

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Eastmont School District

Docket No. 10-2025-OSPI-02729

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2025-SE-0152

A due process hearing was held before Administrative Law Judge (ALJ) Pamela Meotti on April 20 to 24, 2026, via videoconference. The Parents of the Student whose education is at issue¹ appeared and were represented by Sydney Bay and Alexander Hagel, attorneys at law. The Eastmont School District (District) was represented by Carlos Chavez, attorney at law. Also present for the District was Katie Tucker, Director of Special Education.

STATEMENT OF THE CASE

Procedural History

The Parents filed a due process hearing request (Complaint) on October 8, 2025, which was assigned to ALJ Meotti. A prehearing conference was held on November 17, 2025, and the due process hearing was set for April 20 to 24, 2026. The Parents subsequently amended the Complaint, effective January 5, 2026. *Order Granting Amendment; Setting Amended Issues, January 13, 2026*. The District filed a response on March 12, 2026. The due process hearing was held on April 20 to 24, 2026, as scheduled. An order setting a due date for post-hearing briefs was issued on April 27, 2026. An order continuing the due date for post-hearing briefs was issued on June 11, 2026.

Due Date for Written Decision

The deadline for a written decision was extended at the District's request, without objection by the Parents, to thirty (30) days after the close of the hearing record. The record of the hearing closed on July 10, 2026, at 5:00 p.m., when the parties timely submitted post-hearing briefs. The due date for a written decision is August 9, 2026.

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

EVIDENCE RELIED UPON

Exhibits Admitted:

District's Exhibits: D1 through D34.

Parents' Exhibits: P24 through P26, P28, P30 through P56, P58, P60-P62, P64-P65.²

Witnesses Heard (in order of appearance):

Ms. Parent

Sarah Clarke, District Behavior Coach

Mr. Parent

Angela Schmitten, District Special Education Teacher

Angela McGinnis, District General Education Teacher

Madeline Praye, District School Psychologist

Marie Bergman, District Speech Language Pathologist

Macey Keller, District Occupational Therapist

Jeana Anderson, District Paraeducator

Mikayla Countryman, District Paraeducator

Courtney Bergman, District Paraeducator

Christian Betz, District Board Certified Behavior Analyst

Kevin Schell, Speech Language Pathologist, Sound Children's Therapy

Mayra Shane, District General Education Teacher

Kerrie DuFour, District Assistant Principal

Katie Tucker, District Director of Special Education

Mayra Hurtado, Board Certified Behavior Analyst, Orchid Academy

ISSUES

Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:

- i. Developing individualized education programs (IEPs), and failing to amend existing IEPs, that were not reasonably calculated to provide the Student with FAPE and were inappropriate in light of the Student's circumstances

² Citations to the exhibits of record are by party (P for the Parents; D for the District) and page number. For example, a citation to P6p1, refers to page 1 of Parents' 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.

from October 2023 to March 2025, including failing to provide a 1:1 paraeducator and an appropriate behavior intervention plan (BIP);

- ii. Failing to materially implement the Student's IEPs from October 2023 to present;
- iii. Failing to conduct an appropriate functional behavioral assessment (FBA) in March 2025;
- iv. Failing to create an appropriate BIP, including failing to target behaviors such as physical aggression, from October 2023 to present;
- v. Unilaterally modifying the Student's placement and services in her IEP without parental participation or without attempting to engage in an IEP meeting from October 2023 to present;
- vi. Failing to properly adhere to WAC 392-172A-02110 when restraining the Student from October 2023 to present;
- vii. Preventing meaningful parental participation from October 2023 to present by failing to document and report use of isolation and restraint consistent with RCW 28A.600.485 in conjunction with WAC 392-172A-02110, WAC 392-172A-01162, and WAC 392-172A-01163;
- viii. Failing to amend the Student's IEP on or after November 7, 2025, given that it was not reasonably calculated to provide the Student a FAPE and is inappropriate in light of the Student's circumstances;
- ix. Refusing to hold an IEP meeting on or about December 12, 2025, after one was requested by the Parents following a significant change in the Student's ability to access her education.

And, whether the Parents are entitled to their requested remedies:

- i. Declaratory relief finding that the District violated the IDEA and denied the Student a FAPE;
- ii. Compensatory special education and related services for the Student to allow her to obtain the educational benefit that she would have received but for the District's violations of the IDEA and denial of FAPE;
- iii. An Order that the District shall reimburse the Parents for private evaluations and services they obtained for the Student between October 2023 to present;

- iv. An IEP moving forward that is developed, reviewed, and revised in accordance with WAC 392-172A-03090 that is appropriate and reasonably calculated to meet the Student's unique needs;
- v. Or other equitable remedies, as appropriate.

Order Granting Amendment; Setting Amended Issues for Hearing, January 13, 2026.

FINDINGS OF FACT

Background

1. The Student is currently 10 years old and in fourth grade. She has qualified for special education services since kindergarten. T1021; P58pp1-3.
2. At hearing, the Student was described as a smart, happy, and funny child who loves to read and laugh and can be feisty. T27, 173-74, 538, 826, 617, 649, 1110.
3. The Student and her family resided in [REDACTED] until January 2023, when they moved to Washington. T26. In February 2023, the Student enrolled in first grade at Lee Elementary School (Lee) in the District. T26, 29.
4. In [REDACTED] the Student had an Individualized Education Program (IEP) and a behavior intervention plan (BIP). She participated in a specialized behavior program which the Parents considered to be very effective. D2p24; D6p8; T95.
5. In May 2023, the District reevaluated the Student and determined that she continued to qualify for special education services. D2p25. At that time, the Student had been diagnosed with attention deficit hyperactivity disorder (ADHD) and a mood disorder. D2p6.
6. The Student's IEP team met and developed an IEP that provided specially designed instruction (SDI) and goals in the following areas:

Services 06/01/2023 - 05/29/2024							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Communication	SLP/SLPA	SLP	30 Minutes / 1 Times Weekly	Special Education	06/01/2023	05/29/2024
No	Reading	Special Education Staff	Special Education Teacher	20 Minutes / 3 Times Weekly	Special Education	06/01/2023	05/29/2024
No	Social Skills	Special Education Staff	Special Education Teacher	30 Minutes / 2 Times Weekly	General Education	06/01/2023	05/29/2024
No	Social/Emotional	Special Education Staff	Special Education Teacher	30 Minutes / 2 Times Weekly	Special Education	06/01/2023	05/29/2024
Total minutes per week of building instructional time available for this student (excluding lunch):				1815 minutes per week			
Total minutes per week student is served in a special education setting:				150 minutes per week			
Percent of time in general education setting:				91.74% in General Education Setting			

D6pp9-14.

7. The IEP also provided a “proximity paraeducator” to support the Student. D6p12; D2p25. A proximity paraeducator is not tied to a specific child but is a second adult in the classroom or close by to provide support when necessary. A proximity paraeducator can be assigned to one classroom or to several classrooms, in which case the paraeducator would float between classrooms, “checking in, seeing which kiddos are in need.” T945. A 1:1 paraeducator supports a specific child and sits as close as the child allows. T193, 202, 912-13, 945.

8. The IEP also provided sensory tools the Student could use throughout the day, breaks in the morning and afternoon, a daily behavior chart to earn points, rewards for points earned, and the ability to buy prizes at the end of the week. D6p5.

9. In May 2023, the District conducted a functional behavioral analysis (FBA) and adopted a BIP for the Student. D3; D4; T191, 922.³ The BIP targeted the Student’s defiance toward teachers and staff, especially when they asked her to give up an item she liked or to stop doing an activity she enjoyed. D4pp3-4. Lack of sleep, adjustment to medication, social factors, and academic frustrations could contribute to the target behavior. D4pp3-4.

10. Intervention strategies in the BIP included modelling how to make a socially acceptable request, teaching the difference between wants and needs, praising the use of replacement behaviors, positive reinforcement, and a point system to earn “lion hugs” to buy rewards.⁴ D4pp4-5; T192-193.

2023-2024 School Year – Second Grade

11. During the 2023-2024 school year, the Student was in Mayra Shane’s second grade general education classroom.⁵ T824. Ms. Shane had a student teacher who also worked with the Student. T839.

³ It is unclear when the BIP was adopted. A PWN attached to the BIP included an implementation date of May 16, 2023. D4p6. However, a PWN attached to the IEP suggested that work on the BIP was still ongoing. D6p17.

⁴ A “lion hug” is a piece of paper a child earns and can enter into a drawing. If the child’s entry is drawn, they can choose a prize. T359.

⁵ Ms. Shane has been employed by the District for ten years, with eight years as a second grade teacher. T822. Ms. Shane has a bachelor’s degree in elementary education, and a master’s degree focused on multilingual learning. T823. She is a certificated teacher in Washington state. T823.

12. Angela Schmitten was the Student's case manager and special education teacher.⁶ T191-92. The Student's May 2023 IEP was in place at this time. Ms. Schmitten provided the Student with 30 minutes of reading SDI four times per week in a special education classroom called the Rainbow Room. T248-49. Ms. Schmitten also provided social/emotional SDI to the Student in a small group setting in a room called the Little Rainbow Room. T251, 361-62.

13. Special education staff provided the Student's social skills SDI in a social skills group in the general education classroom. The Student and two other students practiced social skills at a table in the back of the room. T248. Ms. Schmitten also worked on social skills with the Student during reading instruction to help her apply skills in a group setting.⁷ T250.

14. Marie Bergman, a District speech language pathologist (SLP), provided the Student's communication SDI.⁸ T482. Ms. Bergman pulled the Student from class to provide her with 30 minutes of SDI per week with another student working on the same speech sounds. T482-84. The Student was engaged and motivated. T 484-85.

15. A paraeducator, known as Ms. Render, provided 20 to 30 minutes of support to the Student each morning. T826. Courtney Bergman (not to be confused with SLP Marie Bergman) and other paraeducators also supported the Student in second grade. T646. Courtney Bergman noted that she was not assigned to Ms. Shane's classroom, but specifically to the Student. T647. She did not identify herself as a proximity paraeducator, noting that when she was in Ms. Shane's classroom, her job was to support the Student. T647. Courtney Bergman spent approximately 20 to 30 minutes per day helping her with academic and computer work, to regulate when necessary, and with transitions to recess. T646-48, 650, 657. The Student also received periodic check ins from other paraeducators. T826-27, 656.

⁶ Ms. Schmitten has been employed by the District for thirty years, with twenty-eight years at Lee. T188. She has taught special education for nine years and previously taught students in a variety of grades including third, fourth, and middle school. T187. Ms. Schmitten has a bachelor's degree and a master's degree in education. T188. She is nationally board-certified in reading. T188.

⁷ The record does not establish how much weekly SDI was provided in social/emotional or social skills.

⁸ Marie Bergman has been employed by the District as an SLP for approximately ten years. T479. She has a bachelor's degree in communication disorders and a master's degree in speech and hearing sciences. Ms. Bergman also holds a Certificate of Clinical Competency from the American Speech-Language-Hearing Association (CCC). T 480, 489.

Behavior in Second Grade

16. At times during the 2023-2024 school year the Student engaged in behaviors such as hiding under the table, eloping, and sleeping. T255-57. The Student's engagement in academics varied, depending on how she was feeling and if she was tired. T838-39.

17. By email on September 26, 2023, Ms. Schmitten informed the Parents that the Student had had a very tough day and stated: "It is like she knows what she needs to do to earn rewards but doesn't want to accept responsibility." P34p1. Ms. Schmitten noted the need to constantly find new ways to motivate the Student and sought ideas from the Parents. P34p1.

18. From the start of the school year, Ms. Schmitten, Ms. Shane, and paraeducators regularly completed behavior reports for the Student, which were then provided to the Parents at the end of the day. D12; T173. The team used the behavior reports to ensure that interventions and accommodations were allowing the Student to access her learning. T204. The Parents used the reports to talk with the Student about behaviors. T204-05; T173.

19. The behavior reports ranked the Student's behaviors during each period of the day as follows: "0" meant the Student did not stop a behavior that was disruptive or unsafe; "1" meant the Student needed reminders to follow directions and behavioral expectations; "2" meant the Student generally followed directions. E.g. D12p1.

20. The behavior reports for the 2023-2024 school year indicated that the Student's behaviors varied from day to day and sometimes within the same day.⁹ E.g. D12p2 (following directions throughout day except in math class); D12p6 (meltdown in hallway followed by great afternoon); D12p29 (work avoidance in morning but great day overall); D14p44 (amazing day on 3/14 followed by work avoidance, crying, and running out of classroom on 3/15).

21. The Student had multiple days when she generally followed directions or did so with reminders and she sometimes received comments such as "excellent day" or "good afternoon." E.g. D12pp3, 8-10, 12, 18, 20, 25, 33, 44-54. However, the Student

⁹The behavior form on page 6 of Exhibit D12 marked "9/20" was not considered because it did not contain a complete date and was also submitted for the 2024-2025 school year in Exhibit P24, page 8.

also avoided or refused to do work (work avoidance). E.g. D12pp11, 16-17, 21, 23-32, 34-42, 44-45, 47-48, 50-55. She also spent time sleeping. E.g. D12pp2, 4-5, 11-13, 15, 17-18, 20, 22, 23, 26, 35, 37, 43, 45, 48, 51, 53. In addition, the Student sometimes had escalations or meltdowns or left the classroom without permission. T834-35; E.g. D12pp1-2, 4, 6-7, 17, 19, 24, 42, 44. 47-48, 51, 53.

22. During mid-fall, Ms. Shane noticed that the Student was starting to struggle to complete her work. T827-28. Ms. Shane was also concerned because the Student was sometimes sleeping in the classroom. She did not believe the Student was sleeping to avoid work “because when she was out, she was out.” T828. Rather, she was avoiding work because she was tired. T828. On October 16, 2024, Ms. Schmitten, who kept a notebook about the Student, wrote “Mom and Dad took her back to doctor to adjust meds. . . . Nighttime dose up so sleeping better.” P55p1.

23. When the Student fell asleep, she would get angry when she was encouraged to wake up and join the group. T264. Attempts to wake the Student were sometimes successful. T828. When she was awake, the Student could be very engaged if she was interested. T648. She loved listening to stories, math, and technology. T837-38. Ms. Shane provided guided lessons to the classroom, which the Student sometimes followed from her desk. T839. Ms. Shane also worked with the Student in a small group on a daily basis. T838.

24. Because tools that were successful in addressing behaviors one day might not work the following day, the team kept trying different options. T262. Ms. Shane and Ms. Schmitten communicated daily and regularly communicated with the Parents about how to keep the Student awake and motivated. T264, 257, 828-29, 839, 1037-38. Strategies included movement breaks, such as a wiggle break or going for a walk. T829. The Student was given choices and had access to a sensory tub and to the classroom library. T830. Sensory tools, such as fidget tools, were used to help with focus. T262, 266. Ms. Schmitten also taught perseverance skills to help the Student keep going even when something was difficult. T265. Because the Student loved to talk and to draw, Courtney Bergman encouraged her to do work first after which they could talk or draw. She also tried to redirect the Student to focus on her work when she started to become distracted. T659. To minimize elopement, Ms. Schmitten taught the Student breathing and counting strategies, how to ask for help, and how to ask for a break. T268.

25. When the Student became escalated, teachers and staff called a behavior team for support. Behavior team members at Lee included Behavior Specialist Doug

Cornwell, School Counselor Caitlyn Livingston, Assistant Principal Kerrie DuFour,¹⁰ Principal Jamea Connor, School Psychologist Madeleine Praye, and Ms. Schmitten. T207-08. When the Student left the classroom, Ms. Shane called the office and Mr. Cornwell or an administrator would respond. T835-36. The Student had an escalation in the spring of 2024 that required the classroom to be cleared. T841. It is unclear exactly when this occurred. The classroom did not need to be cleared at any other time during the 2023-2024 school year. T842.

26. If the Student needed to calm down, she could go to a room called the PACE room, which was available to any student who needed space to regulate. T206, 926. There, the Student could remove herself from the situation, talk with an adult, and practice strategies on how to return to class. T206.

27. On January 22, 2024, the Student escalated and ultimately calmed down in the PACE room. This incident was not reflected in the behavior reports; however, it was briefly mentioned in Ms. Schmitten's notebook pertaining to the Student. Compare D12p32 with P55p1. The notebook indicated that Ukeru pads had been used and that the Student had run into the PACE room, where she de-escalated. P55p1.

28. Ukeru is a trauma-informed de-escalation strategy focused on keeping the student and staff safe and helping the student calm down. T694. When a child becomes aggressive, Ukeru pads are used to protect the child from hurting themselves or others. T224, 695. For example, a pad could be used to prevent injury if a student was coming at staff with a sharp object or if a student was trying to bang their head against a wall. T705. Ukeru pads decrease the likelihood of restraining or touching a student. T695-96. Smaller pads, called bite guards, protect the hand. T709.

29. Safety-Care is a second trauma informed de-escalation strategy, comprised of six chapters on de-escalation and a final chapter on restraint. T123, 704. Restraint is permitted under Safety-Care training when there is immediate harm to self or others. T704. Safety-Care discusses physical interventions called a two-person stability hold and a two-person transport, which are permitted when there is immediate harm to self or others. T696, 706.

¹⁰ Ms. DuFour has a bachelor's degree in economics, a master's degree in elementary education, and a master's certificate in education administration. She has been employed by the District as an Assistant Principal at Lee for more than two years and previously worked for the District as a third grade teacher for nine years. T853-54.

30. Use of Safety-Care methods to transport or transition a student is considered a form of restraint that must be documented. T864. At Lee, the person who used the hold or the school counselor must complete a form that is sent to the District offices. The form documents who engaged in the hold, how long it lasted, and the reason for believing there was imminent danger, among other things. T864-65, 877.

31. Annually, any use of restraint by the District must be reported to the Office of Superintendent of Public Instruction (OSPI). T909. District policy requires that parents receive verbal notification of restraint within 24 hours and also receive written notification of restraint, which is provided by email, U.S. mail, or a communication platform called ParentSquare. T910-11, 386. The hearing exhibits do not contain any written notifications of restraint to the Parents. T935.

February to April 15, 2024

32. The Student's IEP team met on February 12, 2024, to discuss the Student's recent autism diagnosis, in addition to her prior diagnoses of ADHD, anxiety, and depression/sensory disorders. D7pp1, 17; T36-37.

33. The team reviewed the Student's behavior and discussed how to keep her engaged with learning. Ms. Shane's primary focus at the meeting was how to keep the Student awake in class. T837. The team also discussed a recommendation by the Student's medical providers for a 1:1 paraeducator. T845. Ms. Parent had asked the providers to write the letter because she believed it was important for the Student to have 1:1 support. T37-38. However, the IEP team determined that the Student did not require that level of support. D7p17. At hearing, Ms. Shane explained that the Student had a proximity paraeducator but "almost didn't really need it. I mean, she still remained in the classroom, because that was the agreed plan. But the Student was pretty successful." T844-45.

34. The team also agreed to Ms. Parent's request for the Student to be able to choose an alternative location for recess; the Student is sensitive to temperature changes and did not want to go outside when it was cold or rainy. T44; D7p17. The school day included before-school recess, morning recess, and lunch recess. T197. Meltdowns tended to occur in the winter because the Student did not want to go out to recess. T834.

35. On February 12, 2024, the District issued a PWN reflecting that the team had decided the Student did not require 1:1 paraeducator support and that an alternative

location for recess would be provided. D7p17. Following the meeting, the Student could choose to go to recess or to an alternative location. T845-46.

36. By email on February 28, 2024, Ms. Parent contacted Ms. Schmitten and Principal Connor about an incident in which Ms. Parent believed a stuffed animal the team had agreed to as a comfort object and accommodation had been taken from the Student. P35p1. Because there was no testimony from anyone with direct knowledge regarding this incident, no factual findings are made.

April 15, 2024 IEP

37. On April 15, 2024, the Student's IEP team met to develop a new IEP. Ms. Parent, Ms. Schmitten, Ms. Shane, SLP Marie Bergman, Ms. Connor, and Ms. Livingston attended. D34p21.

38. The IEP provided the following behavioral supports: two scheduled breaks, one in the morning and one in the afternoon; sensory tools throughout the day; and rewards for good behavior. The IEP stated that a daily behavior chart would be shared with the Parents. D34p5. The IEP does not refer to a BIP for the Student. D34.

39. The IEP discussed the Student's present levels of performance in social/emotional, reading, communication, and social skills, and provided new goals in these areas. D34pp7-11. The Student had made progress toward her social/emotion goal to accept adverse situations, but she struggled to recognize that "her outbursts not only affect her ability to learn but her whole classroom learning setting." D34p7. The team set a new goal to use calming strategies when given an adverse situation to improve self-regulation of emotions. D34p7. The IEP also stated that the Student would meet regularly with a small group to practice social and emotional strategies and coping skills, in addition to participating in a social emotional curriculum in her classroom. D34p7.

40. The IEP noted that the student's reading skills varied depending on the day and whether the Student was using accommodations and sensory tools properly. The IEP stated that reading instruction would be provided in a small group setting, that sensory tools would be available, and that positive enforcement would be provided for attempts to learn and focus. D34p8. The team set new reading goals focused on improving comprehension and decoding words in grade level text to improve fluency. D34p8.

41. The Student had met one communication goal and made "excellent progress" toward another. D34p9. The team set new articulation goals. D34pp9-10.

42. The Student had learned new social skills and was using them when she interacted with peers, but she struggled to listen to peers in a group setting. The team set a new goal focused on taking turns while speaking and listening to peers in a small group setting. D34pp10-11.

43. The April 2024 IEP also provided accommodations including breaks, headphones, hybrid masking tool, illustration glossaries, noise buffers, separate seating, and shortened assignments.¹¹ D34p12. The IEP did not mention support from a proximity paraeducator as an accommodation or anywhere else in the IEP. At hearing, Ms. Schmitt stated that this support was inadvertently omitted from the IEP but continued to be provided.¹² T289.

44. The April 2024 IEP increased the Student's reading SDI by 15 minutes per week and provided all SDI in the special education setting as follows:

Services 04/15/2024 - 04/14/2025							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Communication	SLP	SLP	30 Minutes / 1 Times Weekly	Special Education	04/15/2024	04/14/2025
No	Reading	Special Education Staff	Special Education Teacher	25 Minutes / 3 Times Weekly	Special Education	04/15/2024	04/14/2025
No	Social Skills	Special Education Staff	Special Education Teacher	30 Minutes / 2 Times Weekly	Special Education	04/15/2024	04/14/2025
No	Social/Emotional	Special Education Staff	Special Education Teacher	30 Minutes / 2 Times Weekly	Special Education	04/15/2024	04/14/2025
Total minutes per week of building instructional time available for this student (excluding lunch):				1815 minutes per week			
Total minutes per week student is served in a special education setting:				225 minutes per week			
Percent of time in general education setting:				87.6% in General Education Setting			

D34p15.

45. The District issued a PWN indicating that the April 2024 IEP would be implemented on April 16, 2024. D34p18.

June 2024 IEP Amendment Meeting

46. The Student's IEP team met again on June 3, 2024. D10p1. Katie Tucker, Director of Special Education for the District, scheduled the meeting in response to

¹¹ Some of these accommodations are not defined in the record.

¹² Ms. Schmitt made this clarification when questioned about a subsequent IEP amendment. T289.

Ms. Parent's concerns about the Student's accommodations, behaviors, and educational program.¹³ P36p1; P37pp1-2.

47. In attendance were Ms. Parent, Ms. Connor, Ms. DuFour, Ms. Shane, Ms. Schmitten, Mr. Cornwell, Ms. Tucker, SLP Marie Bergman, and Greg Hall, a District school psychologist. D10p19. Sarah Clarke, a District behavior coach who had begun working with the Student on a consultation basis in late-spring 2024, also attended the meeting.¹⁴ T125, 128; D10p19.

48. At the meeting, Ms. Clarke discussed her observations of the Student in music and on two occasions in the general education classroom. T128, 131. The Student was happy and engaged in music class, which was very loud. T129. In Ms. Shane's class, the Student was tired and quiet; she sometimes put her head down and wanted to sleep. T131. Ms. Clarke also discussed data showing that most of the Student's escalations occurred after 11:30 a.m. or after 2:45 p.m., and that the Student was "on task" approximately 90 percent of the time. T129; D10p18.

49. Ms. Parent again requested a 1:1 paraeducator, but District team members did not believe data in daily behavior reports supported that level of intervention. T292-94, 859, 916. At hearing, Ms. Schmitten explained that while the Student struggled, the behavior reports also "contained a lot of 2s, which meant she was doing great." T293. The Student was able to finish some of her assignments on her own, interacted with peers and her teacher in class, went to the break space in the classroom when she needed a break, and returned from the break space on her own. T203, 848-49. Neither Ms. Schmitten nor Ms. Shane believed the Student required support from a 1:1 paraeducator during second grade. T203, 848.

¹³ Ms. Tucker has a bachelor's degree, a master's degree in teaching and learning, and a master's degree in administration. She is a nationally board certified teacher. T906 Ms. Tucker has been employed by the District for twenty-five years. For the past three years, she has been the District's Director of Special Education. Before that, she taught general education for seventeen years and served as an assistant principal and principal for five years. T905-06, 934.

¹⁴ Ms. Clarke has a bachelor's degree and a master's degree in educational leadership. T119. She is a certificated multilingual teacher (K-12) and ELA teacher (secondary). T147. Ms. Clarke has been a teacher in public schools since 2001 and is in her fourth year as a District employee. T118. When she worked with the Student, Ms. Clarke was employed by the District as a behavior coach. T126. Previously, Ms. Clarke served as Director of Special Education in the Lake Chelan School District, which required learning about programming to support children with significant behavioral concerns. T119-20. Ms. Clarke is a trainer for Safety-Care and has training in programs called Behavior Solutions and Universal Design for Learning. T121-23.

50. During the meeting, Ms. Parent acknowledged that the team was providing the Student with accommodations but was concerned the District was not providing an alternate recess. D10p18. Ms. Parent wanted the Student to be able to choose whether to go to recess, noting that escalations were often caused by the transition to recess. T43-44. Mrs. Schmitten agreed to prepare a sensory tub with activities for the Student and a friend to do at recess, which was implemented immediately after the meeting. D10p18; T847. The team also agreed that a District occupational therapist would observe the Student for sensory concerns. D10p18. Ms. Bergman agreed to create a social story of what to expect the following year that the Student could review over the summer, and Ms. Schmitten agreed on the steps to facilitate a smooth transition.¹⁵ D10p18. Ms. Parent agreed to talk to the Student's pediatrician about her sleep issues. At that time, the Student's diagnoses included insomnia. D10pp18-19.

Progress–2023-2024 School Year

51. By the end of January 2024, the Student had made progress toward both articulation goals. D5pp1-2. The Student had met her reading goal by mid-December 2023. D5p2; D8; T273. There is no report on the Student's progress toward her social skills or social/emotional goals for the first semester of the 2023-2024 school year, which ended on January 26, 2024. D5pp2-3; T273; D14p1.

52. By June 10, 2024, the Student had made some progress toward two communication goals set in April 2024; a third goal would be targeted after a prior goal had been mastered. D9pp1-2. Comments noted that the Student "works hard in speech therapy [and] makes steady progress. She is a pleasure to work with!" D9p2.

53. By May 17, 2024, the Student had mastered her reading comprehension goal 50 percent of the time but still required teacher prompting. D9p2; T305-06. The Student had reached her decoding goal "this year but not on her most recent assessment. She read 71 [words per minute] but we know she is capable of reading and decoding. It depends on the day and state of mind! Keep up the good work!" D9p3. This comment reflected the "ebb and flow, roller coast of the Student . . . Some days she would read it and then some days she wouldn't." T307.

54. The Student had shown growth regarding her social/emotional goal, which sought to improve use of calming strategies when the outcome was not what she wanted. D9pp3-4. She was "accepting responsibility for her choices 50% and staying

¹⁵ A social story helps a child to envision themselves successfully doing something that is new or difficult. T494.

calm 40% of the time!” D9p3. The Student had also shown growth toward her social skills goal, but the report did not quantify that progress. D9pp3-4.

55. At the end of the 2023-2024 school year, the Student’s general education report card indicated that she was progressing to standards (“2”) on all behavioral measures. In ELA, the Student was not reading at grade level but was “Making Adequate Reading Progress.” D13p1. On ELA measures, she was well below standards (“1”) with the exception of showing understanding of stories and using appropriate conventions, where she was progressing to standards. D13p1. In math, science, social studies, fitness and health, and music, the Student was progressing to or meeting standards in most measures. D13p2.

56. While District staff completed behavior reports for the majority of school days, the record does not contain reports for the week of October 9, 2023, or the final two weeks of school in June 2024, and contains one report per week for the end of May 2024. D12pp1-55. In November and January through April, the Parents received reports every day except for two or three. D12pp15-22, 26-51. In September, October, December, and early May, the Parents received between two and four reports each week. D12pp1- 14, 23-25, 52-55.

2024-2025 School Year – Third Grade

57. The 2024-2025 school year started on August 28, 2024. D28. The Student was in Angela McGinnis’s third grade general education classroom.¹⁶ T375.

58. Marie Bergman continued to provide the Student’s communication SDI for 30 minutes weekly with another student who was working on the same speech sounds. T483-84. Ms. Schmittsen again served as the Student’s special education teacher. T191-92. The record does not contain details about what SDI she or the Student’s paraeducators provided to the Student during the 2024-2025 school year.

59. Proximity paraeducators provided approximately 30 minutes of support in the morning and again in the afternoon. T409-10. Courtney Bergman continued to support the Student, along with other paraeducators. T3838, 392-93; 650-51. Whoever

¹⁶ Ms. McGinnis has been a public school teacher for twenty-five years. She has been employed by the District for approximately six years, first as an arts specialist and then as a third grade teacher at Lee for the past two years. Ms. McGinnis has a bachelor’s degree with an elementary education major and special education minor, a master’s degree in literacy, and is a certificated general education teacher. T372.

performed that role at any given time was present in Ms. McGinnis' classroom unless they were taking the Student for a break. T413.

60. Early in the school year, District occupational therapist Macey Keller observed the Student for sensory issues.¹⁷ Ms. Keller conducted three observations and during each she observed the Student transitioning to recess, at recess, and returning to the classroom. She saw the Student playing with peers, advocating for herself, and did not observe sensory issues during any of the observations. D15p3; T512.

61. The Student's IEP team met on October 4, 2024, and discussed Ms. Keller's observation of the Student. To address the Parents' concerns that cold weather could trigger sensory issues, Ms. Keller agreed to prepare a social story about winter. D15p3; T514.

62. The IEP team also discussed the Student's behavior. Although the Student had had a few "major melt downs" she had been able to relocate to the PACE room and to reset and rejoin peers. Team members agreed it was "her best year yet" and that she was off to a strong start. D15p3; T377, 919.

63. Ms. Schmitt, Ms. McGinnis, and paraeducators completed behavior reports for the 2024-2025 school year. T312, 385.

64. From the start of the school year through January 2025, the Student continued to engage in task refusal, sleeping, and elopement. E.g. D26pp2-4, 6-7, 12, 27, 30-38, 46-50, 54-57, 59, 62-63, 77, 79-80, 83-84; P24p40.¹⁸ However, at other times, the Student worked hard and participated, as indicated by many "2s," and had days marked as "great" or similar. E.g. D26pp8-10, 14, 29, 40-42, 44, 60, 73-76, 81-82. The Student's behaviors continued to vary, often within the same day. E.g. D26p6 (not following directions and sleeping in morning followed by "great" afternoon); compare P24p30 with P24p32 (great ending to 12/5 followed by significant meltdown on

¹⁷ Ms. Keller has been employed by the District as an occupational therapist for three years. T508. She has a bachelor's degree in kinesiology and a doctoral degree in occupational therapy and holds a Washington state certification to be an occupational therapist in public schools. T508-09, 517.

¹⁸ Exhibit D26 and P24 both contained behavior forms for the 2024-2025 school year. The ALJ considered both exhibits to ensure all data was considered. Some behavior forms were not considered for the reasons noted: D26pp11, 13, 15-17, 19, 96-97 (no date); D26p20 (2023-24 SY); D26p26 (Saturday); D26p28 (duplicate of D26p27); D26p43 (duplicate of D26p42); D26pp51-52 (duplicates of D26pp47-48); D26p61 (duplicate of D26pp62, 64); D26p85 (duplicate of D26p84); P24pp1-3 (8/31, 9/1, and 9/8 were not school days in 2024); P24p8 (incomplete date and same form submitted for prior school year on D12p6); P24pp9-11 (no date).

12/6). Ms. McGinnis regularly communicated with the Parents by ParentSquare and telephone. T385-86.

65. In November 2024, Ms. McGinnis noticed that the Student was starting to struggle. T377. The Student shifted from wanting to work hard and to please people, to “shutting down, choosing to sleep, not wanting to leave my classroom before a transition out of the classroom . . . Trying to get into my classroom when it wasn’t a time to be in my classroom.” T380. Ms. McGinnis kept trying to find new behavior strategies because strategies would work for a day and then become ineffective. T381.

66. The Student began hiding under Ms. McGinnis’s desk and threatening to harm her if she came close. The Student also started engaging in property destruction. She would kick bookshelves, chairs, and desks, and clear books from the shelves. The Student became fixated on bins full of art supplies, first “standing guard” over them and then getting mad and dumping them on the floor. T414. It is unclear how often these incidents took place. Ms. McGinnis did not know whether these incidents were included in behavior reports because they were “turned over” to the behavior team. T415.

67. When Ms. McGinnis saw the Student’s eyes shifting or heard a specific sound, it was a signal that the Student was going to escalate. T381. Ms. McGinnis would then call for assistance from the behavior team. T382-83.

68. On December 2, 2024, the Student “would not leave class Cornwell/Schmittten had to move her out of the room.” D26p32. On December 6, 2024, the Student was suspended from school for one day due to the following incident:

After being informed that she needed to wait to see her sisters during a school assembly, [the Student] escalated her behavior, pushing and shoving peers in an unsafe manner. Staff intervened promptly, escorting her to a secure area to ensure the safety of all students. In this space, [the Student’s] escalation intensified, leading to overturned desks and the throwing of Chromebooks and student materials. When she attempted to activate the fire alarm, staff positioned themselves to prevent an all-school evacuation. During this episode, [the Student] physically aggressed toward staff with the intent to harm, including kicking, hitting, slapping, biting, and other harmful behaviors. Utilizing Safety-Care protocols, staff implemented an all-school SRP HOLD in the hallway and successfully relocated [the Student] to a designated area where she could begin to regulate.

P50p1. A two-person hold was used to transport the Student to the PACE room. T881. Ms. DuFour called Mr. Parent regarding the incident. P50p2; T882.

69. An “all-school SRP HOLD” meant hallways were emptied, classrooms closed their doors, and schoolwork continued within the classrooms. This preserved the Student’s dignity and kept other children safe. T319; T880.

70. When the Student was dysregulated, she often went to the PACE room on her own. T333. If she did not go on her own, Ms. Schmitten called the Parents for permission to relocate the Student using a two-person hold. T333-34. The team did not move the Student until permission had been received. It is unclear how many times this occurred. Sometimes, the Parents did not give permission and, instead, Mr. Parent came to school to talk to the Student. T334. Ms. Schmitten could not recall any instance when she was unable to contact the Parents. T334.

71. At hearing, Ms. McGinnis was asked if the Student was being “physically grabbed by any of the Lee staff.” T397. Ms. McGinnis answered “Yes,” and stated:

I would say when she would not physically get up and move or when she was physically lashing out at a staff member or near other students as well and there was becoming a safety issue, and it was a gentle guide from what I witnessed.

T397. Ms. McGinnis later clarified:

I just remember them always preparing or saying, ‘Honey, if you don’t, then we have to move you. We have to get you out. Will you please stand up?’

I would call it like a parenting ... like if your child throws a fit in the grocery store, right, you are not grabbing them, you are like, ‘Okay, we are leaving,’ and trying to move them to help them.

T429, 434. When the Student refused to get up from the ground, the behavior team was often able to use verbal prompts to get the Student to move on her own. T416. Less frequently, the team used physical action; Ms. McGinnis did not know how often this occurred. T416-17.

72. At hearing, when asked if pads were ever used when the Student was on the ground, Courtney Bergman discussed a time when the Student “got under a desk when they had the pads and we were able to coax her out with them . . .” T664. Ms. Bergman explained:

I just mean that as soon – like they would try to move her, the direction of the door, but this was only when she was being combative and they were worried that she might strike out and hit. Now a lot of the times – the one time I needed with the pads [sic], they were trying to get her out, but most of the time it would just be us, like people without the pads. It was only that one time where she was very, like, aggressive in her manner and we were worried about some of the paras getting hurt.

T665.

73. By late January 2025, Student had met two of her communication goals and had made progress toward the third. D11pp1-2. However, the Student’s progress toward her two reading goals varied depending on her mood and state of mind. D11pp2-3. The Student’s ability to perform consistently depended on the day and whether basic and sensory needs were met. T322.

74. The progress report does not quantify the extent of progress toward the Student’s social/emotional goal. It noted that she had grown and continued to show growth. The report also stated that steps taken to meet the Student’s sensory needs had helped her to handle adverse situations, but she was unable to calm herself if sensory needs were not met. D11pp3-4.

75. The Student was meeting her social skills goal, which focused on taking turns in communicating in a small group setting. In a large group setting, which was not the focus of the goal, the Student was still “blurting out and making noises” 50 percent of the time. D11p4. The Student sometimes blurted out random words such as “Kentucky Fried Chicken.” T325.

76. The Student’s general education report card for the first semester of the 2024-2025 school year indicated that the Student was well below standards (“1”) in all behavioral measures except demonstrating respect, where she was progressing to standard (“2”). D27p1. The Student was well below standards in reading, writing, math, demonstrating age appropriate motor skills, and was progressing toward standard in science, social studies, music, and fitness and health. D24pp1-2.

February through April 2025

77. On February 4, 2025, the Student became very escalated in Ms. McGinnis' classroom and was emptying bins containing school supplies. The behavior team was called and the Student ran through the hallway, hid under a table, and tipped over a desk containing chrome books. D26p69. A two-person hold was used to transport the Student to the PACE room, where she was very agitated and aggressive, yelling profanity and spitting on people. T331; D26p26. Ms. DuFour, Mr. Cornwell, and Ms. Livingston used Ukeru pads to protect the Student and themselves from the Student's aggression, which took the form of kicking, biting, and pushing staff. T330-31; D26p69. Ms. Schmitten notified Mr. Parent of the incident and the Student's grandmother came to school to pick up the Student. T328; D26p69.

78. Notes from a debrief meeting after the incident stated "Restraint – three person basket hold on floor." D26p69. However, Safety-Care does not include such a hold and this terminology was incorrect. T886, 707-08. Ms. DuFour explained that a two-person hold was used but she could not recall the name of the hold. T885. Meeting notes subsequently referred to "Hold – 2 person floor seated stability hold with leg wrap – 2 times, let go, then re escalated, continued to kick, rip clothes." D26p69. Ms. DuFour, Ms. Schmitten, Ms. Livingston, and Mr. Cornwell had Safety-Care training. T886. Ms. DuFour and Ms. Schmitten also had training in Ukeru. T224, 862-63.

79. A meeting was held on February 12, 2025.¹⁹ P40p1; T1063. The day before the meeting, Ms. Parent sent an email to Ms. Schmitten and administrators noting that the Student had been struggling. Ms. Parent believed escalations were increasing in frequency and intensity. T1063. Among other things, Ms. Parent advocated for the District to continue to make recess "optional" for the Student; to excuse the Student from assemblies; to minimize verbal stimulation when the Student was escalated; and to never allow sleeping. P40p1. Ms. Parent stated: "We are working on [sleeping] from a medicine angle, but sleeping is not okay and causes her to wake feeling worse – or that she has successfully avoided expectations." P40p1. Ms. Parent again asked to hire a 1:1 paraeducator, noting that although she "loves many of you," she needed to bond with a dedicated person to help her avoid sensory overload. P40p1. Ultimately, the team proposed to reevaluate the Student and conduct an FBA. T1064; D17p7.

¹⁹ The meeting on February 12, 2025, appears to have been an IEP team meeting although the record does not contain an invitation or other document associated with an IEP team meeting. P40p1; T1063.

80. On February 14, 2025, the Parents provided signed consent for the District to reevaluate the Student in the areas of medical-physical, general education, behavior management, academic, adaptive, functional behavioral assessment, occupational therapy, social/emotional, communication, observation, and review of existing data. D19pp2-3, 46; T69.

81. District school psychologist Madeline Praye oversaw the reevaluation.²⁰ T460. Ms. Praye assessed the Student in all areas of evaluation except occupational therapy, which was assessed by Ms. Keller, and communication, which was assessed by Marie Bergman. T488-89, 516; D19pp23, 31. The Student demonstrated significant delays in behavior management and delays in social/emotional, academic, adaptive, and occupational therapy that adversely impacted her ability to access and make progress in the general education curriculum. D19pp6, 11.

82. In the area of behavior management, Ms. Parent and Ms. McGinnis completed rating scales for the Behavior Assessment System for Children, Third Edition (BASC-3). The Student fell within the clinically significant range with respect to externalizing problems, such as aggression, hyperactivity, and conduct problems. D19pp18-19. The Student's disruptive behaviors, which included hitting, kicking, elopement, and acting impulsively, impacted her ability to participate in general education activities. D19p20.

83. As part of the reevaluation, Ms. Praye interviewed Ms. Parent, who discussed the Student's history and behaviors at home. D1911. Ms. Praye also observed the Student in the general education setting, in the special education setting, and during a transition. T456. Based on her observations, coupled with daily behavior data, Ms. Praye concluded that the Student's ability to participate in general education activities was inconsistent and that the inconsistencies suggested a need for more direct behavior support. D19p28.

84. Ms. Praye also conducted an FBA of the Student. T444. She reviewed the Student's prior evaluation and FBA from [REDACTED] behavioral data in the school-wide information system (SWIS) and in the Student's behavior reports for the 2024-2025

²⁰ In 2010, Ms. Praye completed a dual endorsement program with certifications in special education and elementary education. T439. Ms. Praye holds national board certification as a special education teacher and taught special education in grades three through five for twelve years. T439, 441. Between 2020 and 2024, Ms. Praye worked as a teacher while she also completed an educational specialist degree in school psychology. Ms. Praye graduated from that program in 2024 and is a nationally certified school psychologist (NCSP). T439-40. She has been employed by the District as a school psychologist for two years. T438.

school year and considered her observation of the Student. T446-47, 462. Antecedents to the Student's behaviors included being asked to try a task, join a class, transition, wait for a break, or being told "no." D18p2. Data indicated behaviors occurred as follows: task refusal (28 times); sleeping (25 times with 20 times appearing to be focused on task avoidance); elopement (15 times). D18p2. Consequences of the behaviors were avoiding tasks (36 times); gaining adult attention (25 times); and gaining access to an item (7 times). D18p7.

85. The FBA focused on two target behaviors: task refusal and elopement. D18p3. Sleeping was considered a form of task refusal since it often occurred to avoid tasks. T449. The FBA discussed that the Student's behaviors

can escalate from task refusal to disruption to elopement. If she is engaging in unsafe behaviors or there is a threat of serious injury to student, self, or staff, a crisis team responds to help her move to a safe area, either with adult guidance or a two-person transport.

D18p2. Since task refusal and elopement could lead to physical aggression, the FBA sought to intervene and redirect the Student before physical aggression occurred. T445-46, 459.

86. The FBA hypothesized that schedule changes, task difficulty, absences, fatigue, and illness contributed to the Student's task refusal and elopement. It further hypothesized that when the Student was presented with an academic task, she refused to do it in order to escape the demand and do what she preferred. D18pp2-3. The FBA hypothesized that the Student eloped to seek adult attention and escape from tasks; this behavior was triggered when adult attention was not immediately available and when she was asked to wait or denied access to something she wanted. D18pp3-4. The FBA then set out intervention strategies for the target behaviors and recommended a BIP. D18pp5-6.

87. On March 14, 2025, while the reevaluation and FBA were underway, the Student was involved in an incident that led to her emergency removal from school. P51pp1-2; D16pp1-7. The Student stabbed the school counselor and the assistant principal with an open paper clip. She then grabbed two pairs of teacher scissors, threatened to stab anyone who came near her, and stabbed the teacher's computer. The Student opened the scissors onto Ms. Connor's wrist, but Ms. Connor was not hurt. Ultimately, Mr. Parent arrived and was able to calm the Student. D16p1.

88. On March 20, 2025, the evaluation team met to review the reevaluation, including the FBA. D19p39. Attendees included the Parents, Ms. McGinnis, Ms. Schmitt, Ms. Praye, Ms. Connor, Ms. Keller, Marie Bergman, Ms. Tucker, Ms. Livingston, Ms. DuFour, and Christian Betz, a District Board Certified Behavior Analyst (BCBA).²¹ D19p47.

89. The Student was found eligible for special education services in the autism disability category with SDI recommended in behavior, social/emotional, adaptive, reading, written expression, and math, and occupational therapy as a related service. D19pp8, 39. The reevaluation team determined the Student no longer required SDI in communication. D19p24; T488. As supplementary aids and services, the team recommended a 1:1 dedicated paraeducator and consultation from a BCBA. D19pp8. The reevaluation was signed by all team members with no dissenting opinions. D19pp43, 47.

90. Also on March 20, 2025, the Student's IEP team held a manifestation meeting and determined that the Student's behavior on March 14, 2025, was a manifestation of her disability. D17pp1,6.

91. The Student's IEP team met on April 3, 2025, to develop an annual IEP. D21p1. The meeting was attended by Ms. Parent, Ms. DuFour, Ms. Connor, Ms. Schmitt, Ms. McGinnis, Ms. Praye, Ms. Keller, and Ms. Tucker. Ms. Parent agreed to excuse Ms. Clarke for childcare purposes. D21pp5.

92. The April 2025 IEP noted that the Student's behavior impeded her learning and that she had a BIP. D21p8.

93. The IEP also discussed the Student's present levels of performance in social/emotional, behavior management, math, reading, writing, and adaptive, and set goals in each area. D21pp10-15. The Student had made little progress toward her social/emotional goal. While she was able to practice calming strategies in small group and one-on-one settings, she could apply those strategies in less than ten percent of heightened situations. D21p1. The team set a goal to continue work on applying

²¹ Mr. Betz has undergraduate degrees in community health and school health and a master's degree in special education, K through 12. He became a board certified behavior analyst (BCBA) in February 2025 and is also a certificated teacher. T670-71. Mr. Betz has been employed by the District as a behavior specialist since January 2023. T669. He previously worked as a special education teacher, as a behavior specialist, and as a paraprofessional. T670. For the past several years, Mr. Betz has been certified to train others in Ukeru and Safety-Care and provides District-wide training in these methods. T702-03.

calming strategies and a second goal focused on relinquishing items she liked or discontinuing activities she liked. D21pp10-11.

94. The IEP noted that the Student had not met either reading goal and set goals to continue learning decoding strategies and making inferences about a text. D21p13. The IEP also set a math goal focused on addition and subtraction and a writing goal. D21pp12, 14.

95. The IEP set two behavior goals. The first sought to improve the Student's ability to stay in the classroom and express her needs and wants in challenging situations. The second sought to improve task engagement. D21pp11-12. Finally, the IEP provided an adaptive/self-help goal to improve the Student's transition skills. D21p15.

96. The IEP provided 18 accommodations. Among these were sensory tools, access to a quiet space to reset and calm down, alternate recess space, a token board, and a visual schedule. D21pp17-18.

97. The April 2025 IEP provided the following SDI, related services, and supplementary aids and services:

Services 04/04/2025 - 04/03/2026

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Occupational Therapy	OT	OT	20 Minutes / 1 Times Weekly	Special Education	04/04/2025	04/03/2026
Special Education							
No	Reading	Special Education Teacher	Special Education Teacher	30 Minutes / 4 Times Weekly	Special Education	04/04/2025	04/03/2026
No	Math	Special Education Teacher	Special Education Teacher	25 Minutes / 4 Times Weekly	Special Education	04/04/2025	04/03/2026
No	Written Expression	Special Education Teacher	Special Education Teacher	25 Minutes / 4 Times Weekly	General Education	04/04/2025	04/03/2026
No	Social/Emotional	Dedicated 1:1 Paraeducator	Special Education Teacher	30 Minutes / 5 Times Weekly	Special Education	04/04/2025	04/03/2026
No	Behavior	Dedicated 1:1 Paraeducator	Special Education Teacher	30 Minutes / 5 Times Weekly	General Education	04/04/2025	04/03/2026
No	Adaptive/Self Help	Dedicated 1:1 Paraeducator	Special Education Teacher	40 Minutes / 5 Times Weekly	Special Education	04/04/2025	04/03/2026
Transportation							
No	Transportation						

Total minutes per week of building instructional time available for this student (excluding lunch):

1815 minutes per week

Total minutes per week student is served in a special education setting:

590 minutes per week

Percent of time in general education setting:

67.49% in General Education Setting

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	1:1 Dedicated Paraeducator	Dedicated 1:1 Paraeducator	Special Education Teacher	340 Minutes / 5 Times Weekly	General Education	04/04/2025	04/03/2026

D21p20. The Parents agreed with all of these provisions and with the placement in which the Student would spend approximately 30 percent of her time in the special education setting. T74.

98. The team agreed that the escalation in the Student's behaviors and data for the third grade year showed that the Student required 1:1 paraeducator support. T212-13, 868.

99. The IEP team also adopted a BIP on April 3, 2025. D20p1. The BIP incorporated significant language from the FBA, including intervention strategies. D20pp6-8. Regarding task refusal, these strategies included:

Setting: reduce access to preferred items or activities until after engagement in the desired behavior; divide longer activities into smaller parts, and schedule access to preferred tasks

Antecedent: teach how to take a break; embed preferred activities throughout the day; prime for transitions; give specific praise for positive actions; review expectations visually; and provide accommodations for academic tasks

Replacement Behavior: daily instruction to teach a break-taking routine; prime asking for breaks before tasks; present demands that are already in the Student's repertoire prior to more challenging tasks; acknowledge expected behavior with tokens

Consequences to Increase Replacement Behavior: specific praise for positive actions, allow brief escape from tasks if a break is requested

Consequences to Decrease Target Behavior: repeat directions and give wait time; reintroduce choices between tasks; prompt break-taking behavior; provide visual expectations of tasks.

Regarding elopement, these included:

Setting: check in with basic needs (hunger, fatigue, medication, transition to school); teach replacement behaviors to request a break, take a time-out, or opportunity to meet sensory needs

Antecedent: embed preferred activities throughout the day, including access to positive adult attention; preteach and precorrect expectations

for transitions; proximity control (decrease distance between adult and Student)

Replacement Behavior: Expected behavior—remain in a designated area per adult permission; Replacement behavior—use a break space in the classroom; Strategies—daily instruction to learn and practice how to take a break or meet sensory needs; prompt to use replacement behavior before task starts

Consequence for using Replacement Behavior: provide positive adult attention, allow a break from the task

Consequence for using Target Behavior: use time-out procedures (e.g. take a break, use calming area/room); restate expectations and give wait time; proximity control.

D20pp6-8; D18pp5-6.

100. The BIP included a crisis and recovery plan for when the Student eloped outside of the school, was holding an item that could harm herself or others or engaged in “direct physical aggression towards adults that makes contact.” D20p13.

101. The Student’s IEP team developed an emergency response protocol (ERP) on April 3, 2025. D22pp1-3; D21p22. The ERP provided that isolation, restraint, or a restraint device could be used if the Student was harming herself or others, had eloped from campus, or was in imminent danger. The ERP listed the types of holds or assists that could be used in moving the Student to a safe space in order to protect her or others. Only staff trained in restraint and de-escalation programs, such as Safety-Care or Ukeru, could use restraint or restraint devices. Additionally, the ERP required that restraint would be discontinued immediately once the likelihood of imminent danger had passed and would take the least amount of time possible. D22p3. The ERP was discussed at the meeting and all IEP team members agreed to it. T902-03.

102. After the April 2024 IEP was implemented, Ms. Keller provided the Student with 20 minutes per week of 1:1 occupational therapy services. T520. The services were initially provided in Ms. McGinnis’s classroom; subsequently, the Student chose to go with Ms. Keller to the Little Rainbow Room for services. T521, 530.

103. Following the IEP team meeting, Ms. Schmitten and Ms. Clarke met to review data and consider how to motivate the Student and provide positive reinforcement.

T213. Ms. Clarke worked with the team to help implement the Student's BIP and to provide support for the Student. T135, 154.

104. During the first two weeks of April, the Student was "pairing" with her 1:1 paraeducator for a portion of each day. T138, 155; 402. Pairing, which occurred in the PACE room, was the process of building a solid relationship between the Student and Samantha Rosseau, the Student's 1:1 paraeducator at the time. T138-39. During this time, the Student continued to go to the Rainbow Room to receive her SDI from Ms. Schmitten. T348.

105. The goal of pairing was to create an environment that helped the Student to feel that she wanted to attend school. T162-63. Because the Student often escalated if presented with too many demands, the team wanted to remove demands and then slowly reintroduce them while giving the Student choices and autonomy. T138, 163, 681. The pairing process was led by the Student so there was no set amount of time in the PACE room. T155. The PACE room was equipped with blankets, stuffed animals, and activities the Student liked. T140. The Student often wanted to play UNO. T138.

106. Following the pairing process, academics were slowly reintroduced and the Student transitioned back to her prior schedule and the general education classroom, with Ms. Rosseau as her 1:1 paraeducator. T400-03, 406-07, 424. The Student could choose to do the same work as her peers or to work on easier tasks. T140-41. After Ms. Rosseau became the Student's 1:1 paraeducator, the Student was "a very happy Student" but Ms. McGinnis did not see much academic work taking place. T406. Mr. Parent noticed there were fewer escalations and refusals, and the Student was calmer and happier. T141-42, 1117.

May 2025

107. The Student's IEP team met to amend her IEP on May 6, 2025. D23p1. Because the Student had met some of her academic goals, the team discussed and set new goals. D23p22; T213.

108. On May 15, 2025, the Student became escalated in the lunchroom. She bit Mr. Cornwell and tried to slap other students. A two-person transport was used to move the Student to the PACE room. P54p1; P55p12. At hearing, Ms. DuFour indicated the Parents would have been notified of the use of restraint under District policy; however, there is no evidence that the Parents were, in fact, notified. T895-96.

109. There were three meetings with the Parents during May and June 2025 to discuss behavior data. T145. The team discussed the data in Exhibit P25, although data from April 2025 is missing from that exhibit. T156. Data indicated that between May 12 and June 3, 2025, the Student continued to sleep periodically during the day. P25p1. She engaged in both physical aggression and property destruction on May 15, 2025. P25p1. The Student engaged in property disruption on two additional days, task refusal on four days and did not elope. P25p1.

110. The Student's IEP team met again on May 21, 2025, to review data, address a spike in behavior, brainstorm solutions, and consider re-introducing technology. D25p3. The Parents had been opposed to the Student having access to technology, but the team, including Mr. Parent, agreed to reintroduce limited use of electronics because the use of technology was so prevalent that it would be difficult to replicate some things manually. T173. The team also agreed to send a daily communication log to the Parents. D25p3; T685.

111. The Parents met with Ms. Schmitt, Ms. Praye, and Mr. Betz on June 4, 2025. P28p1. They discussed that the Student was pairing with two paraeducators at that time and was responding well. P28p1. This second round of pairing was necessary because Ms. Rosseau had decided to leave the District. T159-60. The Student was pairing with Jeana Anderson, who would be her 1:1 paraeducator for the 2025-2026 school year. T160, 543. The pairing process with Ms. Anderson took approximately one week, comprised of three or four full days and part of one day. T549, 557. During the meeting, the Parents provided an update that the Student had not yet had a sleep study. P28p1.

112. At hearing, Ms. Parent acknowledged that she wanted the Student to bond with her paraeducator; however, she believed having a 1:1 paraeducator resulted in the Student being removed from the general education classroom with no learning during the pairing process. T75, 1066; P40p1. Mr. Parent understood that the Student and the 1:1 paraeducator would go through a bonding process, but he did not understand how long it would take. T172, 1116.

113. At some point after the Student was reevaluated in March 2025, the Parents became concerned that the Student was spending too much time in the PACE room. The use of the PACE room was not a "big deal" for the Parents until after reevaluation. T1054.

Progress – 2024-2025

114. By May 30, 2025, the Student had met her task initiation goal on certain days and had increased her use of self-regulating strategies, but she had not shown

consistent progress toward either goal. D24p4. It was too soon to assess the Student's progress toward her new reading, writing, and adaptive goals, and some of her behavior and social/emotional goals. D24p1-3. By June 3, 2025, the Student had not made progress toward the multiplication goal adopted on May 6, 2025. D24p2.

115. The Student's general education report card for the second half of the 2024-2025 included the mark "IE," meaning insufficient evidence due to absences or missing assignments, for all areas except music and fitness and health. D27pp1-2. The Student had 16.20 excused absences during the second semester. D27p1.

2025-2026 School Year- Fourth Grade

116. The 2025-2026 school year started on August 27, 2025. D33. The Student was in Nathan Weber's fourth grade general education classroom, with Ms. Schmitten again serving as the Student's special education teacher. T191-92; 346. Ms. Keller continued to provide the Student with occupational therapy services for 20 minutes each week. T524-26.

117. Ms. Anderson was the Student's paraeducator in the morning and Mikayla Countryman took over that role for the afternoon. T550, 554, 603, 606. Ms. Countryman paired with the Student for approximately 1 to 1.5 hours per day for several weeks. T606.

118. Ms. Schmitten and the Student's paraeducators completed behavior forms for the Student during fourth grade; however, the record only contains behavior reports for nine days. T552, 610; D32pp1-10.

119. Mr. Betz, Ms. Schmitten, and Ms. Connor provided direction to the Student's paraeducators on how to support her. T551-52, 583, 607-08, 611. Mr. Betz discussed behavioral strategies based on the Student's BIP and IEP goals. T810. Paraeducators used a token system where the Student would earn a token and praise for saying or doing anything positive. T626. Ms. Countryman tried motivating the Student by offering to go on the swings, to walk in the hallway or the cafeteria, or to look for bugs outside; this sometimes helped with calming but not with academic engagement. T633. If the Student was sleeping, paraeducators prompted her every fifteen minutes by asking if she wanted to go back to class or recess. T583, 618. If the Student was in a "deep sleep," Ms. Anderson did not want to interrupt her basic need for sleep. T583. The Student's sensitivity to different triggers depended on her tiredness. T632.

120. As academics were introduced, if the Student showed signs of escalating, the team would draw back and work on teaching the Student how to request a break or help. T691. Mr. Betz discussed what was working or needed to be modified and what prompted any escalations with paraeducators and Ms. Schmitten. T789, 621.

121. When the Student became escalated, she growled, her eyes started darting back and forth, and she grabbed and threw things. T569. If the Student started to escalate, paraeducators were instructed to call the behavior team right away to preserve the paraeducators' relationship with the Student. T582, 613, 616. They were also instructed to remove items that could be thrown as weapons from the classroom, to avoid prompting the Student, which could cause further escalation, and to give her space. T570-71.

122. On September 3, 2025, the Student became escalated in the Rainbow Room and started throwing books, which ultimately led to Ms. Schmitten being injured. T589; D32p6. The Student was not restrained in this incident. T588.

123. Another time, the Student escalated because she did not want to go to recess; it is unclear when this incident occurred. After the Student started throwing pencils and markers, Ms. Anderson called the behavior team and started removing items that could be "used as throwing weapons." T570. When the behavior team arrived, Ms. Anderson left the room but could hear chairs and books being thrown. Students were coming into the classroom, and the team moved the Student to the PACE room using a two-person hold. T573-74.

124. The Student also became escalated one afternoon in Mr. Weber's classroom. Ms. Countryman called the behavior team. The Student was pushing and shoving desks and tables and, at one point, she had a pencil in her hand and threatened to stab Ms. DuFour. Ultimately, the Student walked to the PACE room with Ms. Livingston and Ms. DuFour on each side of her. "She was using her legs to walk, they were just kind of guiding her to the PACE room," with the Student swearing at Ms. DuFour. T629.

September 2025 Meetings

125. The Student's IEP team met on September 9, 2025, in response to the Parents' concerns that the Student needed a safe place to regulate without leaving the general education classroom. Mr. Parent attended the meeting. D29p3.

126. Ms. Schmitten talked with the team about whether the Student was in her least restrictive environment (LRE) because the Student was choosing to spend time both

inside and outside of the general education classroom. D29p3; T804, 928. Ms. Schmitten suggested having the Student start her day in the PACE room. D29p3. Mr. Parent suggested a tent in the back of the general education classroom as a way for the Student to regulate within the general education setting. T928. Team members agreed to try the tent and also agreed that the Student might need to use other settings like the PACE room at times. Ultimately, the team decided not to change the Student's LRE at that time but to see how the tent worked. D29p3; T928.

127. Also on September 9, 2025, the Student received a short-term suspension after she repeatedly kicked Ms. Anderson in the legs, abdomen, and ribs, causing significant injury. T589; P52pp1-2. Another staff member was kicked multiple times when she tried to intervene but was able to get away from the Student. P52p1.

128. The Student's IEP team held a reentry meeting on September 15, 2025. D30p3. The team discussed the Student's placement and decided to see how the Student behaved during the upcoming week and whether the tent would help the Student to regulate in the classroom. The team, including Mr. Parent, also decided that the Student would be allowed to choose to join the classroom or the PACE room at the beginning of the day, which was sometimes referred to as a "soft start." The plan called for the Student to have breakfast in the PACE room, which would allow a "slow ramp-up to the day." T177. The Student sometimes came to school grumpy if she had a bad night's sleep or an incident on the bus, and the soft start was intended to give her an easier start and hopefully lead to a more successful day. T177; D30p3; P55p15.

129. Subsequently, the Student was given the option to go to before-school recess or the PACE room; she usually chose the PACE room, especially if she was exhausted. T555-56, 559-60, 805. The Student was then asked if she was ready to go to her general education classroom. T221, 556. Most mornings, the Student did not want to go to class. T583. She chose to go the PACE room almost every day and slept "the majority of the time." T560, 67. When she was tired, the Student would lie down in her tent.²² T563. On a few occasions, the Student and Ms. Anderson worked on reading and math materials provided by Mr. Weber or Ms. Schmitten. T563-64, 567.

130. The Student also chose whether she was ready to go to the classroom in the afternoon. T607. Early in the year, the Student chose to go to the classroom, but she started choosing the PACE room in the afternoon more often as the year went on. T620-21.

²² Ms. Anderson could not recall whether there were two tents – one in Mr. Weber's room and one in the PACE room – or whether they brought the same tent back and forth. T567.

131. When the Student chose to go to the general education classroom, she could color, read a book, do work provided by Mr. Weber, or just sit. T560-62, 622. She sometimes worked on social skills using materials provided by Ms. Schmitten. T622-23. In Mr. Weber's classroom, Ms. Anderson went back and forth between the Student and another student because she was "considered a proxy" meaning a proximity paraeducator. T562, 544. Ms. Countryman found that the Student would do classwork as long as there was a reward that sparked her interest and she was not tired. T617-18.

132. At hearing, Mr. Parent emphasized that he agreed to the Student having a soft start to the day "with the understanding that it would just be a soft start, not a soft day." T177. The Parents wanted the Student to spend as much of her day in the general education classroom as possible. T176. Ms. Parent, who was not present at the reentry meeting, stated at hearing that if the Student chose to be in the PACE room, she was engaging in work avoidance and needed to be redirected. T85-86.

133. The Student's paraeducators believed the Student was more successful in the PACE room and was completing more work in that setting. T797.

134. On September 19, 2025, the Student received a three-day in-school suspension after she repeatedly struck staff members with an object and kicked at them. She attempted to bite staff and to stab one staff member with a sharp object. She turned on the water, causing the floor to flood. P53pp1-2.

135. On October 7, 2025, Mr. Betz and Ms. Schmitten met with Kevin Schell, a private SLP who had been working with the Student since early March 2025.²³ P38p3; P39p1. District staff were already using a number of Mr. Schell's recommendations for working with the Student. T353-54; P39pp2-7. In an email to Mr. Schell on October 7, 2025, Mr. Betz noted that the general education classroom was "a potential mismatch" for the Student's sensory system. P38p2.

136. On October 8, 2025, the Parents requested a due process hearing. OAH File.

137. On November 7, 2025, the Student ate lunch with a group of students. A 1:1 paraeducator who was filling in for Ms. Countryman was nearby, and the students called her over to report that the Student had asked for a knife and was threatening to

²³ Mr. Schell has been employed by Sound Children's Therapy since January 2025, and Cascade Hospital since February 2025, as an SLP. P65p7. He has a bachelor's degree and a master's degree in speech-language pathology. T728; P65p1. Mr. Schell previously worked for hospitals treating adults and children. P65p7; T755.

stab them and to harm herself. P26p1; T634-35, T871. The Student denied this account. She became upset and threw a pear across the room, then threw a tray at the wall and a milk carton at her paraeducator. P26p1.

138. The Student told her Parents that she had not escalated or done anything wrong and was confused. She stated that school was “hell,” that she did not like school, and that she needed to protect herself. T88.

139. When a Student threatens self-harm, a suicide risk form must be completed. T871. The Student met with a private psychologist, Christine Heller, Ph.D., for mental health support and an assessment of the Student’s risk of hurting herself or others. On November 10, 2025, Dr. Heller provided a letter to the District stating that the Student was not “thinking about or planning to hurt herself or others” but was responding to stressors in the environment. P47p1.

140. The Student was not suspended from school due to the November 7, 2025 incident. T872.

141. The November 7 incident was the “last straw” for the Parents. T179. They believed the Student’s 1:1 paraeducator had not been with her during the interaction, which could have been avoided if the District had followed the Student’s IEP. P31p1.

142. By email on November 12, 2025, the Parents notified the District that:

Because [the Student] has been unlawfully restrained and is not being properly served, she no longer feels safe at school, and therefore we will be removing her from the school environment, effective immediately. She is currently experiencing trauma responses and autism burnout resulting from the practices utilized by the District due to either lack of training or services and the use of restraint, isolation, and suspension as a means to cope with behaviors related to her disability.

P31p1. The Parents asked the District to provide home hospital/homebound services immediately under a new IEP. P31p1.

143. By email on November 17, 2025, Principal Connor disputed the accuracy of the Parents’ claims and suggested an IEP team meeting to review the incident. She emphasized that the Student was never restrained and that her 1:1 paraeducator had been positioned nearby and quickly intervened in accordance with the IEP. P32p1.

144. In an email to Ms. Connor on November 19, 2025, the Parents acknowledged that restraint had not been used. They emphasized that the Student’s IEP required a

1:1 paraeducator rather than a proximity paraeducator and that the IEP was not being implemented. The Parents noted that they were requesting home/hospital services for the Student and requested an IEP meeting regarding those services. P33p1.

145. The Parents submitted documents from Christine Heller, Ph.D., and Kevin Schell, SLP, in support of their request for home/hospital services for the Student. P33p1; P30p1. Dr. Heller signed a form requesting these services and also wrote a letter stating that she had met with the Student and understood she was experiencing significant stress at school. P49p1. Based on a conversation with Mr. Parent, Dr. Heller stated that if the Student's IEP could not be implemented adequately right away, the Parents planned to homeschool the Student for several months until issues related to implementation could be resolved. Dr. Heller recommended that the Student continue to receive her IEP services and suggested a gradual return to school to help her to re-adapt to the school environment. P49p1.

146. Mr. Schell wrote a letter in which he opined that the Student "appeared to be experiencing symptoms of autistic burnout" and "could benefit from some time away from the school environment to recover from burnout" P48p1.

147. On December 12, 2025, the District issued a PWN refusing to hold an IEP team meeting as requested by the Parents. The PWN stated the school team believed that the school-based program did not require changes. D31p2. The PWN further notified the Parents that the documentation they provided did not substantiate a temporary medical condition that would warrant home/hospital services under OSPI's policies. D31p2; T931.

148. At hearing, Ms. Tucker explained that OSPI requires documentation from a medical provider, which the Parents did not provide. T931. Ms. Parent stated that the Parents subsequently provided the District with a letter from a medical doctor recommending home/hospital services; however, the record does not contain such a letter. T1089-90.

149. Ms. Schmitten was not involved in deciding whether to hold an IEP team meeting, but she believed that the Student's program was working. She felt that the Student "loved the PACE room. She was in the PACE room. She was doing her work. She was working one-on-one. She was coming to me for my time. She was a happy student. . . . I feel like what we were doing at that time was working" T358.

150. The Parents removed the Student from Lee, and she has not attended since November 7, 2025. T872, 1092, 1117.

151. As of November 7, 2025, the Student had made some progress toward her reading and math goals, her transitioning goal, and her goal to identify emotions. D24pp1-3. She had not met her writing goal and often became overwhelmed and refused to work even with accommodations. D24p2. There is no mention of progress toward the goal of staying in the learning environment and there was no consistent or measurable progress toward the task initiation goal. D24p4. The Student had not met her goal to improve emotional regulation skills. She sometimes relinquished preferred items. D24pp4-5. In Mr. Betz' opinion, data was showing that the Student was making significant progress, but it is unclear what data he was referring to. T801.

Orchid Academy

152. The Parents decided to enroll the Student in Orchid Academy (Orchid) to receive applied behavioral analysis (ABA) therapy. T1079. ABA therapy incorporates evidence-based practices or strategies to decrease unsafe behaviors or teach skills acquisition. T966.

153. Orchid does not provide academic instruction and is not an approved non-public agency in Washington.²⁴ T933, 991. The Mother, who is a certificated teacher, grades 4 to 12, left her position as a teacher and has been teaching the Student at home. T1079-80.

154. On November 21, 2025, Mayra Hurtado, a BCBA at Orchid, conducted an initial assessment of the Student using the Vineland Adaptive Behavior Scales, Third Edition (Vineland-3) Comprehensive Parent/Caregiver Form Report.²⁵ P41p2. The Vineland-3 is a standardized measure of the things people do to function in their everyday lives. P41p2. The test compares a student's functioning to that of children of the same age. P41p2. Ms. Parent completed the Vineland-3 rating scales. T997. The Student's adaptive behavior composite score (based on communication, daily living skills, and socialization domain scores) was 60. P42pp4, 7. This score was well below the normative mean of 100 and placed the Student in the percentile ranking of less than 1. P42pp2,4.

²⁴ A non-public agency is an entity authorized by OSPI to contract with school districts in Washington to provide special education services.

²⁵ Ms. Hurtado has a bachelor's degree and a master's degree in special education with an emphasis in ABA. She has been a BCBA since 2019. T994. Ms. Hurtado started working for Orchid in November 2025. She previously worked as a behavior technician between 2015 and 2025. T963-65. Ms. Hurtado has never worked as a teacher in a public school setting. T994.

155. On or about December 8, 2025, Orchid developed an initial ABA treatment plan for the Student. P43p1. The treatment plan set goals to reduce aggression and elopement, and improve emotional regulation skills, executive functioning, self-advocacy when dysregulated, transitions, and social interactions. T976-77. The treatment plan also aimed to reduce sleep approximation, which referred to when the Student covered herself with a blanket, pretended to be asleep, or otherwise disengaged when she was denied access to something she preferred. T978.

156. When the initial treatment plan was developed in December 2025, the Student sometimes engaged in aggression at home, such as throwing electronics at the Parents or the wall, triggered by being pushed to do an unwanted task, denied access to a preferred item, or asked to stop doing a preferred activity. P43pp7, 17; T1003. The treatment plan reflected that the Student was taking several medications including one to help with sleep, which she was still taking at the time of hearing. P43p2; T1097.

157. The Parents informed Ms. Tucker that the Student would be receiving ABA therapy at Orchid around December 12, 2025. T932. It is unclear exactly when or how this notice was provided.

158. ABA services began on December 16, 2025. P45p1. The Student received four hours per week of ABA therapy until January 19, 2026, when treatment increased to fifteen hours per week. P45p1. The Student receives services from a 1:1 behavior technician, with two individuals providing those services on an alternating basis. T998-99.

159. By April 2, 2026, the Student was making progress toward most of her goals at Orchid as follows:

Reduced elopement; P44pp4-6;

Reduced sleep approximation; P44pp9-10;

Increased use of functional communication to stop participation; P44p6-8;

Increased ability to initiate conversation and engage in conversation about less preferred topics; P44p12-18;

Self-advocacy to request a break, change of activity, or help; P44pp18-22;

Adapting to change; P44pp23-24;

Participating in chores; P44pp24-27;

Practicing coping skills; P44pp27-30; and

Transitioning to less preferred activities. P44p31.

160. However, the frequency of aggressive behaviors gradually increased from the baseline. P44pp1-2. Increases occurred when there was a change in the location of services, new skills were introduced, and when services increased from two to three hour sessions. T1006-08.

161. The Student's use of contextually inappropriate language also increased. The report hypothesized that the increase may have related to the Student feeling more comfortable in her environment. P44pp3-4; T1008-09.

162. If the Student is sleepy at Orchid, they have found success by using humor or redirecting her to get a drink of water or a snack, or to engage in movement. T1015.

163. Staff try to teach replacement behaviors when the Student is calm and receptive to language. However, if the Student is aggressive toward staff, they are not confrontational, do not remain in close proximity, and sometimes model language the Student could be using. T990-91.

164. The Student has not had "a severe meltdown or tantrum" at Orchid and there has been no need to use physical restraint. T983-84. However, when the Student was introduced to new skills and increased demands, she returned to using unsafe behaviors. T989; P44pp1-2. Staff at Orchid used a forearm or hand to block the Student from kicking. T984.

165. The pace of instruction on the Student's goals at Orchid sometimes slowed depending on her day. The Student's morning could influence her participation or behavior and on some days she needed more support self-regulating. T983.

166. The Student's ABA services have been funded by the Parents' health insurance. TT996. Orchid reassesses whether continued services are medically necessary every six months. T993.

167. At the time of hearing, the Student was attending Orchid Monday through Friday from 9:00 a.m. to 12:00 p.m. on a consistent basis. T982, 1000. Orchid hours are from 9:00 a.m. to 5:00 p.m. each weekday. T1001. At the time of hearing, Ms. Hurtado believed it was medically necessary for the Student to continue ABA services and to increase service hours. T993, 1010. Increased hours would allow for the introduction of less-preferred activities and give the Student opportunities to practice advocating for herself instead of resorting to aggression and sleep approximation when demands

are increased. T1010-1013. Ms. Hurtado could not estimate how long the Student would continue to need ABA services. T993.

168. Twelve students between the ages of 4 and 18 were enrolled in Orchid at the time of hearing. T996. It is unclear how many students were enrolled in the fourth grade. T996. There are six behavior technicians at Orchid. T999.

Private SLP Therapy

169. The Student is scheduled to attend weekly SLP therapy sessions with Mr. Schell but actually attends only once or twice a month because demands, such as regularly attending sessions, are difficult for her. T730, 762.

170. When Mr. Schell first started working with the Student, he focused on providing her “a safe place to not have any demands,” and to be herself. T736-37. Over time, they started talking and playing games. T736, 767. Mr. Schell noted that the Student prefers control and “kind of shuts down” if she does not have it. T731. She does not want to do things that are presented as a demand and struggles when multiple demands are placed on her. T731. Mr. Schell emphasized the importance of building trust when working with children like the Student. T732.

171. About a week before Mr. Schell testified, the Student had had a “pretty big” meltdown. Mr. Parent and Mr. Schell were sitting on the floor when this occurred. The Student left the room and came back when she was regulated. T751-52.

172. The Parents were present for all of the Student’s sessions with Mr. Schell. T763. When the Student was tired or unable to participate in programming with Mr. Schell, he let her rest and provided coaching to the Parents. T771-72. When asked at hearing what he would recommend if the Student was so escalated that there was a risk of harm, Mr. Schell advised giving the Student space, getting people away from her, and giving her another place to go. T774. The goal, however, would be to avoid reaching this level of dysregulation in the first place. T774-75.

173. In Mr. Schell’s opinion, the Student “appears to have a profile of autism that is called ‘pathological demand avoidance’ or ‘persistent drive for autonomy’” (PDA), which is commonly associated with students with autism. T699; P65p10. At hearing, Mr. Schell acknowledged that PDA is not a diagnosis recognized by the DSM-V, that there is no specific training on PDA, and that his knowledge comes from reading and learning on his own. T756-57. Therefore, it is not found that the Student had PDA. Mr. Schell also opined that when he first met the Student, she “appeared to be in autistic

burnout” P65p2. While Mr. Schell referred to a journal article in support of this opinion and has some certifications related to autism spectrum disorder, there is no evidence that Mr. Schell has education, training, or experience in evaluating or diagnosing autistic burnout. P65p2 n.1; P65pp7-9. It is not found that the Student was in autistic burnout.

Hearing

174. The Parents seek reimbursement for payments to Orchid. T1083, 1105. Receipts submitted by the Parents totaled \$800.00. P60pp1-19. The Parents also seek reimbursement for transportation to Orchid based on the federal reimbursement rate of 72.5 cents per mile. T1084-86, 1127. The Parents calculated the total mileage at 713.4 miles between December 9, 2025, and April 10, 2026.²⁶ P64p4. The total transportation cost is \$518.00 (713.4 X .725 rounded up). P64p4.

175. The Parents would like the Student to continue ABA therapy at Orchid in the morning with SDI minutes delivered by a District certificated teacher at Orchid in the afternoon. T1082. Although Ms. Parent has been teaching the Student at home since November 2025, the Parents have not filed an intent to homeschool the Student and Ms. Parent is not interested in homeschooling the Student. T1089.

176. The District provides a “full continuum of special education services,” ranging from life skills or self-contained classrooms for students who are highly impacted by their disabilities to services being pushed in to a general education classroom. T907-908. However, the Parents do not believe the Student feels safe at Lee and will not send her back to school in the District. T1081, 1105.

177. The Parents acknowledged that they received one notice of written restraint. T1057; 1119-20. Ms. Parent stated: “We have only received one notice of – that they touched the Student.” T1057.

178. Both Parents received calls seeking permission to move the Student. Ms. Parent explained: “Mr. Cornwell called and said, Can I move her out of the office, because they needed to hold a meeting. So I guess that’s a verbal permission to touch her or to escort her out.” T1057. Mr. Parent also received multiple calls from Ms. Schmitten, Mr. Cornwell, or Ms. DuFour saying “the Student is escalated. We need to relocate her. The Student is in the principal’s office. We need to move her.” T1119.

²⁶ Initially, Orchid was in a temporary location that was 28 miles from the Student’s home. P1126.

179. The Parents did not have direct knowledge about what happened during the school day, and their understanding is premised on the Student's statements to them and/or to Mr. Schell. Because the Student's hearsay statements were not subject to cross-examination, no findings of fact were based on them. In particular, the evidence does not support a finding that the Student was ever left in the PACE room on her own. T102, 208. Nor does the evidence support a finding that Mr. Betz kicked the Student's tent. T110, 585, 627.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated under these provisions, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).
2. The District bears the burden of proof in this matter. RCW 28A.155.260(1). In a due process hearing, the burden of proof is a preponderance of the evidence. RCW 28A.155.260(3). Because the Parents seek reimbursement for a unilateral parental placement, the Parents bear the burden of proof as to the appropriateness of such placement. RCW 28A.155.260(2).

The IDEA and FAPE

3. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).
4. In *Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the individualized education program developed under these procedures is reasonably calculated to enable the child to receive educational benefits. "If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more." *Rowley*, 458 U.S. at 206-07.

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

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

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

6. "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017). The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry. As the U.S. Supreme Court has made clear, "[a] focus on the particular child is at the core of the IDEA," and an IEP must meet a child's unique needs. *Id.* at 400. The "essential function of an IEP is to set out a plan for pursuing academic and functional advancement." *Id.* at 399. Accordingly, an IEP team is charged with developing a comprehensive plan that is "tailored to the unique needs of a particular child." *Id.* at 391. Additionally, the Student's "educational program must be appropriately ambitious in light of his circumstances" *Id.* at 402.

7. In reviewing an IEP, "the question is whether the IEP is *reasonable*, not whether the court regards it as ideal." *Id.* at 999 (emphasis in original). The determination of reasonableness is made as of the time the IEP was developed. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is "a snapshot, not a retrospective." *Id.*

Issues Not Raised

8. A party requesting a due process hearing may not raise issues during a due process hearing that were not raised in the complaint unless the other party agrees. WAC 392-172A-05100(3); 20 U.S.C. § 1415(f)(3)(B). "Administrative and judicial review in IDEA cases is specifically limited to the issues raised in the due process complaint, unless the parties agree otherwise." *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 *34-35 (W.D. Wash. May 8, 2019), *aff'd sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022). This is consistent with Washington administrative law requiring that a notice of hearing include a statement

of the issues (RCW 34.05.434) and that prehearing orders identify all issues and provide an opportunity to object. WAC 10-80-130.

Issue i. Whether the District violated the IDEA and denied the Student a FAPE by developing IEPs and failing to amend existing IEPs that were not reasonably calculated to provide the Student with FAPE and were inappropriate in light of the Student's circumstances from October 2023 to March 2025, including failing to provide a 1:1 paraeducator and an appropriate behavior intervention plan (BIP).

9. The Parents contend that the Student's IEPs were not reasonably calculated to provide the Student with FAPE because they failed to provide 1:1 paraeducator support and an appropriate BIP. They argue that the District should have amended the Student's IEP to add these supports between October 2023 and February 2024. They further contend that the IEP team should have provided support from a 1:1 paraeducator and an updated BIP when it met in February, April, and June 2024.

10. In developing an IEP, WAC 392-172A-03110(1) requires an IEP team to consider the strengths of the student; the concerns of the parents for enhancing the education of their student; the results of the initial or most recent evaluation of the student; and the academic, developmental, and functional needs of the student.

11. An IEP must contain a statement of a student's present levels of academic and functional performance, including how the student's disability affects involvement and progress in the general education curriculum. WAC 392-172A-03090(1)(a). In addition, an IEP must include a statement of annual goals, including academic and functional goals designed to meet the student's needs that result from their disability to enable them to be involved in and make progress in the general education curriculum and to meet each of the student's other educational needs that result from the student's disability. WAC 392-172A-03090(1)(b).

12. An IEP must also include a statement of the special education and related services and supplementary aids and services to be provided to the student to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students. WAC 392-172A-03090(1)(d).

13. In the case of a child whose behavior impedes the child's learning or that of others, the IEP team must consider the use of positive behavioral interventions and supports to address that behavior. WAC 392-172A-03110(2)(a)(i); 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).

14. A behavioral intervention plan (BIP) is a plan incorporated into a student's IEP if the IEP team determines that it is necessary for the Student to receive FAPE. WAC 392-172A-01031. At a minimum, it must describe the following:

1. The pattern of behavior(s) that impedes the student's learning or the learning of others;
2. The instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team;
3. The positive behavioral interventions and supports to:
 - a. Reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors;
 - b. Ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities;
4. The skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior for the Student.

WAC 392-172A-01031.

15. An IEP team must review a student's IEP periodically and not less than annually to determine whether the student is achieving their goals. WAC 392-172A-03110(3). A student's IEP should be revised, as appropriate, to address:

- (i) Any lack of expected progress toward the annual goals described in WAC 392-172A-03090 (1)(b) and in the general education curriculum, if appropriate;
- (ii) The results of any reevaluations;
- (iii) Information about the student provided to, or by, the parents, as described under WAC 392-172A-03025;
- (iv) The student's anticipated needs; or
- (v) Other matters.

WAC 392-172A-03110(3)(b).

16. The Parents first argue that the Student required support from a 1:1 paraeducator throughout the 2023-2024 school year and that the IEP team should have provided this support as early as October 3, 2023.

17. The District has shown by a preponderance of the evidence that the Student did not require 1:1 paraeducator support at any point during the 2023-2024 school year. The IEP team considered the Parents' request for increased paraeducator support in February, April and June 2024, but on each occasion the team determined that behavior data did not support providing a 1:1 paraeducator. This decision is consistent with testimony from Ms. Shane and Ms. Schmitten that the Student did not require 1:1 support during second grade. Both of these teachers worked closely with the Student, with each other, and with the Parents to address the Student's behaviors, and their testimony is given significant weight. Ms. Shane felt that the Student "almost didn't really need" support from a proximity paraeducator, and no teachers or staff testified that the Student needed more paraeducator support. While the Student's behavior reports indicated that she sometimes engaged in behaviors that interfered with her learning, she also had many "2s," indicating that she generally followed directions, and comments such as "great day" on multiple days.

18. Additionally, the Student was making progress toward her IEP goals, although progress toward her reading goals depended on her mood and state of mind. This variation does not mean the Student required increased paraeducator support. While the Parents maintain that they were not provided with progress reports and had no knowledge of the Student's IEP goal progress, the April 2024 IEP discussed the Student's present levels of performance and included a discussion of the Student's progress toward her IEP goals to date. Based on what the IEP team knew during the 2023-2024 school year, it was reasonable to determine that she did not require support from a 1:1 paraeducator.

19. The Parents also allege that the Student's IEPs during the 2023-2024 school year were not reasonably calculated to provide the Student with FAPE because they did not include an appropriate BIP.

20. The BIP developed in May 2023 was in place throughout the 2023-2024 school year. The District has shown that between October 2023 and April 2024, it was not necessary to amend the Student's IEP to include an updated BIP in order to provide the Student with FAPE. The evidence shows that concerns about the Student's inability to complete her work first arose during mid-fall 2023. Because the Student slept very deeply at times, Ms. Shane credibly testified that she believed the Student was avoiding work because she was tired, rather than sleeping to avoid work. Thus, when the IEP team met in February 2024, a primary concern was how to keep the Student awake so that she could engage in her work. The team also agreed to provide an alternative location for recess because the Student did not like going outside when it was cold or rainy, and this could lead to meltdowns. Given that concerns about sleeping and work avoidance were intertwined, and concerns related to recess were

potentially resolved, the District has shown that it was not necessary to amend the Student's IEP to include an updated BIP prior to April 2024.

21. However, the District has not met its burden to show that the April 2024 IEP had sufficient behavior supports to be reasonably calculated to provide the Student with FAPE. The April 2024 IEP provided scheduled breaks, sensory tools throughout the day, and a system for earning "tickets" and rewards as positive behavioral supports for the Student. However, the April 2024 IEP made no mention of a BIP, and the record contains no evidence that the IEP team considered anything related to a BIP.

22. WAC 392-172A-03110(2)(a)(i) requires an IEP team to consider the use of positive behavioral supports for a student whose behavior impedes their learning or that of others. This provision does not expressly state that an IEP team must consider whether a student requires a BIP as part of this inquiry; however, WAC 392-172A-01031 defines a BIP as a plan "incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE." WAC 392-172A-01031 also requires that a BIP, at a minimum, describe a student's positive behavioral interventions and supports. Reading WAC 392-172A-03110 and -01031 together, the only reasonable interpretation is that when an IEP team considers positive behavior supports for a student whose behaviors impede their learning, the IEP team must consider whether the Student requires a BIP in order to receive FAPE. Here, the IEP does not refer to the 2023 BIP or a new BIP and there is no evidence that the IEP team gave any consideration to this issue.

23. Moreover, the evidence makes clear that the Student required an updated BIP in order to receive a FAPE. The 2023 BIP only addressed defiance toward teachers and staff. During the 2023-2024 school year, the Student started engaging in additional behaviors, albeit inconsistently. Ms. Schmitten and Ms. Shane were constantly working to find new ways to meet the Student's behavioral needs. Their efforts, which were guided by the behavior supports set out in the 2023 IEP and BIP, enabled the Student to have many days with positive comments and a lot of "2s" in her behavior reports. Even so, the Student still engaged in work avoidance, meltdowns, and elopement and by April 2024 it was clear that these behaviors were persistent. At this point, even if these behaviors were intertwined with the Student's sleep difficulties, the team needed to at least consider whether the Student needed a BIP.

24. Finally, the evidence demonstrates that work avoidance and elopement, which meant time avoiding schoolwork or outside of the classroom, necessarily interfered with the Student's learning. As a result, in order for the April 2024 IEP to be reasonably calculated to enable the Student to make progress appropriate in light of her circumstances, it needed to

include an updated BIP that provided strategies for addressing these behaviors, which impeded the Student's ability to participate in her education.²⁷

25. In their brief, the Parents also assert that the April 2025 IEP and the May 2025 IEP amendment were inappropriate. However, issue i, as framed by the Parents, is specifically limited to the period from October 2023 to March 2025. Even if this issue had been raised, the April 2025 IEP and May 2025 IEP amendments provided 1:1 paraeducator support and an updated BIP, which was appropriate for the reasons discussed below. Because both of these IEPs contained appropriate behavior supports, a preponderance of the evidence establishes that they were reasonably calculated to provide FAPE.

26. The Parents also argue that the District should have amended the Student's IEP from June 2024 to present in order to provide an appropriate placement. As noted above, the timeframe for issue i was specifically limited to October 2023 to March 2025. Issue viii, which was added when the Parents amended their complaint, alleges the District denied the Student FAPE by failing to amend her IEP after November 2025. Given the specificity of the timeframes alleged in issues i and viii, and the specific omission of March 2025 to November 2025, this claim is not considered.

27. In conclusion, because the April 2024 IEP failed to incorporate an updated BIP, the District has not met its burden to show that the April 2024 IEP was reasonably calculated to enable the Student to make progress appropriate in light of her circumstances. WAC 392-172A-05105. The Parents are entitled to a remedy as set forth below.

Issue ii. Whether the District violated the IDEA and denied the Student a FAPE by failing to materially implement the Student's IEPs from October 2023 to present.

28. The Parents claim that the District failed to materially implement the Student's IEPs starting in October 2023. They first claim that the District failed to provide the Student with a proximity paraeducator between October 2023 and March 2025. Next, they claim the placement provisions of the Student's IEPs were not implemented because she was not in her general education classroom 80 percent of the time during third grade (2024-2025) and spent the majority of her day in the PACE room during fourth grade (2025-2026). Third, the Parents claim that if the Student did not want to

²⁷ The Parents argue that the April 2024 IEP also removed paraeducator support for the Student. At hearing, Ms. Schmitt explained that this provision was mistakenly omitted. It is not necessary to address this issue given the conclusion that the April 2024 IEP needed to include a BIP to provide the Student with FAPE.

do classwork or participate in her SDI, the District let the Student do what she wanted, as long as she was calm and not disturbing others.²⁸

29. A school district's obligation to provide the special education and related services provided in a student's IEP does not require "perfect adherence to the IEP . . ." *Van Dyun v. Baker Sch. Dist.* 5J, 481 F.3d 770, 779 (9th Cir. 2007). Failure to implement an IEP constitutes a denial of FAPE only "when the services provided to a disabled child fall significantly short of those required by the IEP," so as to constitute a material failure. *Id.* at 773.

30. In this case, the June 2023 and April 2024 IEPs were in effect between October 2023 and March 2025. Both IEPs provided the Student with support from a proximity paraeducator. During this timeframe, the Student received approximately 30 minutes of paraeducator support in the morning and again in the afternoon, along with periodic check ins from different paraeducators who worked with the Student, and assistance to transition to lunch or recess. The Parents argue that the Student was supposed to have a paraeducator in the classroom or just outside to provide help when she needed it and to address behaviors in real time. They point to the fact that when the Student eloped, Ms. Shane needed to call the office because no one was in proximity.

31. However, Ms. Tucker, as Director of Special Education, explained at hearing that a proximity paraeducator could be assigned to several classrooms and float between them, checking in to see which students needed help. While the provision of paraeducator support in this case does not strictly align with this definition, the evidence establishes that the Student was receiving paraeducator support that provided help as needed and addressed her behaviors. Both Ms. Shane and Ms. McGinnis worked closely with paraeducators to support the Student in the classroom. Paraeducators, along with the Student's teachers, completed her behavior reports. Courtney Bergman redirected the Student to her work when she became distracted and offered to talk and draw, which the Student liked, after she did her work. The District has shown that any departure from the requirement to provide a proximity paraeducator was not material.

32. The Parents' argument that the District failed to implement the Student's IEP because she was not in the placement required by her IEPs is duplicative of issue v, which alleges that the District unilaterally changed the Student's placement. This claim is therefore discussed as part of issue v.

²⁸ The Parents have not argued or alleged that any other portions of the Student's IEPs were not implemented.

33. The Parents next contend that the District was not implementing the behavior supports in the Student's IEP but instead allowed her to do whatever she wanted. The District has met its burden to show that teachers and staff implemented the positive behavior supports in the Student's IEPs from October 2023 until November 7, 2025, when the Student stopped attending Lee.

34. The evidence, including the testimony of Mr. Schell and Ms. Hurtado, makes clear that the Student's behaviors increased when academic demands were imposed and when she was tired or having a difficult day. Mr. Schell acknowledged the difficulty of trying to address the Student's behaviors in a school setting. District teachers and staff were consistently working to motivate and engage the Student without escalating her. Both Mr. Schell and Ms. Hurtado also emphasized the importance of giving the Student space and backing away from demands at times.

35. The testimony of Ms. Schmitten, Courtney Bergman, Ms. Shane (second grade teacher), and Ms. McGinnis (third grade teacher) makes clear that all of these individuals made significant efforts to meet the Student's behavioral needs during the 2023-2024 and 2024-2025 school years. The tools used to address the Student's behaviors included a reward system, continued efforts to come up with new rewards that would motivate the Student, sensory tools to help the Student with focus, redirecting the Student when she was becoming distracted, access to the classroom library, teaching the Student how to request breaks, providing wiggle and movement breaks when the Student was tired, teaching the Student breathing and counting strategies and how to ask for a break, building perseverance skills, offering to draw and talk with the Student if she completed her work, and providing social stories to help the Student prepare for challenging situations. The Student was also given an alternative location for recess when she did not want to go outside, and Ms. Schmitten prepared a sensory tub with activities for the Student and a friend.

36. These efforts continued during the 2025-2026 school year. Mr. Betz discussed behavioral strategies with the Student's 1:1 paraeducators based on the Student's BIP and IEP goals and revisited those strategies to see what was working or needed to be modified. With guidance from Mr. Betz and Ms. Schmitten, the 1:1 paraeducators used a token system that rewarded the Student for saying or doing anything positive, transitioning successfully, or expressing that she was hungry or tired. They offered to go on the swings, to walk in the hallway or the cafeteria, or to look for bugs outside, although these steps ultimately did not lead her to engage in academic learning. If the Student fell asleep, she was prompted to wake up every fifteen minutes by asking if she wanted to go back to class or to recess. As academics were introduced, if the Student showed signs of escalating, the team would draw back and work on teaching the Student how to request a break or help.

37. The Parents seem to suggest that because the Student's behaviors persisted, and because the Student often escalated, the District must not have been implementing the Student's IEP. The testimony of Ms. Hurtado and Mr. Schell undermines this argument. At Orchid, the Student's aggressive and unsafe behaviors increased when there was a change in location of services, when new skills were introduced and when services increased from two to three hour sessions. Thus, depending on the Student's day, the pace of instruction toward the Student's goals might slow down. Similarly, when the Student was tired during sessions with Mr. Schell, he let her sleep. The Student had "a pretty big meltdown" during therapy with Mr. Schell the week before the hearing, and that environment posed little to no demands on the Student. When asked what he would recommend if the Student was so escalated that there was a risk of harm, Mr. Schell advised giving the Student space, getting people away from her, and giving her another place to go. This is exactly what the District did when the Student became escalated.

38. In conclusion, the District has shown that the Student's IEPs were materially implemented between October 2023 and November 7, 2025, when the Student stopped attending Lee.

Issue iii. Whether the District violated the IDEA and denied the Student a FAPE by failing to conduct an appropriate FBA in March 2025.

Issue iv. Whether the District violated the IDEA and denied the Student a FAPE by failing to create an appropriate BIP, including failing to target behaviors such as physical aggression, from October 2023 to present.

39. The Parents next claim that the FBA and BIP developed in 2025 were inappropriate because they failed to target physical aggression.

40. As discussed, a child's IEP team must consider positive behavioral supports for a child whose behavior impedes their learning or that of others. WAC 392-172A-03110(2)(a)(i). A BIP is a plan incorporated into a Student's IEP that describes, at a minimum, the pattern of behaviors that impedes the student's learning, the circumstances that contribute to the pattern of behaviors, the positive behavioral interventions and supports, and the skills to be taught as alternatives to the challenging behaviors. WAC 392-172A-01031.

41. An FBA is one type of behavioral intervention or strategy that helps identify causative factors and objectionable behaviors. *J.L. v. Manteca Unified Sch. Dist.*, 2016 U.S. Dist. LEXIS 77441 (E.D. Cal. June 14, 2016). The IDEA only requires an FBA when a child is removed from his current placement due to problem behaviors. *Butte Sch.*

Dist. No. 1 v. C.S., 817 F. App'x 321, 326 (9th Cir. 2020); 20 U.S.C. § 1415(k)(1)(D)(ii). “For other students with disability-related behavioral needs, an IEP need only include (1) ‘measurable annual goals’ developed to ‘enable the child to be involved in and make progress in the general education curriculum;’ and (2) how ‘progress toward meeting the annual goals . . . will be measured.’ 34 C.F.R. § 300.320(a)(2)(i), (3)(i).” *Butte*, at 326.

42. The IDEA does not include specific standards for conducting an FBA or determining whether an FBA is appropriate. In cases in which a parent has requested an independent educational evaluation (IEE) based on disagreement with an FBA, some courts have analyzed the FBA using the standards that apply to assessments in the evaluation process, as set out in WAC 392-172A-03020. See e.g. *W.A. v. Panama-Buena Vista Union Sch. Dist.*, 2024 U.S. Dist. LEXIS 113052 (C.D. CA. June 26, 2024). In this case, however, the Parents have not requested an IEE based on disagreement with the FBA or the reevaluation but have instead claimed that the inappropriate FBA denied the Student a FAPE.

43. Neither party has discussed the applicable standard in their briefing. Even under the standard that applies when a parent requests an IEE, the evidence demonstrates that the FBA was appropriate. The FBA was conducted by Ms. Praye, who is a nationally certified school psychologist and also holds national board certification as a special education teacher. Ms. Praye has been employed by the District as a school psychologist for two years. She previously taught special education for twelve years in grades three through five, giving her extensive experience with elementary school children with special education needs.

44. Ms. Praye conducted the FBA as part of a comprehensive reevaluation, consistent with the Parents’ consent. Ms. Praye interviewed Ms. Parent and asked about the Student’s behavior in the home, assessed the Student’s behavior, and observed the Student as part of the reevaluation. She was therefore familiar with the Student’s history and behavioral profile. In conducting the FBA, Ms. Praye also reviewed the Student’s educational records, including prior evaluative data and the FBA conducted in [REDACTED] and considered her observation of the Student. She reviewed and analyzed behavioral data in the SWIS database and the Student’s behavior reports to determine what behaviors the Student was exhibiting and how often. She identified elopement and task refusal, including sleeping, as target behaviors. These behaviors were consistent with what had been observed in [REDACTED]

45. The FBA was thorough in identifying the antecedents, behaviors, and consequences of the targeted behaviors. Ms. Praye hypothesized that the function of elopement was to gain adult attention and escape from tasks and that the function of

task refusal was to avoid tasks and do what she preferred. She recommended intervention strategies for both target behaviors and recommended that the IEP team adopt a BIP. These intervention strategies were then incorporated into the BIP when it was adopted.

46. The Parents now argue that the FBA should have addressed physical aggression. However, no one raised concerns about that FBA when it was discussed during the reevaluation meeting in March 2025. Ms. Praye credibly explained at hearing that because elopement and task refusal could lead to physical aggression, the FBA sought to intervene and redirect the Student before physical aggression occurred. Ms. Hurtado, the BCBA called by the Parents to testify at hearing, similarly noted that it was best to address the Student's precursor behaviors before they led to escalation. Mr. Schell expressed this sentiment as well.

47. The District has shown that the March 2025 FBA of the Student was appropriate.

48. The March 2025 BIP was premised on the FBA. Consistent with WAC 392-172A-01031, it described the behaviors that impeded the Student's learning (task avoidance and elopement) and discussed the factors that contributed to these behaviors, which included hunger, fatigue, medication, and transitions to school. The BIP described positive behavioral interventions and supports for each behavior. These included teaching the Student how to take a break, embedding activities she enjoyed and access to positive adult attention throughout the day, priming the Student for transitions, praising positive actions, reviewing expectations visually, pre-teaching expectations for transitions, and providing accommodations for academic tasks. The BIP also included daily instruction on a routine to take a break or meet sensory needs and use of the break space within the classroom.

49. While the BIP, like the FBA, appropriately sought to address elopement and task avoidance before they led to escalation and physical aggression, it also included a crisis and recovery plan for when the Student eloped outside of the school or was engaging in physical aggression.

50. In conclusion, the District has shown that the FBA and the BIP developed in March and April 2025 were appropriate.

Issue v. Whether the District violated the IDEA and denied the Student a FAPE by unilaterally modifying the Student's placement and services in her IEP without parental participation or without attempting to engage in an IEP meeting from October 2023 to present.

51. The Parents assert that the District, by allowing the Student to spend so much time in the PACE room, unilaterally modified her placement and services without parental participation and outside of the IEP process. The Parents argue that while they were aware of and agreed to some use of the PACE room, they were unaware that the Student was spending so much time there. The Parents also assert that they were unaware that the Student would receive little to no academic instruction in the PACE room.

52. WAC 392-172A-02060 requires that an IEP team, including the parents, make a decision about the educational placement of a student based on the following criteria:

- (a) the Student's IEP;
- (b) the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070 . . .;
- (c) the placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and
- (d) a consideration of any potential harmful effect on the student or on the quality of services which he or she needs.

WAC 392-172A-02060(2); see also *Sacramento City Unified Sch. Dist. Bd. of Educ. v. Rachel H.*, 14 F.3d 1398 (9th Cir. 1994).

53. At hearing, Ms. Parent conceded that the Parents were not concerned about the use of the PACE room until after the reevaluation of the Student in late March 2025. Moreover, the evidence indicates that prior to the reevaluation, the Student's use of the PACE room was generally consistent with the purpose of that room, which was to provide a space for all students who needed a place to regulate. On balance, the District has shown that the Student's placement did not change between October 2023 and April 2025.

54. The District has also shown that the Student's placement did not change without parental participation or IEP team involvement during the remainder of the 2024-2025 school year. Mr. Parent acknowledged at hearing that the pairing process had been discussed and that he was aware that the Student would go through a process to bond with her 1:1 paraeducator. Ms. Parent acknowledged that she wanted the Student to bond with her paraeducator. Moreover, the evidence, including the testimony of Mr. Schell, makes clear that this process was necessary to build the Student's trust and a sense that demands would not be imposed. The Parents also had a chance to raise concerns about the pairing process during three meetings held during May and June 2025 to discuss the Student's behaviors. Finally, the Student ultimately transitioned back to the general education classroom. The District has

shown that it did not unilaterally change the Student's placement without the Parents' participation or outside of the IEP process during the final months of the 2024-2025 school year.

55. During the 2025-2026 school year, however, it is clear that the Student's placement changed when she started spending more time in the PACE room than in the general education setting, even though the Student's IEP called for her to spend approximately 70 percent of her time in the general education setting. The IEP team discussed concerns about whether the Student was in her LRE during meetings on September 9 and 15, 2025. The team agreed to a "soft start" in the PACE room, but deferred a decision regarding the Student's placement to see if the tent helped the Student to stay in the general education classroom. However, the evidence makes clear that the tent did not increase the Student's time in the classroom and she spent the majority of her day in the PACE room. This constituted a change of the Student's placement.

56. The District argues that the IEP team agreed that the Student would start her day in the PACE room and that the reduced demands and lower sensory input available in the PACE room were consistent with input from Mr. Schell. While Mr. Parent and the IEP team agreed to a soft start in the PACE room in September 2025, there is no evidence that the Parents were aware that the Student was spending so much time in the PACE room throughout the fall of 2025. Even if all IEP team members including the Parents agreed that the PACE room was the Student's LRE, the team did not have a chance to make a placement decision. See *Rachel H.* 14 F.3d at 1404 (setting out four factor test for LRE).

57. Because they were unaware that the Student was spending the majority of her day in the PACE room, the Parents did not have an opportunity to participate in a decision regarding an appropriate placement for the Student. Accordingly, the District's procedural violation significantly impeded the Parents' right to participation in the Student's educational programming resulting in a denial of FAPE. WAC 392-172A-05105(2).

58. The District has not met its burden with respect to this claim, and the Parents are entitled to a remedy.

Issue vi. Whether the District violated the IDEA and denied the Student a FAPE by failing to properly adhere to WAC 392-172A-02110 when restraining the Student from October 2023 to present.

Issue vii. Whether the District violated the IDEA and denied the Student a FAPE by preventing meaningful parental participation from October 2023 to present by failing to document and report use of isolation and restraint consistent with RCW 28A.600.485 in conjunction with WAC 392-172A-02110, WAC 392-172A-01162, and WAC 392-172A-01163.

59. Issues vi and vii are related and are therefore discussed together. The Parents argue that the District's failure to comply with requirements regarding the use and documentation of restraint denied them meaningful participation and resulted in a denial of FAPE.

60. There is no evidence in the record that the Student was ever left alone in the PACE room or anywhere else. The Parents' brief does not argue that the Student was isolated. Therefore, this issue is addressed solely with respect to the use of restraint.

61. The IDEA does not address the use of restraint. In Washington, restraint is defined as "physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. . . . " WAC 392-172A-01162; RCW 28A.600.485(1)(b). A restraint device means

A device used to assist in controlling a student including, but not limited to, metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, pepper spray, tasers, or batons. This section shall not be construed as encouraging the use of these devices. A restraint device does not include a seat harness used to transport a student safely or other safety devices, including safety belts for wheelchairs, changing tables, booster seats, and other ambulatory or therapeutic devices when used for the purpose intended for the safety of a student.

WAC 392-172A-01163.

62. Under WAC 392-172A-02110, restraint may only be used when a student's behavior poses an imminent likelihood of serious harm. When a District uses restraint, it must follow the documentation and reporting requirements in RCW 28A.600.485. WAC 392-172A-02110(4). A school employee who uses restraint on a student must submit a written report to the district office within two business days. RCW 28A.600.485(5). At a minimum, the written report must include the date and time of the incident and the name and job title of the individual who administered the restraint, describe the activity that led to the restraint and the type of restraint used, state whether the student or staff were injured during the restraint, and offer

recommendations for changing the nature or amount of resources available to the student and staff in order to avoid similar incidents. *Id.*

63. Additionally, the principal or principal's designee “must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred.” RCW 28A.600.485(6).

64. In this case, restraint was used on December 6, 2024, February 4 and May 15, 2025, and on two occasions in the fall of 2025. On these five occasions, the District used either a two-person hold or a two-person transport, which are considered a form of restraint under Safety-Care protocols. The District also used restraint when the Student was in third grade and refused to get up from the ground and move out of her classroom. When the Student refused to get up on her own, a member of the behavior team “grabbed” the Student, which Ms. McGinnis explained meant more of a gentle guide to get her up and out of the classroom. Because restraint is defined as “physical intervention or force used to control a student,” it is not limited to physical actions that are aggressive or forceful. WAC 392-172A-01162. Physically moving the Student to leave the classroom satisfies this definition.

65. The next question is whether the District’s use of restraint complied with WAC 392-172A-02110. On December 6, 2024, the Student became escalated and was pushing and shoving others during an assembly. On February 4, 2025, she was emptying bins with school supplies then tipped over a desk with chrome books. On May 15, 2025, the Student bit Mr. Cornwell and was trying to slap students. During one instance in the fall of 2025, the Student was throwing items, including chairs and books in the classroom. On the second instance in the fall of 2025, she was pushing and shoving and threatened to stab Ms. DuFour with a pencil she was holding. In each of these instances, the Student was significantly escalated and engaging in dangerous behaviors. These behaviors put others at risk and were sufficiently aggressive to pose an imminent likelihood of serious harm, as required by WAC 392-172A-02110.

66. However, that level of risk was not present when the Student refused to get up from the floor and leave the classroom. While it is unclear how often restraint was used under these circumstances, the evidence establishes that the District used restraint even when there was no imminent likelihood of serious harm in violation of WAC 392-172A-02110.

67. To the extent that the Parents claim the District used Ukeru pads as a restraint device, the District has shown that pads were used to avoid the use of restraint or the

need to touch the Student. When the Student was aggressing toward staff, especially when she had sharp objects, pads were used as a way to protect both staff and the Student. The Parents argue that Courtney Bergman's testimony establishes that Ukeru pads were used to coax the Student out from under a desk one time. However, Ms. Bergman's testimony is not that cut and dry. On the occasion at issue, pads were in the room because the Student was aggressive and combative and were being used due to concern about possible harm to paraeducators. On balance, the District has shown by a preponderance of the evidence that the District did not use Ukeru pads as a restraint device.

68. However, the District has not met its burden to show that it complied with the documentation requirements of WAC 392-172A-02110. The District did not introduce any exhibits to establish that employees who restrained the Student submitted reports required by WAC 392-172A-02110. While the Parents acknowledged that they received one written notice of restraint, they deny receiving notice on any other occasion and the District did not introduce any exhibits to establish that any form of written notification was provided.

69. While these procedural violations are troubling, the District has shown that they did not prevent meaningful participation or deny the Student a FAPE. The Parents acknowledged that they received calls seeking permission to move the Student from the classroom. Ms. Parent interpreted a call from Mr. Cornwell as seeking permission to "touch [the Student] or to escort her out." Mr. Parent received multiple calls. At times, he did not grant permission and instead went to school. Further, when the Student escalated and a hold was used, the Parents received calls letting them know. Thus, even if they did not receive written notice, they were aware of incidents that resulted in the use of restraint. Moreover, in April 2025, Ms. Parent attended a meeting at which the IEP team discussed the use of restraint and adopted an ERP with agreement by all team members. Because the Parents were aware of the use of restraint and had an opportunity to discuss any concerns, the District's procedural violations regarding the use and documentation of restraint did not deprive the Parents of meaningful participation. Additionally, these violations did not deprive the Student of educational benefit or impede the Student's right to a FAPE. To the extent the Parents claim the District was relying on restraint to move the Student rather than using positive behavioral supports, the evidence makes clear that the Student often went to the PACE room on her own when she needed to regulate, indicating that she was learning to take a break on her own when she became escalated. Accordingly, the District's violation of WAC 392-172A-02110 did not deny the Student FAPE and the Parents are not entitled to a remedy.

Issue viii. Whether the District violated the IDEA and denied the Student a FAPE by failing to amend the Student's IEP on or after November 7, 2025, given that it was not reasonably calculated to provide the Student a FAPE and is inappropriate in light of the Student's circumstances.

70. The Parents contend that the District should have amended the Student's IEP following the incident in the cafeteria on November 7, 2025, because it was clear that the IEP was no longer reasonably calculated to provide her with a FAPE.

71. The IDEA requires that a school district review and revise a student's IEP periodically and not less than annually to address lack of expected progress, reevaluation results, information provided by parents, a student's anticipated needs, or "other matters." WAC 392-172A-03110(3).

72. As discussed in issue v, the Student's placement changed after she started spending the majority of her time in the PACE room instead of in the general education classroom. Moreover, given the Student's behavioral incidents during the fall of 2025, it was clear that the Student's placement in the general education setting was no longer appropriate, meaning that the Student's IEP needed to be amended to include an appropriate placement. The failure to amend the IEP to provide an appropriate placement constitutes a procedural violation of the IDEA. WAC 392-172A-03110(3). Moreover, this procedural violation cannot be considered harmless. The IDEA charges an IEP team, including the parents, to make a decision about a student's educational placement based on criteria including LRE requirements. WAC 392-172A-02060(2); see also *Rachel H.*, 14 F.3d at 1404. While the evidence demonstrates that the Student performed better in the PACE room than the general education setting, there was no discussion about the various placement options or the criteria in WAC 392-172A-02060(2). The failure to amend the IEP significantly impeded the Parents right to participate in the decision making process and denied the Student a FAPE.

73. The District has not met its burden with respect to this claim, and the Parents are entitled to a remedy.

Issue ix. Whether the District violated the IDEA and denied the Student a FAPE by refusing to hold an IEP meeting on or about December 12, 2025, after one was requested by the Parents following a significant change in the Student's ability to access her education.

74. The Parents argue that the District should have held a meeting on or about December 12, 2025, to discuss the Student's placement and their request for

home/hospital services. They argue that the failure to do so denied the Parents of their right to participate in the IEP process and denied the Student a FAPE.

75. The IDEA does not address whether an IEP meeting must be held after a parent requests one. However, the U.S. Department of Education (DOE) has opined that a school district must convene an IEP meeting in response to a parent's request if *the district* believes that a change in the IEP may be needed in order to ensure the student at issue receives FAPE. Specifically, in response to questions regarding IEPs, DOE states:

In general, if either a parent or a public agency believes that a required component of the student's IEP should be changed, the public agency must conduct an IEP meeting if *it* believes that a change in the IEP may be necessary to ensure the provision of FAPE.

64 Fed. Reg. 12,476, 12,477, Appendix A to 34 CFR Part 300 – Notice of Interpretation (March 12, 1999) (emphasis added). The Office of Superintendent of Public Instruction (OSPI) has implemented this interpretation of the IDEA in its own decisions. See *Kent Sch. Dist.*, 122 LRP 21506 (WA SEA 2021) (a district must conduct an IEP meeting in response to a parent's request if it believes that a change to the IEP may be necessary to ensure the provision of FAPE).

76. If a parent believes a change to the IEP is necessary regarding the provision of FAPE or the educational placement of the child, and the district refuses to hold an IEP team meeting to discuss that change, the district must provide written notice of the refusal and the reasons for the refusal. 64 Fed. Reg. 12,476-77.

77. WAC 392-172A-02100 provides in relevant part:

(1) Home or hospital instruction shall be provided to students eligible for special education services and other students who are unable to attend school for an estimated period of four weeks or more because of disability or illness.

(2) As a condition to such services, the parent of a student shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks.

78. In this case, the District issued a PWN stating that it did not believe it was necessary to revise the Student's IEP and that the Parents had not provided the documentation required by OSPI in order for the District to provide home/hospital services.

79. As discussed previously, the Student's IEP did not accurately reflect her educational placement after she started spending the majority of her time in the PACE room. Additionally, the IEP team did not meet to discuss an appropriate placement and amend the IEP accordingly. WAC 392-172A-03110(3). Thus, even if the Parents did not provide the documentation required by WAC 392-172A-02100(2) as a condition for home/hospital services, it was necessary for the IEP team to meet to discuss and decide on an appropriate educational placement. Moreover, the failure to hold an IEP team meeting to amend the IEP significantly impeded the Parents' right to participation because they had no say in deciding the Student's placement.

80. The Parents are entitled to a remedy as discussed below.

Summary of Violations

81. The District violated the IDEA and denied the Student a FAPE by failing to include an updated BIP in the April 2024 IEP.

82. The District violated the IDEA and denied the Student a FAPE by unilaterally changing the Student's placement in the fall of 2025.

83. The District violated the IDEA and denied the Student a FAPE by failing to amend the Student's IEP on or after November 7, 2025.

84. The District violated the IDEA and denied the Student a FAPE by failing to hold an IEP team meeting to discuss the Student's educational placement on or after December 12, 2025.

85. 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 Parents.

Remedies

86. When a violation of the IDEA is proven, a tribunal may "grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(C)(iii). In this case, the District violated the IDEA and denied the Student a FAPE by failing to provide an appropriate IEP in April 2024, by unilaterally changing the Student's educational placement in the fall of 2025, by failing to amend the Student's IEP, and by failing to hold an IEP team

meeting to discuss an appropriate placement for the Student. Accordingly, the Parents are entitled to remedies.

87. The Parents seek an order granting reimbursement for payments to Orchid and transportation costs. 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. *Florence County Sch. Dist. v. Carter*, 510 U.S. 7, 15, 114 S. Ct. 361 (1993).

88. The evidence shows that the Student's placement changed during the fall of 2025, when she started spending the majority of her time in the PACE room instead of the classroom. The Student almost always chose to go to the PACE room instead of the general education classroom. Moreover, Ms. Schmitten and her paraeducators believed that she was more successful there. Despite this change to the Student's placement, the Student's IEP was never amended and neither the IEP team nor the Parents were given a chance to make a decision about the Student's educational placement. In a PWN issued December 12, 2025, the District maintained the Student's placement did not need to be changed, even though the IEP still provided that the Student would spend approximately 70 percent of her day in the general education setting. The overwhelming evidence makes clear that the Student was unwilling to go to the general education classroom and her behaviors prevented her from spending the majority of her time in that setting.

89. A preponderance of the evidence establishes that the placement being offered by the District, which meant the Student would spend 70 percent of her time in the general education setting, was not reasonably calculated to meet the Student's needs and violated the IDEA. This satisfies the first prong of the test for tuition reimbursement.

90. However, the Parents have not proven that Orchid is a proper placement. Under the second prong, "[a] placement is proper if it is specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction." *Bellflower Unified Sch. Dist. v. Lua*, No., 2019 U.S. Dist. LEXIS 112829 *13 (C.D. Cal. July 8, 2019), *aff'd* 2020 U.S. App. LEXIS 33641 (9th Cir. 2020). Once a district fails to develop an IEP that makes FAPE available, the proper private placement need only confer some educational benefit to the student. *C.B. v. Special Sch. Dist. No. 1* 56 IDELR 187 (8th Cir. 2011); and *Warren G. v. Cumberland County Sch. Dist.* 31 IDELR 27 (3^d Cir. 1999). 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. See, e.g., *C.B. v. Garden Grove Unified Sch. Dist.*, 56 IDELR

21 (9th Cir. 2011), *cert. denied*, 111 LRP 68912, 132 S. Ct. 500 (U.S. 2011). Rather, to qualify for reimbursement, parents must “demonstrate that the placement provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction. *Id.* at 1159 (quoting *Frank G. v. Bd. Of Educ. Of Hyde Park*, 459 F.3d 356, 365 (2d Cir. 2006)).

91. In the Ninth Circuit, a private residential placement is justified under the IDEA when it is “necessary for educational purposes,” rather than as “a response to medical, social, or emotional problems ... quite apart from the learning process.” *Ashland Sch. Dist. v. Parents of Student R.J.*, 588 F.3d 1004, 1010 (9th Cir. 2009) (quoting *Clovis Unified School Dist. v. California Office of Administrative Hearings*, 903 F.2d 635, 643 (9th Cir. 1990)). In *Clovis*, the court determined, “Where, as here, a child requires six hours per day of intensive psychotherapy, such services would appear ‘medical’ in that they address a medical crisis.” 903 F.2d 645.

92. In *Edmonds Sch. Dist. v. A.T.*, 780 Fed. Appx. 491 (9th Cir. 2019), the student at issue was placed in a private residential placement (Provo Canyon School) unilaterally by his parents. In the two years leading up to his placement at Provo, the student’s grades dropped dramatically, and he committed more than twenty disciplinary offences. The school district challenged whether the placement was “proper,” arguing the student’s mental health had deteriorated so significantly that he “could only benefit from serious medical intervention, so any placement must be understood as a medical one.” The Ninth Circuit disagreed, stating, “Students who require residential placement to obtain an educational benefit are often experiencing some acute health crisis at the time they are placed – the severity of their condition is precisely why they need residential treatment. If we adopted the district’s approach, it is difficult to imagine how any private residential placement would be reimbursable under the IDEA.” 780 Fed. Appx. at 495. Moreover, the court found that Provo was an educational, rather than medical placement, because it is an accredited educational institution with a full day school and regular classroom settings, its instructors are employed by the facility, and most are certified special education teachers.

93. However, when it is clear that a unilateral placement does not provide any educational services, reimbursement is not warranted. The U.S. District Court for the Western District of Washington recently affirmed an ALJ’s decision denying reimbursement for the cost of a unilateral placement that did not provide any educational services. *M.K. v. Issaquah Sch. Dist.*, 2025 U.S. Dist. LEXIS 112086 *18 (W.D. WA. 2025). In that case, the Student’s placement was medical in nature.

94. Here, Orchid offers ABA therapy, and the Student was placed there to address behavioral issues. Orchid, like the placement in *M.K.*, does not provide any educational services. Additionally, Orchid is not an approved non-public agency in Washington. As a result, Ms. Parent has been providing the Student's instruction while the Student obtains ABA therapy at Orchid. Given that Orchid does not provide any educational services, it cannot be considered a proper placement. *Id.*

95. Accordingly, tuition reimbursement for Orchid is not an appropriate remedy in this case.

96. The Parents also claim that they are entitled to compensatory education in the amount of 689 hours to make up for lost educational benefit between October 2023 and December 2025.

97. 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." *Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), cited with approval in *R.P.*, 631 F.3d at 1125. "There is no obligation to provide 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." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994). Flexibility rather than rigidity is called for. *Reid v. Dist. of Columbia*, 401 F.3d at 523-24. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Id.* at 524.

98. A hearing officer may fashion individualized relief for students seeking compensatory education. As noted in *R.P.*:

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).

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

99. While compensatory education is often prospective, “it is not limited to an award of prospective relief and can include reimbursement for services that the student has already received.” *J.T. v. Dep’t of Educ.*, 2014 U.S. Dist. LEXIS 38274 (2014).

100. As discussed above, the Parents are entitled to a remedy for the District’s violations of the IDEA and denial of FAPE. The evidence shows that the Student’s behaviors are a barrier to her participation in academics. The Student has made progress toward improving her behaviors at Orchid, but she will need continued behavioral interventions as academic demands are introduced to avoid reverting to task refusal, elopement, and aggression. Therefore, it is appropriate to provide an award of compensatory education to reimburse the Parents for the costs of the ABA therapy she has received and to provide additional ABA therapy, which has proven to be successful for the Student. It is also appropriate to award tutoring to make up for SDI the Student was unable to access due to her behavior.

101. **Compensatory education is awarded as follows:**

1) the District shall reimburse the Parents for \$1,318.00, for \$800.00 in payments to Orchid for the Student’s ABA services, and \$ 518.00 in transportation costs.

2) the District shall pay for 238 hours of compensatory services in ABA therapy, reading, writing, and/or math intervention by a provider selected by the Parents who has the required education, training and experience to serve the Student’s needs, at a maximum rate of \$120.00 per hour. 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 20 days of issuance of this order. The services will be delivered at any time during the three calendar years following the date of this decision at the duration and frequency determined appropriate between the Parents 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. This award provides services from an outside provider rather than through the District based on the deterioration in the relationship between the parties.

102. The award is calculated as follows.

From April 2024 to April 2025 (approximately 37 weeks) the Student’s IEP did not incorporate a BIP that addressed work avoidance and elopement, which impeded her ability to access SDI. Additionally, the Student’s behaviors intensified with the lack of a cohesive behavioral plan, which further limited her

ability to benefit from SDI. The Student's IEP provided 195 minutes of SDI per week.²⁹ This amounts to 120 hours. ($37 \times 195 / 60 = 120$).

From September 2025 to December 2025 (approximately 12 weeks) the Student was spending the majority of her day in the PACE room and engaging in little to no academic work. While concerns about her LRE had been raised at IEP meetings in September, the team never met to discuss the Student's LRE and decide on what placement was appropriate for her educational needs. The Student's IEP provided that she would be served in the special education setting for 590 minutes per week. This amounts to 128 hours. ($12 \times 590 / 60 = 118$).

103. A compensatory award of private services is sometimes reduced to account for the fact that students generally progress more rapidly with 1:1 instruction as opposed to instruction in a classroom. In this case, it is not appropriate to reduce the award because the Student's IEP provides support from a 1:1 paraeducator and she benefits from 1:1 instruction.

104. Nothing in this order precludes the Parents and the District from agreeing to an alternative method for delivering the Student's compensatory education award.

105. The Parents also seek to place the Student at Orchid for the upcoming school year, with academic instruction provided by a certificated teacher at Orchid. Ordering such a placement would not be appropriate. Even if academic instruction could be provided by the District at Orchid, Ms. Hurtado could not estimate how long the Student will require services at Orchid. It would not be appropriate to order prospective placement at Orchid for a period of time when it is unclear whether the Student will require such services throughout that time period.

106. The Parents testified that they will not return the Student to any school in the District but also do not intend to homeschool the Student. The Parents brief does not address this issue, making it unclear whether the Student will remain enrolled in the District.

107. A continuum of placements is available in the District. If the Student remains enrolled in the District, the evidence shows that she requires a placement in which she spends the majority of her day in the special education setting with limited time in the general education setting. The Student also requires small group or 1:1 instruction.

²⁹ The evidence shows the Student performed well during her communication SDI so that SDI is not included in the compensatory award.

Ms. Schmitt and the Student's paraeducators agreed that the Student performed better in the PACE room than in the general education setting. This is consistent with testimony that the Student performed well when she received communication SDI in a small group setting with one other child and OT SDI individually with Ms. Keller. Moreover, Ms. Hurtado's testimony establishes that behaviors such as aggression and work avoidance increase when the Student is faced with transitions or academic demands or is introduced to new people. The Student will face all of these challenges when she returns to a school setting.

108. Accordingly, if the Student remains enrolled in the District, the District shall hold an IEP team meeting within 30 calendar days of publication of this order and shall develop an IEP that:

- Provides a placement in which the Student spends the majority of her time in the special education setting;
- Provides all academic instruction in a small group or 1:1;
- Provides support from a 1:1 paraeducator throughout the day; and
- Incorporates a plan to facilitate a smooth transition from Orchid to the District.

109. The Parents also request training for District special education staff on the appropriate use of restraint, including reporting requirements. Training of special education staff at Lee is appropriate given the failure to provide written notification of restraint to the Parents and the use of restraint in the absence of imminent likelihood of serious harm.

110. The following District staff at Lee Elementary School shall receive training: all members of a behavior team; special education teachers; paraeducators; and behavior support staff who potentially perform restraint. The training will cover the following topics:

- Training by a qualified provider on appropriate techniques for safely performing restraints only as a last resort and when there is an imminent likelihood of harm.

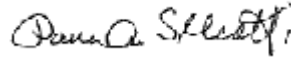
- Documentation and notification procedures following restraint.

ORDER

1. The District violated the IDEA and denied the Student a FAPE as set forth in Conclusions of Law 27, 58, 73, and 80.

2. The District is ordered to provide compensatory education as set forth in Conclusions of Law 101, 108, and 110.
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 Parents.

SERVED on the date of mailing.



Pamela Meotti
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

DECLARATION OF SERVICE

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

Parents

[REDACTED]
[REDACTED]

via E-mail

[REDACTED]
[REDACTED]

Sydney Arizona Bay
Alexander Hagel
Cedar Law LLP
600 1st Ave Ste 330
PMB 96563
Seattle, WA 98104

via E-mail
sydney@cedarlawllp.com
alex@cedarlawllp.com
levi@cedarlawllp.com
jhuynh@cedarlawllp.com

Katie Tucker
Director of Special Education
Eastmont School District
800 Eastmont Avenue
East Wenatchee, WA 98802

via E-mail
tuckerk@eastmont206.org

Carlos Chavez
Pacifica Law Group LLP
401 Union St., Suite 1600
Seattle, WA 98101

via E-mail
carlos.chavez@pacificalawgroup.com
grace.mcdonough@pacificalawgroup.com

Dated July 15, 2026, at Spokane Valley, Washington.

Lan Le

Representative
Office of Administrative Hearings
16201 E. Indiana Avenue, Suite 3000
Spokane Valley, WA 99216

cc: Administrative Resource Services, OSPI