

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Seattle School District

Docket No. 02-2026-OSPI-02830

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2026-SE-0021

A due process hearing was held before Administrative Law Judge (ALJ) Paul Alig on May 18 - 20, 2026, at the offices of the Seattle School District (District). The Parent of the Student whose education is at issue¹ appeared and represented herself. The District was represented by Susan Winkelman, attorney at law. Also present for the District was Dan Long, District Special Education Supervisor. The [REDACTED] interpreters were [REDACTED].

STATEMENT OF THE CASE

Procedural History

On February 13, 2026, the Parent filed a due process hearing request (Complaint). On March 3, 2026, the District filed its response to the complaint. On March 13, 2026, a prehearing order was issued identifying the issues for hearing and scheduling the hearing to begin April 27, 2026. A prehearing order issued on April 3, 2026, gave the Parent a deadline to request that the hearing be held in-person. The Parent timely requested an in-person hearing. On April 22, 2026, a readiness conference was held, and an order issued the next day identifying the location for hearing. The hearing was continued on April 27, 2026, as the ALJ was unavailable. A prehearing conference was held on April 29, 2026. A prehearing order issued on April 30, 2026, scheduling the hearing to begin May 18, 2026.²

Due Date for Written Decision

As set forth in a previous order, the due date for a written decision in this case is thirty (30) days after the record of the hearing closes. The record closed on July 23,

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

² See, Prehearing Orders issued on March 13, 2026, April 3, 2026, April 23, 2026, and April 30, 2026.

2026, the due date for the parties' post-hearing briefs. Accordingly, the due date for a written decision is August 22, 2026.³

EVIDENCE RELIED UPON

Exhibits Admitted:

Parent's Exhibits: P1-P26⁴
District's Exhibits: D1-D27

Witnesses Heard (in order of appearance):

- JaLynn Montes, Principal
- Ayse Topinka, Special Education Teacher
- Mateo Dahlstrom, General Education Teacher
- Parent

ISSUES

1. The issues for the due process hearing are whether beginning November 1, 2025 through February 13, 2026, the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:

- I. Not developing an individualized education program (IEP) and placement that allowed the Student to access school safely.
- II. Not developing an appropriate behavioral intervention plan.
- III. Not implementing adequate behavioral supports.
- IV. Not implementing the educational services in the Student's IEP as he was constructively denied access due to unsafe placement conditions.

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

- I. Order immediate structural separation from the involved student.
- II. Order continuous full-day protective supervision under written enforcement

³ Order Setting Due Date for Post-Hearing Briefs dated May 22, 2026; Order Extending Due Date for Post-Hearing Briefs dated July 22, 2026.

⁴ On May 26, 2026, the Parent submitted a letter dated January 28, 2026, from Thomas Kimball Brasted, Licensed Clinical Psychologist with Odessa Brown Children's Clinic. Because this letter was submitted after the hearing was completed and each party had rested their case it was not admitted or considered.

protocol.

III. Order alternative placement outside the current school site.

IV. Award compensatory education for denial of FAPE.

V. Order reimbursement of medical-related expenses.

VI. Or other equitable remedies, as appropriate.

FINDINGS OF FACT

Background Information

1. At the time of the hearing the Student was 10 years old. He lives with the Parent and is a resident of the District.⁵

2. The Student attended first grade in [REDACTED]. This was his first school experience as there was no available preschool or kindergarten. While attending first grade he was diagnosed with attention deficit hyperactivity disorder (ADHD). The Student moved to America when he was seven years old. The Student's native language is [REDACTED].⁶

3. In November 2023, the Student began attending the District's Graham Hill Elementary School (Graham Hill) for second grade. In January 2024, Graham Hill referred the Student for a special education evaluation. The District did not conduct an evaluation at that time due to lack of consent from the Parent.⁷

4. In February 2024, the Student transferred to the District's Wing Luke Elementary School (Wing Luke). Jalyynn Montes⁸ was the principal of Wing Luke.⁹

⁵ D1p13; Parent T286:24. Citations to the exhibits of record are by the party ("P" for Parent, and "D" for District) and exhibit and page numbers. For example, a citation to D1p13 is a citation to District exhibit 1 page 13. Citations to the hearing transcript indicate who provided the testimony followed by the page number(s) and line(s) on which the testimony appears. For example, a citation to Parent (Student's mother) T286:24 is a citation to the Parent's testimony at page 286 line 24 of the transcript.

⁶ D1p8, D24p11; Parent T302:17.

⁷ D1pp8, 20; Parent T287:20.

⁸ Ms. Montes obtained her bachelor's degree in education from Pacific Lutheran University in 1994. She received a Master of Education in Adult and Higher Education from Western Washington University in 2016. She has a Resident Administration Certificate from Western Washington University. The 2025-2026 school year was her third year teaching at Wing Luke. She has 30 years of experience as a teacher prior to her current position. Her prior experience includes teaching ESL in Seoul, Korea. She was an assistant principal in two other District schools. Montes T59:4-61:8.

⁹ D23p9; Montes T60:4.

2024-2025 School Year (Third Grade)

5. During the 2024-2025 school year, the Student was in the third grade and continued to attend Wing Luke. Ayse Topinka is a special education and English as a Second Language (ESL) teacher at Wing Luke.¹⁰ She was the Student's assigned special education teacher.¹¹

6. In December 2024, the Parent referred the Student for special education services. The reasons for her referral were the Student's work production, legibility of his written work, his stamina for writing, his inability to self-regulate behaviors and his inability to demonstrate expected behaviors. He was also having a hard time managing his impulses to move and touch others and objects in his environment. He often talked out loud or sang during quiet class times. The Parent provided written consent to conduct an initial evaluation. The District initiated the evaluation process and utilized file review, observation, functional skills assessment, educational team report, and standardized testing in conducting the evaluation.¹²

7. In late February 2025, the staff at Wing Luke began implementing an informal safety plan for the Student during lunch and recess that involved daily check-ins with school staff when he arrived at lunch and recess. At these check-ins he was reminded to stay close to the lunch and recess monitors, play with only classmates, and avoid students from other classes. At lunch he was reminded to focus on eating. When he met these expectations, he was awarded stars to add to his daily reward tally.¹³

8. The District's initial evaluation team found that the Student's cognitive ability was within the average range, but that he performed below average in math, reading and written language. The District used the behavior assessment system for children-third edition (BASC-3) as part of its evaluation. Teacher ratings on the BASC-3 placed the Student in the clinically significant range on the following subtests, indexes and composites: externalizing problems, school problems, behavioral symptoms index, and adaptive skills composite. The team found the Student exhibited significant concerns with hyperactivity, aggression, conduct problems, attention problems, learning problems, atypicality, study skills, and functional communication. The team also found that the Student demonstrated a significant delay in his receptive-expressive language, including social/pragmatic language, in both [REDACTED] and English. On the motor portion

¹⁰ Ms. Topinka obtained her undergraduate degree in Turkey in 2002. She obtained her master's degree in education from Antioch University. She has endorsements in special education and English Language Learners (ELL). She has worked for the District since 2012. Initially she worked as an instructional assistant. She began teaching special education and ESL in September 2025. Topinka T146:9.

¹¹ Topinka T147:7.

¹² D1p20; Parent T302:17.

¹³ D5p1.

of the evaluation, the team found that the Student had age-appropriate fine motor skills but exhibited differences in sensory processing that impacted his learning and social interactions.¹⁴

9. On March 13, 2025, the District held an initial evaluation meeting to review the assessment results and determined the Student's eligibility for special education services. The Parent participated in this meeting with an interpreter. The Student was determined eligible for special education under the category of other health impairments based on his ADHD diagnosis. The Parent noted that she and his teachers in Saudi Arabia suspected the Student of having autism. However, he was not diagnosed with autism. The Student required specially designed instruction (SDI) in math, reading, written language and social/behavior. The evaluation team recommended that his social/behavior SDI address impulse control, emotional regulation, understanding cause and effect in social situations, self-monitoring, interpreting social cues, friendship skills, social problem solving skills, coping with strong emotions, sustained focus and attention to instruction, engagement in learning tasks, independent task initiation and completion, following adult directives and rules, having a safe body around others, and distinguishing expected and unexpected behaviors in different settings. He required related services in speech language pathology (SLP). He also required occupational therapy (OT) as a support for school personnel to address the Student's sensory processing differences. The evaluation team recommended behavioral support from an adult as a supplementary aid and service for extracurricular after school activities to support the Student's inclusion in these activities.¹⁵

10. On March 14, 2025, Emily Wetzel, the Student's third grade teacher, provided the Parent with another copy of the safety plan that the District was already using and given the opportunity to have a safety meeting.¹⁶

11. On April 4, 2025, the District developed an IEP for the Student. The Parent participated in the IEP meeting with an [REDACTED] interpreter. The team also included Ms. Montes; Ms. Wetzel; Maureen Lange, special education teacher; Marsann Easterday, OT; Kristin Wyman, SLP; and Alison Spencer, program specialist. The IEP team noted that the Student had unexpected performances in behavior at lunch and recess. He showed most on-task behaviors when receiving 1:1 support for reading. When learning with a full group of students the Student showed on-task behaviors 10% of the time. When given attention due to off-task behaviors from peers those behaviors would increase. The Student's off-task behaviors included standing up while the class was

¹⁴ D1pp11-28.

¹⁵ D1pp5, 6, 24, 29, 30; Topinka T147:11.

¹⁶ D5p1.

seated, calling peers names across the classroom, clapping when inappropriate, playing with peers during instruction or independent work time, pushing another student, stepping on peer's feet, kicking at peers, and making noises during work times. Interventions the Student responded to included 1:1 redirections, feedback, repeated directions and positive praise. The IEP included the following social/behavior goals that addressed "body to himself" and "expected learning behaviors":¹⁷

By 4/10/2026 when given an unstructured setting with peers (transitions, brain breaks, recess, lunch, PE) [the Student] will keep his body to himself for at least 15 minutes improving personal safety from 0/5 trials to 4/5 trials measured by systemic intervention records and systemic observation records.

By 4/10/2026 when given 10 minutes of instruction in all group setting [the Student] will show expected learning behaviors (body to self, quiet voice, listening, staying in space, keeping items to himself, working on the group plan turning and talking, etc.) with 1 or less reminders improving learning behaviors for 0/5 trials to 4/5 trials as measured by teacher observation records and systemic data collection.

12. The IEP provided for the Student to receive SDI in a special education setting of 100 minutes per week in each of the following areas: math, reading, and language arts. It also provided for 60 minutes per week of SDI in social and behavioral services, 60 minutes per month of SLP services, and 300 minutes of OT support per year. The listed IEP accommodations in all school settings that included frequent 1:1 redirections, feedback, repeated directions, positive praise, and teaching peers to ignore unexpected behaviors (blurting out, wandering around room). It also included shared instructional assistant (IA) support in the general education setting. The IEP team identified the Student's placement as 40%-79% in general education. The placement was to allow the Student to participate with non-disabled peers in the general education classroom, and in nonacademic and extracurricular activities except when he is receiving SDI for reading, writing, math and social skills. He would be in general education for special activities including assemblies, field trips, celebrations and full class events. The IEP provided the Student would receive specialized transportation as requested by the Parent due to past behaviors on the bus to daycare. The District developed a prior written notice (PWN) that stated it would implement the services in the Student's IEP.¹⁸

¹⁷ D6pp16-18 (D6 and P8 are duplicates. To avoid confusion, citations are to D6); Topinka T161:24, 192:18.

¹⁸ D6pp3, 21, 22, 24, 25, 28; Topinka T146:25.

13. On April 10, 2025, the Parent provided consent for initial provision of special education services.¹⁹

2025-2026 School Year (Fourth Grade)

14. The Student was enrolled in Wing Luke for fourth grade during the 2025-2026 school year. Mateo Dahlstrom²⁰ was the Student's assigned general education teacher.²¹ The Student's assigned special education teacher was Ms. Topinka.²²

15. On September 3, 2025, the school year began. From the start of the school year through October 20, 2025, there were 36 school days.²³

16. The Student started attending Wing Luke on October 20, 2025.²⁴ When the Student began attending Wing Luke, Ms. Topinka reviewed his IEP to understand his needs and design his instruction. She immediately began delivering the services in his IEP. Ms. Topinka's opportunity to deliver services to the Student in the resource room was limited by the Student's frequent absence and tardiness. From October 20, 2025 through November 1, 2025, the Student attended 6 out of a possible 10 school days.²⁵

17. During his fourth grade year at Wing Luke the Student was provided behavioral interventions and accommodations, including: 1) a token economy using a timer with positive reinforcement for expected behaviors; 2) seating with a positive peer on the carpet; 3) 1:1 redirection, feedback, repeated directions, and positive praise during group lessons; 4) a large desk to himself in a group; 5) permission to stand at his desk when looking through a book; 6) a calm down corner; 7) breaks outside the general education classroom; and 8) instruction to classroom peers to ignore his unexpected behaviors. SDI in the areas of math, reading, written language and social/emotional was delivered to the Student in the resource room. The Student was also provided with the support of a shared IA in the general education setting.²⁶

18. On November 12, 2025, at the beginning of recess, the Student said the b-word and the f-word directed towards another student. The Student punched the other student in the stomach area. The other student grabbed the Student's head, held it

¹⁹ D7p1.

²⁰ Mr. Dahlstrom attended Whitman College as an undergraduate. He obtained a master's in teaching from Seattle University. He obtained his teaching certificate in 2022 or 2023 from Seattle University. He has worked as a classroom teacher for the District for three years. Dahlstrom T198:6.

²¹ D23p1; Dahlstrom T199:2.

²² Topinka T146:17.

²³ D5p1; Dahlstrom T208:7.

²⁴ D23p1, D24pp1, 3; Topinka T146:7.

²⁵ Topinka T147:11.

²⁶ Topinka 147:7-150:8, Dahlstrom T205:18.

down, and hit/rubbed his head repeatedly. A third student used his arm to choke the Student. Mr. Dahlstrom talked with all three boys about the incident. The Student did not appear to be having trouble breathing or require medical attention. None of the boys were in immediate medical crisis. The Wing Luke assistant principal facilitated a restorative conversation among the three boys. All three students had a spirit of accountability throughout the conversation and expressed interest in solving the problem together. The three students generated a set of agreements that they would utilize moving forward to help prevent future problems. The plan included ignoring comments, using a calm-down strategy (e.g., taking a deep breath), and reporting an unsafe situation to teachers. After the plan was developed, the students were observed playing at recess safely and working together during class. Mr. Dahlstrom informed the Parent about what had happened and the District's response and offered to meet in person.²⁷

19. On December 4, 2025, the Student and another student were having a conflict that had lasted a few days. Mr. Dahlstrom directed each student to stay away from each other. During math class, the Student called the other student dumb, said he was gay and made fun of his shoes. The other student called the Student a "black African" and spit at him. Mr. Dahlstrom met with both students and made it clear that they should not use the terms gay, dumb, or African as an insult, nor spit at someone under any circumstances. Mr. Dahlstrom and the students talked about how it felt to be called a hurtful word and the students both acknowledged that they were unkind to one another and did not respond to each other in a way that helped solve the problem. They also talked about the need to tell an adult when someone starts a serious problem. The District used restorative conversations such as the one occurring after this incident to make the students accountable for what happened and agree to steps that they would use moving forward to help prevent future problems. Mr. Dahlstrom reported the incident and the follow-up conversation to the Parent.²⁸ The District used internal software to track this incident and future behaviors to identify similar patterns in the Student's behavior and to problem solve and improve his behavior.²⁹

20. Following the November 12 and December 4, 2025 incidents, Ms. Topinka informally began addressing the Parent's concerns by investigating and developing a safety plan for the Student. She researched the development of the Student's IEP because his IEP did not contain an attached specific safety plan as the Parent believed. On days when the Student came to school, his educators would coordinate right away to ensure he was continually supervised. This informal plan was based on the communication between Ms. Topinka, the Parent, and the other adults who were either

²⁷ D10p2, P1pp1, 2; Dahlstrom T200:2, 212:13-213:18.

²⁸ P2p1; Dahlstrom T212:24.

²⁹ D22pp1, 2; Montes T67:8.

working with the Student or around the Student during non-instructional times of the day. The Parent was included in the e-mail communications about the Student. The informal safety plan was adjusted based on the Parent concerns and implemented as a temporary measure until the Student's IEP team could meet to develop a specific safety plan, and a functional behavioral plan (FBA) could be initiated.³⁰

21. On December 10, 2025, the Student was out of his seat while riding the bus, having confrontations with other students, and not being respectful of the bus driver and bus monitor. The District reported this behavior to the Parent.³¹

22. On December 12, 2025, the Student insulted another student in the classroom. The District notified the Parent that the Student had developed a pattern of targeting the other student and degrading him. The District implemented use of a check-in and check-out form in the classroom to eliminate the behavior. The District requested a time to speak with the Parent due to the Student's pattern of behavior.³²

23. On or around December 15, 2025, the Student began receiving increased IA support due to increased District staffing.³³

24. On December 16, 2025, the Parent documented concerns regarding the Student's special education services. These concerns included racially harmful language, spitting during class, physical assault (including the choking incident during recess), not having a safety plan in his IEP, and removing the Student from recess.³⁴

25. The District attempted to convene an IEP meeting to address the Parent's concerns. It was believed that the Parent was available on January 6, 2026, for the meeting. On December 17, 2025, the District sent the Parent a link and call-in information for the meeting.³⁵

26. On December 18, 2025, in response to Parent's request, the District provided the Parent with the names and email addresses for Student's IEP team members, as well as Dan Long, Special Education Regional Supervisor, and Ms. Spencer. The District explained that Ms. Montes had asked Ms. Topinka to schedule a meeting in response to the Parent's request for an emergency IEP meeting. She explained that the team needed to know the Parent's availability and recommended that she email

³⁰ Topinka T167:17-169:3, Dahlstrom T192:12.

³¹ D11p1.

³² D12p1, D22p2; Montes T67:8.

³³ D12p2.

³⁴ D13pp1-3; Topinka T150:24.

³⁵ D13p11; Topinka T171:16.

the IEP team directly regarding her availability.³⁶

27. On December 31, 2025, the Parent thanked the District for responding to her request for an “emergency” IEP meeting. She requested that the District schedule the meeting for January 5, 2026, at 10:00 a.m. and confirm the attendance of all required IEP team members. The Parent stated that the purpose of the meeting was to address the ongoing failures in implementing the Student’s IEP, including: 1) failing to implement his IEP during all school times; 2) significant student safety concerns; and 3) failing to implement a safety plan consistently and effectively, resulting in physical and psychological risk to the Student.³⁷

28. On January 5, 2026, the Parent asked the District to cancel and reschedule the IEP meeting.³⁸

29. On January 9, 2026, Mr. Long emailed the Parent offering to meet individually prior to the IEP meeting.³⁹

30. On January 23, 2026, Ms. Topinka emailed the Parent with proposed IEP meeting date and times. The email included the Student’s proposed daily schedule.⁴⁰

31. On January 29, 2026, the Parent responded that she was not available at the proposed dates and times. She requested that the meeting be scheduled for a time that the Student’s family advocate case manager could attend. The District agreed to schedule the meeting for February 2, 2026, which was the date proposed by the Parent.⁴¹

32. On February 2, 2026, the District convened an IEP team meeting that included the Parent and the Student’s “family advocate case manager.” The District provided an [REDACTED] interpreter at the meeting. Ms. Montes, Mr. Dahlstrom, Mr. Long, Ms. Topinka, a District school psychologist, and a District SLP also attended the meeting. The team discussed the ongoing safety concerns that impacted the Student. The District developed a safety plan that provided the following:⁴²

³⁶ D14pp. 1-2.

³⁷ D14pp. 5-6.

³⁸ D15p10; Montes T65:6, Topinka T171:16.

³⁹ D15p14.

⁴⁰ D16p7.

⁴¹ D16p3, D18p1; Topinka T153:18.

⁴² D19p1; Topinka T153:18.

Purpose: To support the student's safety and successful participation during lunch and recess through structured supervision, clear expectations, and consistent adult support.

Procedures:

Check-In and Supervision

- The student will check in daily with Mr. Casey, Special Education Instructional Assistant, upon arrival at lunch and recess.
- Mr. Casey will provide structured supervision during these times.

Expectations and Prevention Strategies

- The student will be reminded of simple, clear expectations prior to and during lunch and recess, including:
 - Staying close to the assigned adult
 - Remaining seated and eating lunch during designated lunch time
 - Engaging appropriately with peers
 - Avoiding interactions with students involved in previous conflicts

Monitoring and Feedback

- At the conclusion of lunch and recess, the student will check in with Mr. Mateo (Classroom teacher) and Mr. Casey to:
 - Review behavior and safety during the period
 - Determine incentives earned based on participation and adherence to expectations

Review and Adjustment

- The effectiveness of this Safety Support Plan will be monitored through staff observation and data collection.
- The plan may be adjusted as additional data is gathered and as part of ongoing IEP team review.

The IEP team identified the need to conduct an FBA and develop a behavioral intervention plan (BIP). An FBA is a process where the District collects data regarding the Student's behavior to understand what the student's struggles are. The team decided to collect six weeks of data to complete the FBA and BIP. The District developed a PWN explaining these decisions. The District rejected the Parent's request to increase service minutes because it wanted to collect additional data on the Student's social and academic progress before considering a change in services. The safety plan was attached to the PWN and implemented by the District.⁴³

33. On February 3, 2026, Mr. Dahlstrom observed the Student tell another student on the soccer field to get out, using profanities and calling him an annoying snitch. Mr. Dahlstrom attempted to facilitate a restorative conversation, but the Student mocked the other student, preventing a resolution at that time. Mr. Dahlstrom reported this

⁴³ D18pp3, 4; Topinka T151:6, Dahlstrom T193:12.
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incident to the Parent.⁴⁴

34. On February 5, 2026, the Student told another student to shut up and insulted him. Later Mr. Dahlstrom observed the Student attempt to shut the other student out of the building. Mr. Dahlstrom intervened and spoke with the Student about taking a break when overwhelmed.⁴⁵

35. On February 9, 2026, the Student was kicked in the stomach by another student in the classroom during instructional time. The Student reported abdominal pain following the incident and required medical evaluation at the hospital. The Parent informed the District about the Student's hospital visit.⁴⁶

36. On February 10, 2026, Mr. Dahlstrom thanked the Parent for reporting the incident. He asked for more details and explained that he wanted to investigate what happened further, so he could communicate with the other student's parents and make plans for a consequence/repair. In response, Parent provided the names of the other student involved in the incident and a letter from Seattle Children's Hospital, which stated that the Student had been seen in the emergency department on February 9 and could return to school on February 11. That same day, Ms. Montes informed the Parent that she spoke with the student who had kicked the Student, but that the consequence she carried out was confidential as required by the District's policy regarding the Family Educational Rights and Privacy Act (FERPA). She explained that she told Mr. Dahlstrom to make sure the Student was at the front of the line when they entered or left the classroom for transitions to avoid contact with the other student. Ms. Montes sent a meeting invitation for February 12 to the Parent, Mr. Ferris, Mr. Dahlstrom, Ms. Topinka, and Mr. Saadat. The Parent refused to attend this meeting as she wanted the discussion held in an IEP meeting.⁴⁷

37. On February 11, 2026, the Parent provided the District signed consent to conduct the FBA. The Parent kept the Student home as she wanted to ensure the school could provide a safe environment.⁴⁸

38. On February 13, 2026, the Parent filed this due process hearing request.⁴⁹

39. Between November 1, 2025 and February 13, 2026, the Student was absent

⁴⁴ D20p1; Dahlstrom T206:10.

⁴⁵ D20p8; Dahlstrom T231:18.

⁴⁶ P11p1; Parent T292:11.

⁴⁷ P11pp1-15, P12p1, P19pp1, 2, 7; Parent T292:37

⁴⁸ P21p5; Topinka T155:6 Parent T293:6.

⁴⁹ P23p3; Complaint

35 out of a possible 67 school days.⁵⁰

40. On February 17, 2026, Alexander Ferris, Licensed Mental Health Clinician (LMHC) wrote a letter documenting that the Student was receiving mental health treatment through Seattle Children's, Odessa Brown Children's Clinic. The letter stated the Student was scared to attend school due to having recently being kicked in the stomach by another student and having to go to the emergency room. The Parent provided a copy of this letter to the District.⁵¹

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.⁵² In a due process hearing, the burden of proof is a preponderance of the evidence.⁵³

The IDEA and FAPE

3. Under the IDEA, a school district must provide a FAPE to all eligible children. In doing so, a school district is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity."⁵⁴

4. In *Bd. Of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the IEP developed under these procedures is reasonably calculated to enable the child to receive educational benefits. As stated in *Rowley*, "[i]f these requirements are met, the State has complied with the obligations imposed by Congress and the courts can

⁵⁰ D24pp1, 2, D29p1; Dahlstrom T208:2.

⁵¹ P15p1; Parent T278:16.

⁵² RCW 28A.155.260(1).

⁵³ RCW 28A.155.260(3).

⁵⁴ *Bd. Of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

require no more.”⁵⁵ 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.⁵⁶

5. Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

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

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

(III) caused a deprivation of educational benefits.⁵⁷

6. In *Endrew F. v. Douglas County Sch. Dist. RE-1*, the U.S. Supreme Court stated, “[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.”⁵⁸ The determination as to whether an IEP is reasonably calculated to offer a student a FAPE is a fact-specific inquiry. As the U.S. Supreme Court has made clear, “[a] focus on the particular child is at the core of the IDEA,” and an IEP must meet a child’s unique needs.⁵⁹ The “essential function of an IEP is to set out a plan for pursuing academic and functional advancement.”⁶⁰ Accordingly, an IEP team is charged with developing a comprehensive plan that is “tailored to the unique needs of a particular child.”⁶¹ Additionally, the Student’s “educational program must be appropriately ambitious in light of his circumstances”⁶²

7. In reviewing an IEP, “the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.”⁶³ The determination of reasonableness is made as of the time the IEP was developed. An IEP is “a snapshot, not a retrospective.”⁶⁴

IEP Requirements

8. An IEP must contain a statement about a student’s present levels of academic

⁵⁵ *Rowley*, 458 U.S. at 206-07.

⁵⁶ *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001).

⁵⁷ WAC 392-172A-05105(2); 34 CFR § 300.513(a)(2).

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

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Endrew F.*, 580 137 S. Ct. at 1000.

⁶² *Id.*

⁶³ *Endrew F.*, 137 S. Ct. at 999 (emphasis in original).

⁶⁴ *Adams v. Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999).

and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.⁶⁵ Present levels must include baseline measurements for goals.⁶⁶

9. An IEP must include a statement of the program modifications and supports that will be provided to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students.⁶⁷

10. An IEP must also contain a statement of annual goals, including academic and functional goals designed to meet the student's needs that result from his disability. For students who take alternate assessments aligned to alternate achievement standards, the IEP must include a description of benchmarks or short-term objectives.⁶⁸ There must be a relationship between the present levels of performance and the goals and objectives. Goals must be stated with enough specificity that they are understandable and must be measurable in order to determine whether a student is making progress toward the goals.⁶⁹

11. An IEP must include a statement of the special education and related services to be provided to the student to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students.⁷⁰

IEP Revision

12. Under the IDEA, an IEP team is required to revise a student's IEP, as appropriate, to address: 1) a lack of expected progress toward the annual goals and the general education curriculum; 2) the results of any reevaluations; 3) information provided by the parents; 4) the student's anticipated needs; or 5) other matters.⁷¹

Behavioral Intervention Plan

13. In the case of a child whose behavior impedes the child's learning or that of

⁶⁵ WAC 392-172A-03090(1)(a); 34 § CFR 300.320(a)(1).

⁶⁶ *Northshore Sch. Dist.*, 114 LRP 2927 (SEA WA 2013).

⁶⁷ WAC 392-172A-03090(1)(c)-(d); 34 § CFR 300.320(a)(4)(ii).

⁶⁸ WAC 392-172A-03090(1)(b)(i); 34 § CFR 300.320(a)(2).

⁶⁹ *Seattle Sch. Dist.*, 34 IDELR 196, 34 LRP 226 (SEA WA 2001).

⁷⁰ WAC 392-172A-03090(1)(d); 34 CFR § 300.320.

⁷¹ WAC 392-172A-03110(3)(b).

others, the IEP team shall consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.⁷² An FBA is one type of behavioral intervention or strategy that helps identify causative factors and objectionable behaviors.⁷³ As the Ninth Circuit recently held in *Butte Sch. Dist. No. 1 v. C.S.*, 817 F. App'x 321 (9th Cir. 2020):

The IDEA only requires an FBA when a child is removed from his current placement due to problem behaviors. 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).

Id. at 326.

14. A BIP must be included in a Student’s IEP if determined necessary by the IEP team to receive a FAPE. At a minimum, it must describe the pattern of behavior that impedes the student’s learning or the learning of others; the conditions or circumstances that contribute to the pattern of behavior; the positive behavioral interventions and supports that will be used and the skills the student will learn.⁷⁴

Educational Placement

15. WAC 392-172A-02060(1) and (2) require that an IEP team, including the parents, decide the educational placement of a student at least annually after formulating the IEP. The team determines placement based on the Student’s IEP, LRE, probability of the student attaining the IEP goals, and consideration of any potential harmful effect on the student or on the quality of services which he or she needs.⁷⁵

16. The Ninth Circuit has defined educational placement to mean the general educational program of the student.⁷⁶

17. WAC 392-172A-02050 requires school districts to ensure that students who receive special education are served in their LRE. This means students should be

⁷² 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).

⁷³ *J.L. v. Manteca Unified Sch. Dist.*, 2016 U.S. Dist. LEXIS 77441 (E.D. Cal. June 14, 2016); see also *S.J. v. Issaquah Sch. Dist.*, 2007 U.S. Dist. LEXIS 67735 (W.D. Wash. Sept. 12, 2007).

⁷⁴ WAC 392-172A-01031.

⁷⁵ *Clover Park School District*, 122 LRP 46581 (SEA WA 2022).

⁷⁶ *N.D. v. State Dep’t of Educ.*, 600 F.3d 1104, 1116 (9th Cir. 2010).

served “(1) to the maximum extent appropriate in the general education environment with students who are nondisabled; and (2) special classes, separate schooling, or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.”⁷⁷

18. The Ninth Circuit established a 4-part test in *Sacramento City Unified Sch. Dist. V. Rachel H.*, 14 F.3d 1398, 1404 (9th Cir. 1994) to determine whether a student’s placement represents the LRE:

We consider: (1) the academic benefits of placement in a mainstream setting, with any supplementary aids and services that might be appropriate; (2) the non-academic benefits of mainstream placement, such as language and behavior models provided by non-disabled students; (3) the negative effects the student’s presence may have on the teacher and other students; and (4) the cost of educating the student in a mainstream environment. . . . The first factor requires us to analyze the educational benefits available to the child in a regular classroom, supplemented with appropriate aids and services, as compared to the educational benefits of a special education classroom.⁷⁸

19. The IDEA requires school districts to provide students an education in a placement and location that meets a student’s “academic, social, health, emotional, communicative, physical and behavioral needs.”⁷⁹ While every effort is to be made to place a student in the LRE, it must be the LRE which also meets the child’s IEP goals.⁸⁰

Issues for Hearing

20. The issues for the due process hearing are whether beginning November 1, 2025 through February 13, 2026, the District violated the IDEA and denied the Student a FAPE through the following bolded and underlined issues:

⁷⁷ *Id.*; see also, 34 CFR 300.116(b)(2).

⁷⁸ *Ms. S. ex rel. G v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1137 (9th Cir. 2003) (internal quotation marks omitted; citations omitted) (quoting *Sacramento City Unified Sch. Dist. v. Rachel H.*, 14 F.3d 1398, 1404 (9th Cir. 1994)).

⁷⁹ *Ashland Sch. Dist. v. Parents of H.*, 587 F.3d 1175, 1185 (9th Cir. 2009).

⁸⁰ *City of San Diego v. California Special Educ. Hearing Office*, 93 F.3d 1458, 1468 (9th Cir. 1996).

I. Not Developing an IEP and Placement That Allowed the Student to Access School Safely.

April 4, 2025 IEP

21. The Parent alleges that the April 4, 2025, IEP that was in effect on November 1, 2025, did not provide for the Student to access school safely. She stated the IEP, and placement could not protect the Student from injury from other students or account for his needs.⁸¹ The District argued that during the time period at issue the April 4, 2025, IEP did not need to be revised as it was reasonably calculated to enable the Student to progress toward his academic and social and behavioral goals and it demonstrated an amendment or reevaluation was not necessary to provide the Student an opportunity to attend the school safely.⁸²

22. The Student's April 4, 2025, IEP was in effect when the time period at issue began. It included social/behavioral goals in improving the Student's personal safety and learning behaviors in addition to his IEP goals in academics. The social/behavioral goals that were in the Student's IEP were consistent with his initial evaluation indicating he qualified for SDI in the area of social and behavioral needs in addition to academics. The IEP provided 60 minutes per week of SDI in social and behavioral services delivered by a special education teacher in addition to his other SDI services. The IEP was based on behavioral assessment, classroom observation and the Parent's input. The IEP was also based on the Student's present levels of academic and functional performance as identified by the IEP team. Among the IEP identified accommodations to ensure the Student's safety, the IEP included frequent support from a 1:1 while at school and an IA while in the general education setting and specialized transportation. His placement was identified as 40%-79% in the general education setting with the support in the resource room. The related services of SLP and OT support were developed to help the Student with communication with other students and control his body while around others.

23. Based on the information available to the District, the Student's IEP was reasonably calculated to allow him to attend school safely. The District demonstrated that when time period at issue began, an IEP revision was not required for the Student to progress toward his IEP goals. The 1:1 and IA support provided to the Student appeared to be a key factor that successfully helped to redirect the Student in his general education classroom. In addition, the social/behavioral IEP goals were designed so the Student could improve his personal safety and stay safe when he

⁸¹ Parent's Post-Hearing Brief, p. 2.

⁸² District's Post-Hearing Brief, p. 29.

attended school.

24. The District demonstrated that, although the Student exhibited inappropriate behaviors towards peers at times, the Student did not require additional or different supports from what was already in his IEP based on those behaviors. When the Student attended school, the supports in his IEP addressed the specific behaviors he exhibited. The District, therefore, demonstrated that a revision of his IEP and placement was not required.

25. In December 2025, when the Student's behavior indicated a potential need for more support, the District began informally providing increased support and informed the Parent. The District also took steps to amend the Student's IEP to formalize those supports with input from the Parent.

26. With respect to his placement during the time period at issue, the resource room support was designed to provide him with behavioral instruction to learn how to behave appropriately and improve his personal safety. His placement was designed to give him the maximum time appropriate in the general education classroom. The District identified a placement based on his IEP, his LRE, the option that provided him with a reasonably high probability to attain his annual goals, and in consideration of any potential harmful effect on the quality of services he needs. In doing so, it determined his placement consistent with *Rachel H*, and WAC 392-172A-02060(1). The safety issues occurring in November and December 2025, were anticipated by his initial evaluation and did not create a circumstance requiring reevaluation.

27. The Parent's argument that the District did not respond to her concerns about the Student having autism were not persuasive.⁸³ The District considered these concerns when the Student was initially evaluated. It found him eligible for OT support, which allowed school personnel to address the Student's sensory processing differences, and incorporated this support into his IEP. This support was available to school staff during the time period at issue.

February 2, 2026 IEP Amendment

28. On February 2, 2026, the IEP team developed a safety plan for the Student that was attached to his PWN as an amendment to his IEP. The Parent and the Student's family advocate case manager participated in the meeting. The District convened the IEP at the earliest opportunity and consistent with the Parent's request. The plan included check-ins, supervision, and incentives. The District identified the need for an FBA and BIP and a plan to collect data to develop the FBA. These were appropriate

⁸³ See, Parent's Post-Hearing Brief, p. 2.
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steps to address the Student's safety needs. The safety plan provided the Student support from being targeted by other students. The decision to develop an FBA and BIP was an appropriate step to respond to the Student's escalating behavior, and safety needs consistent with WAC 392-172A-01031.

29. The District's decision to collect data and complete an FBA before increasing the Student's services was reasonable. The Student had missed more than half the available school days since November 1, 2025, and more data was needed to complete an FBA. Therefore, the District proved that it did not violate the IDEA when adding a safety plan to the Student's IEP and initiating the FBA process in February 2026, rather than increasing services as the Parent requested.

Summary

30. The District proved the IEP in place from November 1, 2025 through February 13, 2026, was reasonably calculated to enable the Student to make appropriate progress, in light of his circumstances, and provided an opportunity to access school safety. For the period prior to February 2, 2026, when the District amended the Student's IEP to include a safety plan, an IEP revision was not required. When the Student's behaviors in December 2025 indicated the potential need for revision to his behavioral supports and development of a safety plan, the District acted properly to initiate that process and appropriately initiated the process to complete an FBA. A preponderance of the evidence supports the conclusion that the District met its burden of proof and prevailed on this issue.

II. Not Developing an Appropriate BIP.

31. The Parent alleges that the District did not develop an appropriate BIP. The Parent argued that the Student's safety was at risk while attending school as evidenced by the harassment he received from other students, altercations occurring at school, and the injuries he received.⁸⁴ As stated above, the District demonstrated that the behavior supports and placement in the Student's April 4, 2025 IEP and his February 2, 2026, IEP Amendment, were appropriate during the time period alleged. Additionally, in its post-hearing brief the District argued that in December 2025, after the Student demonstrated a pattern of behavioral incidents, it attempted to convene the Student's IEP team to address the Student's behavioral supports and safety needs. The District argued that, after identifying the earliest time the Parent was available, it convened an IEP meeting and initiated the process to develop an FBA and complete a

⁸⁴ Parent's Post-Hearing Brief, p. 6
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BIP for the Student.⁸⁵

32. The Student did not begin attending school until October 20, 2025. He experienced at least two safety incidents by December 4, 2025, which were documented and reported to the Parent. At this point, Wing Luke staff were implementing an informal safety plan. By mid-December 2025, the District had requested the Parent participate in an IEP meeting to formalize the safety plan and begin the FBA process. The District was diligent in seeking this meeting, which was delayed at the Parent's request so that the Student's family advocate case manager could attend.

33. The facts of this case support the conclusion that the District did not unduly delay the process to develop a BIP. When it identified a pattern of behaviors that endangered the Student and others, it took steps to mitigate the risk of harm through an informal safety plan while promptly requesting an IEP meeting with the Parent. The District also took appropriate steps to provide the Parent an opportunity to participate in the process. It was appropriate for the District to seek an FBA with input from the IEP team, including the Parent and the Student's family advocate case manager, before developing a BIP for the Student. The District acted promptly to pursue this process while including the Parent and obtaining her consent to conduct the FBA.

34. Because the District proved, by a preponderance of the evidence, that it did not delay in seeking a BIP after identifying a pattern of unsafe Student behaviors, it met its burden to demonstrate that it did not violate the IDEA with respect to this issue.

III. Not Implementing Adequate Behavioral Supports.

35. The Parent alleges that the District did not implement adequate behavioral supports.⁸⁶ The District argued that all the behavioral services in the Student's IEP were materially implemented.⁸⁷

36. The District provided the Student with the behavioral supports in his IEP including a 1:1 support, shared IA support, and appropriate SDI to allow him to reach his behavioral goals. The Parent believed a safety plan was a support in the Student's IEP beginning November 1, 2025. However, a safety plan was not added to his IEP until February 2, 2026. Prior to that time, the District was implementing the safety plan on an informal basis even though it was not required by the Student's IEP. Once the safety plan was added to the Student's IEP, it was implemented by the District.

⁸⁵ District's Post-Hearing Brief, pp. 35, 36.

⁸⁶ Parent's Post-Hearing Brief, p. 5.

⁸⁷ District's Post-Hearing Brief, p. 35.

37. The Parent's argument that IA services were not provided during the time period at issue was not persuasive. The District demonstrated it provided IA services during the majority of the time period at issue. The short period of time an IA was unavailable to the Student did not result in a material deprivation of IA services.

38. Because the evidence at hearing demonstrated that the District provided the Student the behavioral supports in the Student's IEP, it did not materially fail to implement his IEP. Therefore, a preponderance of the evidence supports the conclusion that the District met its burden to show that it did not violate the IDEA with respect to this issue.

IV. Not Implementing the Educational Services in the Student's IEP as He Was Constructively Denied Access Due to Unsafe Placement Conditions.

39. The Parent alleges the Student was constructively denied access to school and the education services in his IEP were not implemented because the placement the District offered was unsafe.⁸⁸ The District did not specifically address this issue in its post-hearing brief but argued generally that it offered the Student a placement consistent with his LRE and did not deny him access to school.

40. As concluded above, during the time period at issue, the District offered the Student an appropriate placement consistent with his LRE and behavioral supports to maintain his safety. He was not excluded from school during this time. The days the Student did not attend were not due to the fault of the District.

41. Because the District proved that the Student was not denied access to school, it met its burden to show, by a preponderance of the evidence, that it did not violate the IDEA with respect to this issue.

Conclusion

42. The District has shown, by a preponderance of evidence, that it did not violate the IDEA or fail to offer the Student a FAPE as alleged in the issues in this case. All arguments and requests for relief made by the parties have been considered. Arguments not specifically addressed have been considered but are found not to be persuasive or not to substantially affect a party's rights.

43. Because the District has demonstrated it did not violate the IDEA or deny the Student a FAPE, the Parent is not entitled to any relief.

⁸⁸ Parent's Post-Hearing Brief, pp. 8, 9.
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ORDER

1. The Seattle School District proved by a preponderance of the evidence that it did not violate the IDEA or deny the Student an opportunity to receive a FAPE as set forth above.
2. The Parent is not entitled to her requested remedies.

SERVED on the date of mailing.



Paul Alig
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

DECLARATION OF SERVICE

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

Parent

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Dated August 10, 2026, at Spokane Valley, Washington.

Jazmyn Johnson
Representative
Office of Administrative Hearings
16201 E. Indiana Avenue, Suite 3000
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cc: Administrative Resource Services, OSPI