal, Mr. Fowlds learned that the Parent had raised a concern about bullying, and he understood “they were looking into it.”⁹⁴ In his role as special education supervisor, Mr. Fowlds is not responsible for investigating claims of harassment, discrimination, or bullying.⁹⁵

46. In an email dated January 25, 2024, Mr. Legacki informed the Parent that, due to staffing issues in 2023 and 2024, he had calculated that the District did not provide the Student with approximately 1,200 special education service minutes (equal to 20 hours).⁹⁶

47. On February 6, 2024, the IEP team met to review and develop the Student’s IEP (February 2024 IEP), discuss annual goal progress, and discuss compensatory services.⁹⁷ Ms. Lorow, Mr. Fowlds, Ms. Prynne, Mr. Legacki, and the Parent were present at this meeting.⁹⁸ This is the only IEP meeting for this Student that Mr. Fowlds attended.⁹⁹

48. The IEP team noted that the Student does not speak any language except English, and she had mistakenly been identified as needing ELL services. The team noted that the error would be corrected in the Student’s profile.¹⁰⁰ At the time of the

⁹¹ P12 p3.

⁹² P12 p4.

⁹³ T101.

⁹⁴ T101.

⁹⁵ T107.

⁹⁶ P7 p4.

⁹⁷ D6 p1.

⁹⁸ D6 p2; T108-109.

⁹⁹ T99; T109.

¹⁰⁰ D6 p5.

February 2024 IEP, the Student had no noted communication needs and did not receive communication services.¹⁰¹

49. The February 2024 IEP included goals for the Student in math, reading, written language, and study/organizational skills.¹⁰²

50. The February 2024 IEP service matrix provided for the following special education services for the Student from February 6, 2024, through February 4, 2025:¹⁰³

Services 02/06/2024 - 02/04/2025

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
Yes	STUDY/ORGANIZATION SKILLS	Special Education Staff	Special Education Teacher	100 Minutes / Weekly	Special Education	02/06/2024	02/04/2025
No	MATH	Special Education Staff	Special Education Teacher	60 Minutes / Weekly	Special Education	02/06/2024	02/04/2025
No	READING	Special Education Staff	Special Education Teacher	90 Minutes / Weekly	Special Education	02/06/2024	02/04/2025
No	WRITTEN LANGUAGE	Special Education Staff	Special Education Teacher	90 Minutes / Weekly	Special Education	02/06/2024	02/04/2025

Total minutes per week of building instructional time available for this student (excluding lunch): 1775 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: 86.48% in General Education Setting

51. There is no evidence showing that any IEP team member objected to the SDI provided to the Student under the February 2024 IEP or to the frequency of services.

52. During the February 6, 2024, meeting, the team discussed placement for the Student for her sixth-grade year.¹⁰⁴ At the meeting, the Parent requested that the District place the Student in private school at public expense. The District team members refused the requested change in placement because they believed that placement within the District, which would have been at Denny Middle School, was appropriate for the Student.¹⁰⁵

53. The District issued a prior written notice (PWN) on February 6, 2024, that does not include the Parent’s request for a change in placement or the District’s response.¹⁰⁶ On March 26, 2024, the District issued a PWN, revising the February 6, 2024 PWN to “reflect conversation and clarify decisions made by the team.”¹⁰⁷ The

¹⁰¹ D6 p5.

¹⁰² D6 pp6-8.

¹⁰³ D6 p12.

¹⁰⁴ T131.

¹⁰⁵ D6 p15; T131.

¹⁰⁶ D7.

¹⁰⁷ D6 p15.

March 26, 2024 PWN reflects that the Parent requested that the Student attend private school at Hamlin Robinson at public expense. The March 26, 2024 PWN reports that the District team members rejected the Parent's request because the Student had made progress in her current placement.¹⁰⁸ The District believed the Student could be served at Denny Middle School with continued SDI to support her academic growth.¹⁰⁹ Both the February 6, 2024, and March 26, 2024 PWNs noted that the IEP team discussed providing the Student with compensatory services for special education service minutes the Student missed in fourth and fifth grade and that the Parent also requested that the lack of recovery services offered in the 2021-2022 school year be considered for compensatory services.¹¹⁰

54. The District offered to provide the Student with 20 hours of compensatory services through one-to-one tutoring after school and potentially over the summer.¹¹¹ The District agreed to look into the Parent's claims that more services may have been missed and would consider adjusting the offer of compensatory services.¹¹²

55. The Parent declined the District's offer of compensatory services.¹¹³ The Parent asked the District to compensate her financially for the cost of tutoring and to cover the cost of placing the Student in a private educational institution. The Parent expressed her belief that the District had failed to provide special education services for the Student and therefore should cover the cost of placement in a private institution.¹¹⁴

56. The Parent did not believe the District's offer of compensatory services was sufficient to meet the Student's needs.¹¹⁵ The Parent did not believe that staying in school longer or attending summer school would be healthy for the Student. The Parent noted that the Student had attended summer school since kindergarten and she wanted the Student "to have a normal summer, a normal day camp, a normal family vacation."¹¹⁶

57. The IEP team agreed to meet again to discuss resolving the issue of compensatory services and finalize the IEP.¹¹⁷

¹⁰⁸ D6 p15.

¹⁰⁹ D6 p16; T145.

¹¹⁰ D7 p3.

¹¹¹ D7 p3; T100.

¹¹² T100.

¹¹³ T101; T154.

¹¹⁴ D7 p3.

¹¹⁵ D7 p3.

¹¹⁶ T175.

¹¹⁷ D7 p3.

58. In emails dated February 28, 2024, and March 7, 2024, the Parent informed the IEP team that she declined the 20 hours of after school compensatory services the District had offered the Student. The Parent also reminded the IEP team that the team needed to meet again to discuss compensatory services and finalize the Student's IEP.¹¹⁸

59. In an email dated March 12, 2024, the Parent informed Mr. Fowlds that she did not want compensatory service minutes for the Student. The Parent requested that the District compensate the Student for missed special education services by providing the tuition for the Student to attend private school at Hamlin Robinson.¹¹⁹

60. On April 18, 2024, the Parent and Mr. Legacki met to "fix discrepancies" in the meeting notes on the February 6, 2024, PWN.¹²⁰ An April 18, 2024, PWN notes that the Parent requested that the District fund tuition for the Student to attend Hamlin Robinson school. The Parent again expressed her belief that the District failed to meet the Student's special education needs. The District's rejection of the Parent's request for private placement at public expense is again noted in the PWN.¹²¹

61. Mr. Legacki was aware that the Parent submitted a written notice of intent to enroll the Student in a private school at public expense and that the IEP team discussed the request.¹²² Mr. Legacki was directed to make note of the Parent's request.¹²³ Mr. Legacki recalled that he met with the Parent to make sure the Parent's concerns were reported in the PWN. He recalled that someone in the special education department later made edits to the Parent's comments in the February 6, 2024 PWN, but he did not recall exactly what was edited or who made the edits.¹²⁴ Special education program specialist Maki Ichikawa¹²⁵ and Mr. Fowlds are the individuals who have access to edit a PWN.¹²⁶ Mr. Legacki believes that the District responded via email to the Parent's written request for private placement at public expense.¹²⁷

¹¹⁸ P7 pp2-3.

¹¹⁹ P7 p1.

¹²⁰ D9 p3.

¹²¹ D9 pp3-4.

¹²² T139.

¹²³ T139.

¹²⁴ T140; T151.

¹²⁵ Ms. Ichikawa is a special education program specialist in the District. She graduated from the University of Tokyo in 1996 with a bachelor's degree. After relocating to the United States in 2007, she earned teaching certificates in elementary education, special education, and general education in Washington. Ms. Ichikawa earned a master's degree in 2011. T63-64.

¹²⁶ T141.

¹²⁷ T141.

62. The Parent also requested that the District provide a dyslexia specialist to support the Student.¹²⁸ The District rejected this request because it believed the special education teacher and the reading specialist would be able to use data to guide the services needed by the Student.¹²⁹

63. The April 18, 2024 PWN noted that the Student's records erroneously showed she needed ELL services.¹³⁰ The Parent believed that the assumption that the Student is a [REDACTED] speaker is "overtly racist."¹³¹ According to the PWN, the team believed that the Student showed as qualified for ELL supports and services because early in her academic career an intake form incorrectly indicated that multiple languages were spoken in the Student's home. The team agreed to correct the Student's records to reflect that she does not require ELL supports or services.¹³²

64. The Parent is not aware of any ELL services received by the Student while at Roxhill.¹³³

65. Although the Student was identified as qualifying for ELL services while at Roxhill, there is no evidence showing that any ELL staff worked directly with the Student. There is no evidence showing that qualifying for ELL services impacted the special education services the Student qualified for or received.

66. The April 18, 2024, PWN includes the following note:¹³⁴

[Parent] wrote this statement in the comment box on the signature page [of the IEP] and it is being added to the PWN: I [Parent], am rejecting the placement proposal and this IEP plan by the district to provide FAPE/LRE to [Student] for concerns stated during this meeting, missing several IEP minutes, lack of appropriate LRE, supports, resources, discrimination, rejection and denial of services in compliance with state and federal code, policies and regulations. I [intend] to enroll [Student] in a private school at public expense.

[Parent] asked that it be expressly stated in the PWN that Gordon Fowlds was invited the meeting but chose not to attend.

¹²⁸ D9 p4.

¹²⁹ D9 p4.

¹³⁰ D9 p4; P1 p3.

¹³¹ D9 p4.

¹³² D9 p4.

¹³³ T173.

¹³⁴ D9 p4.

67. In a March 12, 2024 email to the school psychologist, Dr. Wood, the Parent requested that the District evaluate the Student in the area of speech, language, and communication.¹³⁵ On March 19, 2024, the Parent provided consent for the District to assess the Student in the area of communication, specifically in the areas of functional written language, listening comprehension, and oral expression.¹³⁶ The Parent did not request an assessment for speech services prior to her request in March 2024.¹³⁷

68. Speech language pathologist (SLP) Kathryn Silsby,¹³⁸ evaluated the Student for communication services on or about April 16, 2024.¹³⁹ Ms. Silsby determined that the Student was eligible for SDI in the area of communication.¹⁴⁰

69. On May 14, 2024, principal Susan Lorow, Mr. Legacki, Ms. Silsby, Ms. Prynne, Ms. Ichikawa,¹⁴¹ and the Parent met to discuss the assessment revision (2024 Assessment Revision).¹⁴² The team determined the Student was eligible for SDI in the area of communication in addition to math, reading, written language, and study/organization skills.¹⁴³

70. The District issued an Assessment Revision PWN on May 20, 2024. This PWN proposed adding eligibility for the Student in the area of communication.¹⁴⁴

71. At the May 14, 2024, meeting, the team also amended the Student's IEP to add communication services and a communication goal (May 2024 IEP Amendment).¹⁴⁵

72. During the May 14, 2024, meeting, neither the Parent nor any other team member reported concerns about the Student experiencing bullying.¹⁴⁶ The Parent did not raise concerns about the Student's reading SDI or concerns about the Student

¹³⁵ P13 p1.

¹³⁶ D8 p2.

¹³⁷ T177.

¹³⁸ Ms. Silsby is a speech language pathologist in the District. She earned a bachelor's degree in communicative disorders and a master's degree in speech pathology from the University of New York at Geneseo. Ms. Silsby has a clinical certificate of competence with the American Speech-Language-Hearing Association and an ESA certificate and a speech pathology license in the state of Washington. She has been a speech language pathologist for 16 years and has been with the District since 2012. T156-157.

¹³⁹ D10 p5; T158.

¹⁴⁰ D10 p8.

¹⁴¹ Ms. Ichikawa is a special education program specialist in the District. She graduated from the University of Tokyo in 1996 with a bachelor's degree. After relocating to the United States, she earned a teaching certificate in elementary education in special education and general education in Washington in 2007. Ms. Ichikawa earned a master's degree in 2011. T63-64.

¹⁴² D10 p1; D12.

¹⁴³ D10 p8, pp11-12.

¹⁴⁴ D10 p14.

¹⁴⁵ D12 p10.

¹⁴⁶ T69.

being eligible for ELL services.¹⁴⁷ Ms. Ichikawa does not recall placement being discussed at the May 14, 2024, meeting.¹⁴⁸

73. The May 2024 IEP Amendment service matrix provided for the following special education services for the Student from May 24, 2024, through February 4, 2025:¹⁴⁹

Services 05/24/2024 - 02/04/2025

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
Yes	STUDY/ORGANIZATION SKILLS	Special Education Staff	Special Education Teacher	100 Minutes / Weekly	Special Education	05/24/2024	02/04/2025
No	MATH	Special Education Staff	Special Education Teacher	60 Minutes / Weekly	Special Education	05/24/2024	02/04/2025
No	READING	Special Education Staff	Special Education Teacher	90 Minutes / Weekly	Special Education	05/24/2024	02/04/2025
No	WRITTEN LANGUAGE	Special Education Staff	Special Education Teacher	90 Minutes / Weekly	Special Education	05/24/2024	02/04/2025
No	COMMUNICATION	SLP	SLP	90 Minutes / Monthly	Special Education	05/24/2024	02/04/2025
Total minutes per week of building instructional time available for this student (excluding lunch):				<u>1775 minutes per week</u>			
Total minutes per week student is served in a special education setting:				<u>262.5 minutes per week</u>			
Percent of time in general education setting:				<u>85.21% in General Education Setting</u>			

74. On May 20, 2024, the District issued a PWN for the May 2024 IEP Amendment. In this PWN, the team proposed to continue the Student’s current IEP and amend it to add communication services. According to this PWN, the Parent rejected the Student’s current IEP and expressed her intention to file a due process hearing complaint.¹⁵⁰

75. The May 20, 2024, PWN for the May 2024 IEP Amendment does not mention a request from the Parent to place the Student in private school at public expense.¹⁵¹

76. Mr. Fowlds denies editing the Student’s May 2024 IEP Amendment or any of the Student’s IEPs during the 2023-2024 school year.¹⁵² Mr. Fowlds does not recall having knowledge of the Parent’s written notice of intent to enroll the Student in a private school at public expense.¹⁵³

77. Mr. Legacki does not know of any edits made by the special education team to the Parent’s comments in the May 20, 2024, PWN.¹⁵⁴

¹⁴⁷ T70.

¹⁴⁸ T69.

¹⁴⁹ D6 p12.

¹⁵⁰ D12 p19.

¹⁵¹ D12 p19.

¹⁵² T101.

¹⁵³ T104.

¹⁵⁴ T154.

78. After the development of the May 2024 IEP Amendment, Ms. Silsby delivered communication services in one-on-one sessions with the Student in the speech therapy room, for thirty minutes at a time, for a total of 90 minutes per month.¹⁵⁵

79. According to a 2024 amended IEP goal progress report (2024 Progress Report), the Student made the following progress on her IEP goals in the period of April 2024 through June 2024.¹⁵⁶ The 2024 Progress Report notes that the IEP is too recent to determine growth on the IEP goals in April 2024.¹⁵⁷

GOAL	04/01/2024	06/12/2024
Math ¹⁵⁸ By 02/04/2025, when given a math problem involving addition with fractions [Student] will successfully calculate the problem improving computation skills from 0% proficiency to 60% proficiency as measured by teacher based assessment	N/A	Significant progress made
Math ¹⁵⁹ By 02/04/2025, when given an addition or subtraction problem with decimals [Student] will correctly compute the answer to the math problem improving computation skills from 10% proficiency to 70% proficiency as measured by teacher based assessment	N/A	Significant progress made
Reading ¹⁶⁰ By 02/04/2025, when given a word with 3-5 syllables [Student] will be able to decode the word improving phonics from 1/10 words to 7/10 words as measured by teacher based assessment	N/A	Some progress made
Written Language ¹⁶¹ By 02/04/2025, when given a graphic organizer and a prompt [Student] will be able to write out by hand a outline or draft improving written organization from 0/5 observations to 3/5 observations as measured by teacher assessment	N/A	Some progress made
Written Language ¹⁶² By 02/04/2025, when given a draft essay on the computer [Student] will be able to self edit looking for grammar and spelling errors, finding 5-10 errors in a first draft text improving writing composition from 1/10	N/A	Some progress made

¹⁵⁵ T162.

¹⁵⁶ D15.

¹⁵⁷ D15 pp1-3.

¹⁵⁸ D15 p1.

¹⁵⁹ D15 p1.

¹⁶⁰ D15 p2.

¹⁶¹ D15 pp2-3.

¹⁶² D15 p3.

observations to 7/10 observations as measured by teacher based assessment		
Study/Organization ¹⁶³ By 02/04/2025, when given a system to keep track of assignments, projects, and due dates (such as a planner) [Student] will be able to use it to organize materials and assignments from multiple classrooms improving study and organization skills from 0% of observations to 60% of observations as measured by teacher based assessment	N/A	Some progress made
Communication ¹⁶⁴ By 02/04/2025, when given picture cards [Student] will produce /s, z/ in words improving articulation skills from 0% accuracy to 80accuracy as measured by SLP therapy data.	N/A	Some progress made

The Parent's Testimony

80. For the Student's sixth grade year (2024-2025), the Parent placed the Student at Hamlin Robinson, a private school.¹⁶⁵ When the Student was in the fifth grade at Roxhill, the Parent came to believe that the District did not have a program to serve students with dyslexia and this led to her decision to seek private placement for the Student.¹⁶⁶

81. The Student does not have an IEP at Hamlin Robinson and does not receive speech services at the private school.¹⁶⁷ The Student does not receive counseling services at her private school.¹⁶⁸

82. At Hamlin Robinson, the Student is more confident, actively participates in class, and has a circle of good friends.¹⁶⁹

83. The Parent believes the District did not deliver IEP-required special education services consistently to the Student.¹⁷⁰

84. The Parent believes that the District placed the Student in the ELL program rather than providing her with speech therapy and that placement in the ELL program

¹⁶³ D15 p2.

¹⁶⁴ D15 p3.

¹⁶⁵ T90.

¹⁶⁶ T92-93.

¹⁶⁷ T94.

¹⁶⁸ T170.

¹⁶⁹ T167

¹⁷⁰ T165.

“wasted valuable time” and delayed the speech therapy services needed by the Student.¹⁷¹

85. The Parent asserts that the District delayed dyslexia evaluations of the Student, or that these evaluations were incomplete.¹⁷²

86. The Parent believes the District failed to document or address her reports that the Student was bullied at school and failed to include social/emotional supports in the Student’s IEP.¹⁷³ The Parent did not request an evaluation in the area of social/emotional because she did not know that was an option.¹⁷⁴

87. According to the Parent, her written notice to place the Student in private school at public expense was removed or ignored by the District. She believes that special education staff made edits to the Student’s IEP without her input, resulting in a denial of her right to meaningfully participate in the IEP process.¹⁷⁵ She believes statements she made that should have been included in the Student’s February 2024 IEP were removed by special education staff.¹⁷⁶ The Parent acknowledges that her statements about private placement for the Student appear in the April 18, 2024 PWN.¹⁷⁷

88. The Parent asserts that the District promised tuition assistance for the Student’s tutoring and then later declined to provide reimbursement for tuition services paid for by the Parent. The Parent believes this is a failure by the District to provide the Student with promised special education services.¹⁷⁸ The Parent believes that the District’s failure to provide promised education services resulted in delays in the Student’s progress in reading, math, and writing.¹⁷⁹

89. The Parent recalled that the Student never felt happy at Roxhill, she had no friends her own age, and she was often made fun of.¹⁸⁰ Other students told the Student she “ate like a pig” and was noisy when she ate.¹⁸¹ Roxhill provided a “buddy bench” for students to sit on during lunch if they were lonely. If a student sat on the bench, someone was supposed to sit with them. The Student reported that when she sat on

¹⁷¹ T165.

¹⁷² T166.

¹⁷³ T166.

¹⁷⁴ T169.

¹⁷⁵ T166.

¹⁷⁶ T171.

¹⁷⁷ T171.

¹⁷⁸ T172.

¹⁷⁹ T173.

¹⁸⁰ T175.

¹⁸¹ T176.

the buddy bench, no one would sit with her.¹⁸² At fifth grade camp, no other students wanted to be on the Student's team for reading activities.¹⁸³ As a result of the treatment she received at school, the Student would sometimes ask to leave school early due to a stomach ache. The Parent believes this became a pattern (bullying leading to a stomach ache), but she does not know how often it occurred.¹⁸⁴

90. The record does not include evidence of the Student's attendance records or evidence showing a pattern of missed school.

CONCLUSIONS OF LAW

Jurisdiction

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated under these provisions, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

Burden and Standard of Proof

2. The IDEA is silent as to which party bears the burden of proof in the due process hearing. In *Schaffer v. Weast*, 546 U.S. 49, 51 (2005), the United States Supreme Court considered this issue and held that "the burden lies, as it typically does, on the party seeking relief." In Washington state, the legislature recently enacted a law that places the burden of proof on school districts in due process hearings. Senate Bill 5883 (SB 5883), which adds a new section to RCW 28A.155, was signed by Governor Jay Inslee on March 13, 2024, and took effect on June 6, 2024.

3. The U.S. Supreme Court and Washington courts have generally held that the standard of proof in an administrative proceeding is a preponderance of the evidence.¹⁸⁵ Therefore, the District's standard of proof in this matter is preponderance of the evidence.

¹⁸² T176.

¹⁸³ T176.

¹⁸⁴ T176-177.

¹⁸⁵ *Steadman v. SEC*, 450 U.S. 91, 102 (1981); *Thompson v. Dep't of Licensing*, 138 Wn.2d 783, 797 (1999); *Hardee v. Dep't of Social & Health Services*, 172 Wn.2d 1, 4 (2011).

The IDEA and FAPE

4. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity.”¹⁸⁶

5. In *Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the individualized education program developed under these procedures is reasonably calculated to enable the child to receive educational benefits. “If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.”¹⁸⁷

6. 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.¹⁸⁸ 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.¹⁸⁹

7. “To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”¹⁹⁰ The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry. As the U.S. Supreme Court has made clear, “[a] focus on the particular child is at the core of the IDEA,” and an IEP must meet a child’s unique needs.¹⁹¹ The “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.”¹⁹² Accordingly, an IEP team is charged with developing a comprehensive plan that is “tailored to the unique

¹⁸⁶ *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

¹⁸⁷ *Rowley*, 458 U.S. 176 at 206-07.

¹⁸⁸ *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001).

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

¹⁹⁰ *Andrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017).

¹⁹¹ *Id.*

¹⁹² *Id.*

needs of a particular child.”¹⁹³ Additionally, the student’s “educational program must be appropriately ambitious in light of his circumstances”¹⁹⁴

8. In reviewing an IEP, “the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.”¹⁹⁵ The determination of reasonableness is made as of the time the IEP was developed.¹⁹⁶ An IEP is “a snapshot, not a retrospective.”¹⁹⁷

ISSUE 1: Whether the District failed to provide the Student with promised special education services, resulting in significant academic delays.

9. The Parent argues that the District’s refusal to pay for tutoring services for the Student and its failure to provide special education services required under the Student’s IEP resulted in a denial of FAPE under the IDEA. The evidence in the record shows the District failed to provide the Student with 1,200 minutes, or 20 hours, of SDI in the period of September 2023 through November 2023; however, the evidence does not support a conclusion that the District had an obligation to pay for independent tutoring for the Student.

10. As set forth by the U.S. Court of Appeals for the Ninth Circuit in *Van Duyn v. Baker Sch. Dist.*, only material failures to implement an IEP violate the IDEA. Minor discrepancies in the services required by the IEP do not violate the IDEA. Districts are not obligated to fund private or independent services unless (1) the district agreed to do so, or (2) an ALJ or court orders reimbursement because the district failed to provide FAPE and the private services were appropriate.¹⁹⁸

11. Here, there is no evidence that the District agreed to fund or reimburse the Parent for independent tutoring services. The Student’s IEP does not include tutoring as an IEP service or as a District-funded support. Under the IDEA, the District is only responsible for services specified in the IEP or otherwise agreed upon through a prior written notice or settlement. Because tutoring was not an IEP service and there is no evidence of an agreement by the District to pay for private tutoring for the Student, the District had no legal obligation to pay for tutoring. Therefore, its refusal to do so does not constitute a denial of FAPE.

¹⁹³ *Id.* at 1000.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 999 (emphasis in original).

¹⁹⁶ *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).

¹⁹⁷ *Id.*

¹⁹⁸ See *School Comm. of Burlington v. Dept of Educ.*, 471 U.S. 359 (1985); *Florence County Sch. Dist. Four v. Carter*, 510 U.S. 7 (1993).

12. The record shows, and the District acknowledges, that from September 2023 through November 2023, the District failed to deliver 20 hours of SDI required by the Student's IEP. This was a material failure to implement the IEP and denied the Student FAPE. As such, the Parent is entitled to a remedy.

ISSUE 2: Whether the District inappropriately placed the Student in the ELL program, resulting in the delay of necessary interventions for her specific learning disabilities.

13. The Parent argues that the Student's eligibility for the ELL program resulted in the Student not receiving required special education services, or, at the very least, delayed her receipt of special education services, resulting in a denial of FAPE.

14. ELL services are governed under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), the Equal Educational Opportunities Act (20 U.S.C. Chapter 39), Strengthening and Improvement of Elementary and Secondary Schools (20 U.S.C. Chapter 70, Subchapter III), and Washington's Transitional Bilingual laws and regulations (WAC Chapter 392-160 and RCW Chapter 28A.180). These provisions are distinct from the IDEA and its guarantee of FAPE. Therefore, this tribunal will not address whether it was appropriate for the District to find the Student eligible for ELL services. The issue before the tribunal is whether the Student's eligibility for ELL services, standing alone, interfered with or prevented her receipt of necessary special education services, resulting in a denial of FAPE under the IDEA. Evidence in the record does not support a conclusion that the Student's eligibility for ELL services resulted in a denial of FAPE.

15. The IDEA's FAPE requirement is met if a student's IEPs are reasonably calculated to confer benefit in light of the student's individual circumstances.¹⁹⁹ This is notwithstanding a student's ELL program participation. The Ninth Circuit has made clear that a denial of FAPE must be grounded in evidence that the student's special education program was inappropriate or that procedural shortcomings caused educational harm.²⁰⁰

16. Here, the Student was eligible for ELL services until the February 6, 2024, IEP meeting when District staff acknowledged that the ELL eligibility was an error and they committed to correct the Student's records and remove ELL eligibility. During the period the Student was eligible for the ELL program, there is no evidence that she ever received ELL services. The Parent does not specify what necessary special education interventions were delayed or were not delivered based on the ELL eligibility. There is

¹⁹⁹ *Rowley*, 458 U.S. at 206-07.

²⁰⁰ *M.L.*, 394 F.3d at 653.

no evidence showing that the Student's eligibility for the ELL program resulted in the Student not receiving special education services she required or in a delay in delivering those services. Accordingly, there is no evidence that the Student's ELL eligibility resulted in the Student having an inappropriate special education program or in procedural shortcomings that caused educational harm to the Student.

17. Based on the above, there is no evidence that would support a conclusion that a violation of the IDEA and a denial of FAPE resulted from the Student's eligibility for ELL services.

ISSUE 3: Whether the District failed to provide adequate resources, services, or tutoring to address the Student's reading deficits.

18. The Parent asserts that the District failed to provide evidence-based interventions tailored to the Student's learning profile and that it failed to provide measurable goals and services to meet the Student's individual needs. The evidence in the record does not support the Parent's position.

19. The Washington state legislature has recognized the importance of early identification of students who show indications of, or areas of weakness associated with, dyslexia.²⁰¹ When a covered student requires intervention, RCW 28A.320.260(3)(b) requires that interventions "must be evidence-based multisensory structured literacy interventions and must be provided by an educator trained in instructional methods specifically targeting students' areas of weakness." RCW 28A.320.260(3) specifies that the district must provide interventions "[i]f a student shows indications of below grade level literacy development or indications of, or areas of weakness associated with, dyslexia." Similarly, OSPI has issued dyslexia guidance, which defines and discusses the structured literacy teaching approach and its benefits for all students in all grades. Under the RCW and the OSPI guidance, a school district is not required to use a specific program or methodology for any disability, including dyslexia, so long as the selected instructional approach is research-based and enables the student to make appropriate progress.²⁰²

20. The Ninth Circuit has held that school districts are "entitled to deference in deciding what programming is appropriate as a matter of educational policy."²⁰³ In *Crofts*, the parent contended that the Student's IEP denied her a FAPE because she would have progressed more using the Orton-Gillingham approach.²⁰⁴ The Court

²⁰¹ RCW 28A.320.260.

²⁰² WAC 392-172A-03090.

²⁰³ *Crofts v. Issaquah Sch. Dist. No. 411*, 22 F.4th 1048, 1056 (9th Cir. 2022).

²⁰⁴ *Id.*

explained that districts are not required to specify an instructional method unless that method is necessary to enable a student to receive a FAPE.²⁰⁵ In *Crofts*, the record showed that the student's IEPs were reasonably calculated to enable her to make progress in light of her circumstances without that methodology.²⁰⁶

21. Similarly, in *J.L. v. Mercer Island Sch. Dist.*, the Ninth Circuit explained:²⁰⁷

Although school districts should specify a teaching methodology for some students, for other students IEPs may not need to address the instructional method to be used because specificity about methodology is not necessary to enable those students to receive an appropriate education. See 64 Fed. Reg. 12,552. We accord deference to the District's determination and the ALJ's finding that [the student's] teachers needed flexibility in teaching methodologies because there was not a single methodology that would always be effective. We hold that the District did not commit a procedural violation of the [IDEA] by not specifying teaching methodologies in [the Student's IEPs] . . .

22. The Parent contends that the District denied FAPE because it did not use a program specifically designed for dyslexia. However, neither IDEA nor Washington law mandates a particular methodology or program for students with dyslexia. The District is required only to provide evidence-based instruction suited to the Student's needs. Here, the District used a research-based reading curriculum addressing phonemic awareness, decoding, and fluency, all core areas of need for students with dyslexia and other reading disabilities. The Parent has not articulated why the curriculum was ineffective other than broadly stating it was not specifically designed for dyslexia. The District showed that it provided regular SDI in reading consistent with the IEP and consistent with the District's curriculum, adding instruction specific to the Student where needed. Progress monitoring data shows that the Student consistently advanced toward her reading goals, including meeting her reading goal in December 2023. The Parent's disagreement with the instructional method or desire for a specific "dyslexia program" does not, by itself, establish a denial of FAPE.²⁰⁸ Because the Student made measurable progress, the District met its obligation to provide FAPE under the IDEA and WAC 392-172A-03090. Therefore, the District's use of the same

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 1057.

²⁰⁷ *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 952 (9th Cir. 2010); see also *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1122 (9th Cir. 2011) ("IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit).

²⁰⁸ See *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938 (9th Cir. 2010).

program for dyslexic and non-dyslexic students with similar reading deficits does not constitute a denial of FAPE.

23. The Parent asserts in her brief that the Student's IEP goals were not measurable; however, the record reflects that the goals included clear criteria and that the District issued progress reports documenting advancement toward those goals. No IEP team member, including the Parent, objected to the goals at the time of development or revision of the Student's IEPs. Under *Endrew F.*, the IEP must be reasonably calculated to enable progress, not perfect or drafted to the parent's subjective expectations. The evidence that the Student consistently made progress supports a conclusion that the goals were measurable and appropriately ambitious.

24. Based on the above, evidence in the record does not support a conclusion that the District failed to provide adequate resources, services, or tutoring to address the Student's reading deficits, resulting in a violation of the IDEA.

ISSUE 4: Whether the District failed to resolve bullying, discrimination, and ongoing harassment, resulting in a negative impact to Student's social and emotional well-being.

25. The Parent argues the District violated the IDEA and denied the Student FAPE by failing to appropriately address incidents of bullying that took place at school. She argues that these incidents led to the Student consistently feeling unhappy at Roxhill, having no friends her own age, and sometimes leaving school early due to stomach aches. Evidence in the record does not show that the District's response to bullying, discrimination, or harassment resulted in a denial of FAPE.

26. The Ninth Circuit has recognized that bullying or harassment can, in limited circumstances, constitute a denial of FAPE. Under *M.L. v. Federal Way School District*, to prove that harassment or bullying constitutes a denial of FAPE, a parent must establish that: (1) the student was the victim of bullying or harassment; (2) the school district was deliberately indifferent to the known harassment; and (3) the harassment was so severe, pervasive, and objectively offensive that it deprived the student of meaningful educational benefit.²⁰⁹ The third element under *M.L.*, deprivation of meaningful educational benefit, is determinative. Where a student continues to receive educational benefit, a denial of FAPE cannot be found solely because teasing or exclusion occurred.²¹⁰

²⁰⁹ *M.L. v. Federal Way Sch. Dist.*, 394 F.3d 634, 650 (9th Cir. 2015), cert. denied, 454 U.S. 1128 (2015); see also *Kiona-Benton City Sch. Dist.*, 112 LRP 9581 (WA SEA 2012).

²¹⁰ See WAC 392-172A-05105(2) (an ALJ may find a procedural violation only if it impeded the student's right to FAPE or educational benefit).

27. Not every incident of teasing or exclusion satisfies the *M.L.* standards. As the Ninth Circuit noted, “[t]he IDEA does not require school districts to be perfect, only that they provide a program reasonably calculated to confer educational benefit.”²¹¹

28. Regarding the first prong, the record reflects that the Student was at least occasionally teased and excluded from peer activities during the school year and the Parent reported the bullying to District staff.

29. As for prong two of the Ninth Circuit’s test, the evidence in the record does not demonstrate deliberate indifference by the District. Staff members were aware of the concerns and took informal steps to address the bullying experienced by the Student. Both the Student’s fourth and fifth grade general education teachers checked in with the student, provided social/emotional support, and conducted bullying discussions in the classroom – actions consistent with WAC 392-172A-03110, which requires IEP teams to consider behavioral needs of a student. Ms. Prynne also addressed the issue to some degree on the administrative level. Even if the District’s response here could have been more robust or better documented, the record does not show that the District ignored or condoned the inappropriate behavior of other students towards the Student.

30. Finally, regarding the third prong of the test, the record does not show that the bullying experienced by the Student was so severe or pervasive that it denied the Student of meaningful educational benefit. Evidence shows the bullying experienced by the Student was not pervasive. The Student’s fifth grade general education teacher was aware of the reported bullying incident, but she neither witnessed nor heard of any other similar incidents. The Student’s fourth grade general education teacher also did not witness bullying of the Student and the Student did not report bullying to her. Similarly, when the school psychologist observed the Student, he did not witness or receive reports of any “inappropriate interactions” between the Student and other Students. Additionally, the record shows the Student continued to receive a meaningful beneficial education in fourth and fifth grade. The District has shown that the Student continued to make meaningful progress on her IEP goals, attended school consistently, and participated in instruction and related services. Progress reports and teacher testimony show academic and functional improvement consistent with *Andrew F.* standards. While the District’s documentation of its follow-up to the reported bullying is limited, there is no evidence that the conduct of other students was pervasive or that it materially interfered with the Student’s participation in the classroom or in her receipt of special education services.

²¹¹ *M.L.*, 394 F.3d at 652.

31. While teasing and exclusion by peers are concerning behaviors and warrant appropriate attention from the District, the Ninth Circuit’s standard for a denial of FAPE requires proof that a district’s deliberate indifference to harassment deprived a student of meaningful educational benefit. Here, the evidence establishes that the Student continued to access and benefit from her educational program, meeting IEP goals, and maintaining progress. Accordingly, under *M.L. v. Federal Way School District*, the evidence does not support a conclusion that the Student experienced bullying that rises to the level of a FAPE violation.

ISSUE 5: Whether the District failed to provide meaningful parental participation in IEP meetings, as required by WAC 392-172A-03100, when the special education supervisor declined to attend the last IEP meeting, but made significant edits to the IEP, and disregarded important information provided by Parent, including Parent’s intent to enroll Student in a private school at public expense.

32. The Parent argues that the District violated the IDEA when it allowed Mr. Fowlds, a District special education supervisor, to not attend the Student’s last IEP meeting on May 14, 2024, and later permitted him to make edits to the Student’s IEP that significantly altered the Parent’s written request to place the Student in private school at public expense. The Parent also asserts that the District violated notice requirements when it did not include her request for private placement in a PWN. The evidence does not support the Parent’s arguments.

33. Parental participation in the IEP process is an essential component of the IDEA.²¹² The Ninth Circuit has stated:²¹³

Among the most important procedural safeguards are those that protect the parents’ right to be involved in the development of their child’s educational plan. Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.

34. The IDEA requires that parents have the opportunity to “participate in meetings with respect to the identification, evaluation, and educational placement of the child.”²¹⁴ To comply with this requirement, parents must not only be invited to attend

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

²¹³ *Amanda J.*, 267 F.3d at 890-91

²¹⁴ WAC 392-172A-03100; 34 CFR §300.322.

IEP meetings but must also have the opportunity for “meaningful participation in the formulation of IEPs.”²¹⁵

35. Neither the IDEA nor Washington special education law specifically define “meaningful participation.” Determining what is “meaningful” requires balancing of the totality of the circumstances specific to an IEP meeting.²¹⁶ In reviewing and balancing the totality of the circumstance, a tribunal may consider facts such as 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.²¹⁷

36. If a student is participating in the general education environment, the required members of the student’s IEP team are a general education teacher, a special education teacher or provider, a district administrative representative, the parents, and if appropriate, the student.²¹⁸

37. If a district refuses to change the placement of a student eligible for special education services, the district must provide the parents of the student with a prior written notice that includes a description of the action proposed or refused by the district and an explanation of why the district proposed or refused to take the action.²¹⁹

38. In this case, the Parent participated in all IEP meetings held for the Student during the time period at issue. The record shows the District satisfied the requirements of WAC 392-172A-03095 by having the Parent, the school principal, and the Student’s general education and special education teachers present at the IEP meetings, including those held on February 6, 2024, and May 14, 2024. Although Mr. Fowlds was not required to attend the Student’s IEP meetings, the record shows he participated in the meeting held on February 6, 2024. There is no evidence showing that Mr. Fowlds attended the Student’s final IEP meeting on May 14, 2024.

39. The record shows that during the February 6, 2024, IEP meeting, the IEP team heard the Parent’s request to change the placement of the Student to a private school, and the team refused that request. The District issued PWNs on February 6, 2024, March 26, 2024, and April 18, 2024. The February 6, 2024, PWN did not reflect the Parent’s request for a change in placement or the District’s refusal of that request. Based on the testimony of Mr. Legacki, it is likely a District staff member made some

²¹⁵ *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007).

²¹⁶ *Mercer Island Sch. Dist.*, 121 LRP 1640 (SEA Wash. 2020).

²¹⁷ *Id.*

²¹⁸ WAC 392-172A-03095; 34 CFR §300.321.

²¹⁹ WAC 392-172A-05010.

edits to the Parent's comments before the District issued the February 6, 2024, PWN; however, evidence does not show what edits were made or who made them. Both the March 26, 2024, and April 18, 2024 PWNs revised the February 6, 2024 PWN to include the description of the action refused by the District (placement at a private school at public expense) and an explanation of why the agency refused to take the action (because the Student continued to make progress with her IEP goals and the District believed the Student could be served at Denny Middle school in the District). Accordingly, the District's revised PWNs, issued after February 6, 2024, satisfy the prior notice requirements of WAC 392-172A-05010.

40. There is no evidence showing that the IEP team discussed the Student's placement at the May 14, 2024, IEP meeting, or that any District staff member made edits to the Parent's comments or requests after that meeting.

41. Based on the above, the evidence does not support a conclusion that the District failed to provide the Parent with meaningful participation in the IEP process.

ISSUE 6: Whether the District failed to timely provide speech therapy services for Student.

42. The Parent argues the District violated the IDEA and denied the Student FAPE by failing to timely provide speech therapy services for the Student. Evidence in the record does not support the Parent's argument.

43. Under WAC 392-172A-02040, each school district must "identify, locate, and evaluate" all students within its jurisdiction who are suspected of having a disability and who may need special education and related services. A disability is "suspected," "when the district has notice that the child has displayed symptoms of that disability."²²⁰ A district's obligation to identify and evaluate students is ongoing, meaning it applies to students already eligible for special education, because the district must ensure it identifies all areas of suspected disability.²²¹ A district's duty to evaluate does not arise in the abstract. There is no child find violation if the district had no reasonable basis to suspect the student had additional needs requiring evaluation.²²²

²²⁰ *Timothy O v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9th Cir. 2016).

²²¹ See also WAC 392-172A-03020(3) (evaluation must be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the identified disability category).

²²² *Pasatiempo by Pasatiempo v. Aizawa*, 103 F.3d 796, 802 (9th Cir. 1996) (the duty arises when the district "has reason to suspect a disability").

44. A parent of a child may initiate a referral request for an initial evaluation to determine if a student is eligible for special education services.²²³ After the district obtains parental consent to evaluate the student, the district shall fully evaluate the student and arrive at a decision regarding eligibility within thirty-five days after the date the parent provided written consent for an evaluation to the school district.²²⁴

45. Districts must ensure that evaluations are “sufficient in scope for the IEP team to develop an IEP.”²²⁵ The evaluation must be “sufficiently comprehensive to identify all of the child's special education and related services needs.”²²⁶ However, the IDEA does not impose liability for failing to anticipate a need that was not reasonably suspected by the IEP team or evident from existing data. Whether a school district had reason to suspect that a child might have a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time, not “exclusively in hindsight.”²²⁷

46. The record reflects that the Parent requested an evaluation for communication services on March 12, 2024, and provided consent for the evaluation on March 19, 2024. The District evaluated the Student on or about April 16, 2024, which is within thirty-five days of the Parent’s consent for the evaluation.

47. Prior to the Parent’s request, there is no evidence that the Student’s classroom performance data, teacher observations, or IEP progress reports suggested that communication deficits were interfering with the Student’s access to instruction or IEP goals. Additionally, the Parent acknowledged that she did not request an assessment for speech services prior to her request in March 2024. Without objective indicators, staff observations suggesting a communication need, or a request from the Parent, the District did not violate its obligations under WAC 392-172A-02040 or WAC 392-172A-03005 by not initiating a communication evaluation earlier than May 2024.

48. After the Parent requested and provided consent for an evaluation in the area of speech and communication, the District evaluated the Student and added communication services to her IEP. After communication services were added to the IEP, the SLP began providing services to the Student. The District fulfilled its duty under WAC

²²³ WAC 392-172A-03005(1).

²²⁴ WAC 392-172A-03005(3).

²²⁵ WAC 392-172A-03035(1).

²²⁶ 34 C.F.R. § 300.304(c)(6).

²²⁷ *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999) (quoting *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3d Cir. 1993)). See also *D.K. v. Abington School District*, 696 F.3d 233, 249 (3d Cir. 2012) (district not required to evaluate every potential area absent reason to suspect disability-related need).

392-172A-03005 by promptly evaluating the Student when new information (the Parent's request) gave the District reason to suspect a need for communication services.

49. Based on the above, under the applicable WAC and Ninth Circuit precedent, the evidence does not support a conclusion that the District denied the Student a FAPE by failing to timely provide speech therapy services to the Student.

Summary of Violations

50. The District violated the IDEA and denied the Student a FAPE by failing to provide 20 hours of SDI in the period of September 2023 through November 2023.

51. The District has proven by a preponderance of the evidence that it did not violate the IDEA or deny the Student FAPE in regard to any other issues alleged by the Parent.

Remedies

52. When a parent proves a violation of the IDEA, a tribunal may "grant such relief as the court determines is appropriate."²²⁸

53. 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."²²⁹ Compensatory education is not a contractual remedy, but an equitable one. "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA."²³⁰ Flexibility rather than rigidity is called for.²³¹ Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case.²³² Compensatory education is intended to place students with disabilities in the same position they would have occupied if the District had honored its obligation to provide FAPE.²³³

54. An ALJ may fashion individualized relief for students seeking compensatory education. As noted in *R.P.*:²³⁴

²²⁸ 20 U.S.C. § 1415(i)(2)(C)(iii).

²²⁹ *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).

²³⁰ *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994).

²³¹ *Reid v. District of Columbia, supra*, 401 F.3d at 523-524.

²³² *Id.* at 524.

²³³ *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005); *Letter to Riffel*, 34 IDELR 292 (OSEP 2000).

²³⁴ *R.P. v. Prescott*, 631 F.3d at 1126.

Courts have been creative in fashioning the amount and type of compensatory education services to award. See, e.g., *Ferren C. v. Sch. Dist. of Phila.*, 612 F.3d 712, 718-19 (3d Cir. 2010) (court can order school to provide annual IEPs to student who had aged out of a statutory right to a FAPE); *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 324-26 (4th Cir. 2009) (court can order that private school tuition be reimbursed); *Park, ex rel. Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1034 (9th Cir. 2006) (court can order additional training for a child's teachers).

55. The District's violations in this case delayed the Student's receipt of appropriate interventions. It is therefore appropriate to provide compensatory education to enable the Student to make up for that lost educational opportunity.

56. **Twenty hours of compensatory education is awarded as follows: the District shall pay for 20 hours of reading, math, and/or writing intervention by a provider selected by the Parent who has the required education, training and experience to serve the Student's needs, at a maximum rate of \$150.00 per hour.** This award provides services from an outside provider rather than through the District because the Student is no longer attending school in the District. The District shall contract with the chosen provider, so long as the provider is available and willing to provide this service, and the services shall be available to the Student within 30 days of issuance of this order. The services will be delivered at any time during the calendar year following the date of this decision at the duration and frequency determined appropriate between the Parent and the provider. If the provider bills the District for time the Student failed to appear for scheduled sessions under the provider's billing policy, that time shall count toward this compensatory education award.

57. Although a compensatory award of private services is sometimes reduced to account for the fact that students generally progress more rapidly with one-on-one instruction as opposed to instruction in a classroom, it is not appropriate to reduce the award in this case. The evidence establishes the importance of timely intervention to address reading and writing deficits. Now that the Student is in middle school, time is of the essence in building these skills. Accordingly, the award is not reduced.

58. The Parent also seeks reimbursement for tuition at Hamlin Robinson for the 2024-2025 and 2025-2026 school years, as well as an additional year of placement at Hamlin Robinson.

59. Parents who unilaterally enroll a student in a private school are entitled to reimbursement only if: (1) the district placement violated the IDEA; and (2) the Parents'

private school placement is “proper” under the IDEA.²³⁵ A private school placement does not need to maximize the student's potential or provide every special education service and support she needs to be deemed proper or “appropriate” for reimbursement purposes.²³⁶ A unilateral private placement is proper for reimbursement purposes if it offers instruction that is specially designed to meet the student's unique needs as well as the support services the student requires to benefit from that instruction.²³⁷ A private placement does not need to satisfy the IDEA’s least-restrictive environment requirement to be proper under the Act.²³⁸

60. Parents who unilaterally change their child’s placement do so at their own financial risk.²³⁹ The Supreme Court explained that reimbursement for a private placement is allowed because Congress could not have intended to require parents to either accept an inadequate public-school education pending adjudication of their claim or bear the cost of a private education.²⁴⁰

61. If a district shows its IEP was appropriate, the analysis ends and the parent is not entitled to public funds for privately obtained services.²⁴¹

62. Other than the claims made and addressed above as part of Issue 3, the Parent does not argue that the IEPs developed by the District for the Student were inappropriate. Regardless, the record shows the IEP team relied on current evaluations and teacher input when developing the IEPs; the IEPs include specific, measurable goals tied to the Student’s areas of need; the District provided SDI as written; the Student consistently made progress on her IEP goals; and the Parent participated meaningfully in the decision-making process. The District has shown that the Student’s IEPs were developed according to IDEA procedural requirements, and the IEPs were reasonably calculated to enable the Student to make progress in light of her circumstances.

63. Based on the evidence presented, the Student’s IEPs were appropriate. Accordingly, the Parent has not met the first prong of the reimbursement test. Therefore, it is not necessary to address whether Hamlin Robinson was a proper placement.

64. The Parent is not entitled to reimbursement for the cost of tuition at Hamlin Robinson. Additionally, a preponderance of the evidence does not establish that the

²³⁵ *Florence County Sch. Dist. v. Carter*, 510 U.S. 7, 15, 114 S. Ct. 361 (1993).

²³⁶ See, e.g., *C.B. v. Garden Grove Unified Sch. Dist.*, 635 F.3d 1155, 1159-60 (9th Cir. 2011), cert. denied, 565 U.S. 977 (U.S. 2011).

²³⁷ *M.N. v. State of Hawaii, Dep’t of Educ.*, 509 Fed. Appx. 640, 641 (9th Cir. 2013, unpublished).

²³⁸ *C.B. v. Special Sch. Dist. No. 1*, 636 F.3d 981, 991 (8th Cir. 2011).

²³⁹ *Burlington v. Dep’t of Ed. of Mass.*, 471 U.S. 359, 374 (1985).

²⁴⁰ *Id.* at 370.

²⁴¹ See, e.g., *M.C. v. Voluntown Bd. of Educ.*, 226 F.3d 60, 66 (2d Cir. 2000) (“Only if a court determines that a challenged IEP was inadequate should it proceed to the second question.”)

Parent is entitled to an additional award of compensatory education in the form of prospective placement at Hamlin Robinson by the District.

ORDER

1. The District violated the IDEA and denied the Student a FAPE as set forth in Conclusion of Law 12.
2. The District is ordered to provide compensatory education as set forth in Conclusion of Law 56.
3. The District has shown that it has not violated the IDEA or denied the Student a FAPE as to any other issues alleged by the Parent.

SERVED on the date of mailing.



Jill H. Brown
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

DECLARATION OF SERVICE

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

Parent

[REDACTED]

via E-mail

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Dated November 20, 2025, at Spokane Valley, Washington.

Jazmyn Johnson

Representative
Office of Administrative Hearings
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cc: Administrative Resource Services, OSPI