

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Olympia School District

Docket No. 03-2026-OSPI-02843

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

Agency: Office of Superintendent of  
Public Instruction

Program: Special Education

Cause No. 2026-SE-0030

A due process hearing was held before Administrative Law Judge (“ALJ”) Marek E. Falk on May 26, 2026 through May 27, 2026, via videoconference. The Parent of the Student whose education is at issue<sup>1</sup> appeared and was represented by Mary Griffin, attorney at law. The Olympia School District (“District”) was represented by Lynette Baisch, attorney at law. Also present for the District were Ken Turcotte, District Executive Director of Student Support, and April Goodman, District Director of Student Support, Secondary.

**STATEMENT OF THE CASE**

**Procedural History**

Ms. Parent filed a due process hearing request (“Complaint”) on March 9, 2026. The case was assigned to ALJ Falk at the Washington State Office of Administrative Hearings (“OAH”). The District filed a response on April 9, 2026. A prehearing conference was held on April 13, 2026, and ALJ Falk issued a prehearing order on April 13, 2026. The hearing was held from May 26, 2026 through May 27, 2026, as originally scheduled. An order setting the due date for post-hearing briefs was issued on May 27, 2026.

**Due Date for Written Decision**

At Ms. Parent’s request, the deadline for a written decision was extended to 30 days after the record of the hearing closed. The record of the hearing closed on June 26, 2026, at 5:00 p.m., the agreed deadline for the parties to submit their post-hearing briefs. The due date for a written decision is July 26, 2026.

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<sup>1</sup> To ensure confidentiality, names of parents and students are not used.

## **EVIDENCE RELIED UPON**

### **Exhibits Admitted:**

District's Exhibits: D1–D15.

Parent's Exhibits: P1–P3; P9–P10; P12–P14; P22–P26.<sup>2</sup>

### **Witnesses Heard:**

April Goodman, District Director of Student Support, Secondary

Faye LaFond, District School Psychologist

Ken Turcotte, District Executive Director of Student Support

Ms. Parent

Evan Lima, Ph.D., Neuropsychologist

## **ISSUE AND REQUESTED REMEDIES**

The issue for hearing and Ms. Parent's requested remedies, as set forth in the First Prehearing Order dated April 13, 2026, are as follows:

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

1. Providing overly restrictive conditions for evaluation that are not compliant with the child find requirements in WAC 392-172A-02040.

And, whether the Parent is entitled to their requested remedies:

1. Declaratory relief finding that the District violated the IDEA;
2. Declaratory relief that the District denied the Student a FAPE;
3. An order to proceed with an evaluation for special education without engaging in observations of the Student in the family's car for purposes of the evaluation; and

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<sup>2</sup> Citations to the exhibits of record are by party (P for Ms. Parent and D for the District), exhibit number, and page number. For example, a citation to "P2, p1" refers to page 1 of Ms. Parent's Exhibit 2. Citations to the transcript of record are to "T" followed by the page number and the witness's last name (or Parent for Ms. Parent). For example, a citation to "T191 (Parent)" refers to page 191 of the transcript.

4. Such other relief as the administrative law judge concludes is appropriate to adequately provide a FAPE to the Student.

### **FINDINGS OF FACT**

#### **Background**

1. The Student was 14 years old at the time of the due process hearing.<sup>3</sup> She lives with Ms. Parent, her father, and her two siblings.<sup>4</sup>
2. At the time of the hearing, the Student was in eighth grade at Thurgood Marshall Middle School (“Marshall”).<sup>5</sup> She had attended Marshall since her sixth-grade year, and she has attended school in the District since May of her kindergarten year.<sup>6</sup>
3. The Student has been diagnosed with Generalized Anxiety Disorder.<sup>7</sup>
4. In elementary school, the Student received “small group reading and math intervention.”<sup>8</sup>

#### **The Student’s Sixth and Seventh Grade School Years (2023–2024 and 2024–2025)**

5. During the Student’s sixth grade year (2023–2024), the Student’s grades got worse in each of her academic classes between first semester to second semester.<sup>9</sup> Her semester grades dropped in Math (from C- to D+), English Language Arts (from B+ to C+), Science (from C+ to C), and Social Studies (from B- to D+).<sup>10</sup>
6. In March 2024, in the spring of the Student’s sixth grade year, the District conducted a special education evaluation and found the Student ineligible for special education services.<sup>11</sup> Ms. Parent disagreed with this decision.<sup>12</sup>

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<sup>3</sup> D1, p3.

<sup>4</sup> D1, p6; D7, p4, p9.

<sup>5</sup> D1, p3.

<sup>6</sup> D1, p8.

<sup>7</sup> D1, p3; P9, p8–9.

<sup>8</sup> D1, p3.

<sup>9</sup> D1, p9.

<sup>10</sup> D1, p9.

<sup>11</sup> D1, p6; T202 (Parent).

<sup>12</sup> T202 (Parent).

7. During sixth grade, the Student missed 44 full days of school; she missed the equivalent of 56 school days when partially missed days are added to the calculation.<sup>13</sup>

8. After the March 2024 evaluation, the District agreed to fund an independent educational evaluation (“IEE”) for the Student; this was conducted in December 2024 by Dr. Ann Clawson, a licensed psychologist.<sup>14</sup>

9. Dr. Clawson found the Student qualified for a diagnosis of Generalized Anxiety Disorder.<sup>15</sup> She was unable to determine if the Student had a learning disability or if the uneven academic performance she was displaying was entirely the result of her frequent absences from school.<sup>16</sup> Dr. Clawson attributed the Student’s absences to her anxiety.<sup>17</sup> Dr. Clawson advised that the Student’s parents “[a]void picking up [the Student] from school when possible because leaving school reinforces her cycle of avoidance and makes it harder for [her] to learn to self-advocate and implement coping strategies.”<sup>18</sup>

10. In seventh grade (2024–2025), the Student missed 102 full days of school; this number does not include partially missed days.<sup>19</sup> During this school year, she earned no credit for any academic classes, due in large part to her absences.<sup>20</sup>

11. The District has provided the Student with accommodations related to her anxiety under a 504 plan<sup>21</sup> since the spring of 2025.<sup>22</sup>

### **The Student’s Fall Semester, Eighth Grade School Year (2025–2026)**

12. For some of eighth grade, the Student received math assistance in her school’s “LAP math” class, and at the time of the hearing, she was scheduled to receive reading

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<sup>13</sup> D1, p9; P1, p4.

<sup>14</sup> T202 (Parent); P9.

<sup>15</sup> P9, p8–9.

<sup>16</sup> P9, p8–9.

<sup>17</sup> P9, p9.

<sup>18</sup> P9, p12.

<sup>19</sup> D1, p9.

<sup>20</sup> D1, p9–10; P1, p4.

<sup>21</sup> A “504 plan” lists accommodations for a student with a disability. See 29 U.S.C. § 794; 34 CFR Part 104. These plans are under the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 et seq., a federal statute protecting qualified people from discrimination based on their disabilities. A person qualifies for a 504 plan if they have “a physical or mental impairment that substantially limits one or more major life activities,” such as learning, reading, or communicating. 42 U.S.C. §12102(1)(A), (2)(A).

<sup>22</sup> D1, p3; D15, p1 (LaFond declaration).

assistance in the school's "LAP reading" class.<sup>23</sup> These classes provide extra support to students who are also enrolled in general education math or reading classes.<sup>24</sup>

13. The Student's absences continued in the fall of her eighth-grade year (2025).<sup>25</sup> As of October 24, 2025, out of 34 total school days, the Student had attended only 7 full days, having been absent for 17 full days and 10 partial days.<sup>26</sup>

14. In November 2025, in the fall of the Student's eighth grade year, the District conducted another special education evaluation and again found the Student ineligible for special education services.<sup>27</sup> District School Psychologist Faye LaFond was the case manager for the Student's November 2025 evaluation.<sup>28</sup>

15. Ms. LaFond holds an educational specialist degree in school psychology; this degree consists of two years of master degree coursework along with a third year in a supervised internship.<sup>29</sup> Ms. LaFond holds a certificate to work as a school psychologist in Washington State, and she is nationally certified through the National Association of School Psychologists.<sup>30</sup> The 2025–2026 school year was her first year working for the District.<sup>31</sup> Ms. LaFond had four previous years of experience as a school psychologist with the Highline School District.<sup>32</sup>

16. Ms. LaFond was aware of the Student's absences and found that the Student's anxiety was not preventing her from attending school.<sup>33</sup> Ms. LaFond had interviewed the Student on this topic and learned the Student's stated reason for her absences was that "she generally found school to be boring, not interesting; and it made her not really want to be there ... for the full day."<sup>34</sup> Ms. LaFond determined that the Student's anxiety and depression were demonstrated "more significantly at home" than at

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<sup>23</sup> D1, p3; T48 (Goodman); T207 (Parent).

<sup>24</sup> T48 (Goodman).

<sup>25</sup> D1, p9; P12.

<sup>26</sup> D1, p9.

<sup>27</sup> D1.

<sup>28</sup> D15, p1–2 (LaFond declaration).

<sup>29</sup> T100, T164 (LaFond).

<sup>30</sup> T100 (LaFond).

<sup>31</sup> T100 (LaFond).

<sup>32</sup> T100 (LaFond).

<sup>33</sup> D15, p2–3 (LaFond declaration); T103–05 (LaFond).

<sup>34</sup> T105 (LaFond).

school.<sup>35</sup> She also found the Student's absences were the cause of her poor grades, rather than her grades being caused by any learning or cognitive difficulty.<sup>36</sup>

17. Ms. Parent disagreed with the District's eligibility decision in the November 2025 evaluation.<sup>37</sup> The District agreed to fund a second IEE for the Student; this was conducted in December 2025 by Dr. Evan Lima, a pediatric neuropsychologist.<sup>38</sup>

18. Dr. Lima holds a bachelor's degree in psychology, a master's degree in counseling psychology and a doctoral degree (Ph.D.) in clinical psychology.<sup>39</sup> In his doctoral program, he specialized in clinical neuropsychology and clinical child psychology.<sup>40</sup> He is accredited by five different national and international academies related to psychology and to general and pediatric neuropsychology.<sup>41</sup> Dr. Lima has about eight years of experience working as a certified neuropsychologist, along with the equivalent of approximately three years of practical neuropsychology experience during his doctoral program, and he had around five years of experience as a therapist or counselor.<sup>42</sup>

19. Dr. Lima's evaluation found the Student qualified for diagnoses of Generalized Anxiety Disorder with panic attacks and moderate Major Depressive Disorder.<sup>43</sup> He found that she was "experiencing increased levels of emotional dysregulation and, [was] subsequently isolating and withdrawing, which [was] negatively impacting school attendance and performance."<sup>44</sup>

20. Dr. Lima's evaluation noted the Student "portrayed herself as relatively free from the common shortcomings to which most individuals will admit, overall, in a defensive response style" and that this "may have impacted the accuracy of her responses across many areas."<sup>45</sup> He stated that she "presents as defensive and unwilling to reveal or discuss any emotional/internal struggles she is experiencing, while at the same time exaggerating others."<sup>46</sup> Dr. Lima found the Student's self-reporting on two measures to be invalid; one due to many skipped items and many

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<sup>35</sup> D1, p20-21.

<sup>36</sup> D1, p21.

<sup>37</sup> D1, p43; T202 (Parent).

<sup>38</sup> T242-43 (Lima); P10.

<sup>39</sup> P23, p1.

<sup>40</sup> P23, p1.

<sup>41</sup> P23, p19.

<sup>42</sup> P23, p2-10.

<sup>43</sup> P10, p7.

<sup>44</sup> P10, p7.

<sup>45</sup> P10, p5.

<sup>46</sup> P10, p7.

with multiple responses, and the other due to validity indices showing “significant under[-]responding.”<sup>47</sup>

21. Dr. Lima’s evaluation stated that given the Student’s difficulties despite being on a 504 plan, she “would likely benefit from” having an individualized education program (“IEP”).<sup>48</sup> Dr. Lima recommended the District consider including in that potential IEP a decision to “[a]lways keep [the Student] in school, [because] sending a child home when they are feeling depressed and/or anxious can reinforce or increase symptoms.”<sup>49</sup>

22. Dr. Lima’s evaluation also additionally stated,

[The Student]’s neurocognitive abilities are generally at the age-expected range. While there were some weaker areas noted, including but not limited to rote-verbal learning and memory, aspects of executive functions, and verbal reasoning were noted, given the consistent increased levels of emotional dysregulation (i.e. anxiety) and defensiveness, we cannot say for certain whether they are neurocognitive weaknesses or a product of emotional dysregulation.<sup>50</sup>

### **The Student’s Spring Semester, Eighth Grade School Year (2025–2026)**

23. On January 23, 2026, the District’s evaluation team met to review Dr. Lima’s IEE, discuss changes to the Student’s 504 plan, and consider proposing another special education evaluation.<sup>51</sup> By this time, the Student’s attendance had worsened significantly, she frequently left school for the day after second period, and Ms. Parent had reported the Student was having panic attacks related to attending and remaining at school.<sup>52</sup> Ms. Parent picked the Student up when the Student requested it.<sup>53</sup> Given these changes and the recommendation in Dr. Lima’s IEE, the team agreed to propose an evaluation.<sup>54</sup>

24. During the January 23, 2026 meeting, Ms. Parent requested the Student be given a shortened school day with gradual increases until she was attending full school

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<sup>47</sup> P10, p4.

<sup>48</sup> P10, p8.

<sup>49</sup> P10, p8.

<sup>50</sup> P10, p7.

<sup>51</sup> T45–46 (Goodman); D15, p3 (LaFond declaration).

<sup>52</sup> D15, p3 (LaFond declaration); P12; T46 (Goodman); D4, p4–5, p7–8.

<sup>53</sup> T49 (Goodman).

<sup>54</sup> D15, p3 (LaFond declaration); D4, p4–5, p7–8; see P10, p8.

days.<sup>55</sup> Both Dr. Clawson and Dr. Lima had recommended such a plan, to ease the Student's return to full-time school and reduce her anxiety symptoms.<sup>56</sup> The District staff team members were reluctant to make such a decision before they had evaluative data showing this was necessary for the Student to receive educational benefit, but agreed to this to induce Ms. Parent to consent to a third evaluation.<sup>57</sup>

25. The District's prior written notice ("PWN") for the January 23, 2026 meeting was dated January 26, 2026.<sup>58</sup> It states:

The evaluation will include a review of existing data, including all data considered as part of the evaluation completed in November 2025, additional assessment data in the area of Adaptive skills, information obtained from [the Student]'s counselor via release, and observations of school avoidance behaviors in the settings where the behavior is occurring. At the request of parent's counsel, the evaluation will include data showing time that [the Student] has spent in class and time spent in other locations at school (restorative room, counselor's office, library).<sup>59</sup>

26. The January 26, 2026 PWN also states:

[T]o obtain parent's consent for evaluation, the District agreed to adopt a shortened school day during the time period that the initial evaluation is pending. Upon receipt of written parent consent for the proposed evaluation, [the] Student's school day will be shortened to end after third period. An additional period of the school day will be added every two weeks.

If consent for evaluation is withdrawn, this temporary accommodation will end and [the Student] will be expected to return to a full day of school, as the District will not have the opportunity to complete an evaluation to determine whether a shortened school day is appropriate.<sup>60</sup>

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<sup>55</sup> D4, p7-8.

<sup>56</sup> P9, p10; P10, p8-9.

<sup>57</sup> D4, p7-8; T47 (Goodman).

<sup>58</sup> D4, p7.

<sup>59</sup> D4, p7.

<sup>60</sup> D4, p8 (paragraph break added to improve legibility).

27. Ms. LaFond was again the case manager for the Student's evaluation proposed in January 2026.<sup>61</sup> On January 26, 2026, Ms. LaFond sent Ms. Parent an email with the January 26, 2026 PWN and a consent form for the new evaluation.<sup>62</sup> The consent form explained the proposed evaluation as follows:

The evaluation will include observations of school avoidance behaviors in the settings where the behavior is occurring; behavior is currently reported to occur during morning drop-off/transition into the school building at the start of the school day, at home before leaving for school, and during the transition to 6th period. [The Student] will need to attend school for the full duration of the shortened schedule referenced in the attached prior written notice, without being picked up early (see [January 26, 2026] PWN).

28. Ms. Parent responded to Ms. LaFond on January 26, 2026 with concerns about the Student's wellbeing during the observations.<sup>63</sup> Ms. LaFond responded to this email on January 27, 2026.<sup>64</sup> She stated that the observations would be conducted "with a school psychologist who is up to date with trauma informed practices."<sup>65</sup> She described multiple coping techniques the Student found helpful, and she stated the school counselor would be on call if the Student needed help or support.<sup>66</sup>

29. Ms. Parent signed the consent form and marked the box indicating she gave consent for the Student to be evaluated.<sup>67</sup> She crossed out the form's content explaining the proposed evaluation, from which the District inferred Ms. Parent had not given consent for the District's proposed evaluation.<sup>68</sup> Ms. Parent considered an observation in her home to be a violation of her privacy and the Student's privacy.<sup>69</sup> Based on previous experiences with school staff coming out to Ms. Parent's car and the Student's emotional distress appearing to increase, Ms. Parent did not want observation to occur in the car, to protect the Student from difficult feelings.<sup>70</sup>

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<sup>61</sup> D15, p1–2 (LaFond declaration).

<sup>62</sup> D15, p3 (LaFond declaration); see D4.

<sup>63</sup> D5, p2–3.

<sup>64</sup> D5, p1.

<sup>65</sup> D5, p1.

<sup>66</sup> D5, p1.

<sup>67</sup> D6, p9.

<sup>68</sup> T50 (Goodman).

<sup>69</sup> T198–99 (Parent).

<sup>70</sup> T199 (Parent).

30. On the consent form, replacing the District's proposed description, Ms. Parent wrote the following content in the space for parental suggestions for consideration:

1. The School District staff may engage in observations of the student's behavior in the classroom and upon exit or entrance from or to any vehicles and approach to the school. The School District staff will not engage in observations at the family home or in the family car.
2. The School District will include behavioral data provided by school staff concerning incidents of crying or possible anxiety or panic which they have already observed. Please see attached list provided by the Parent.
3. The School District will consider new information from the recent IEE.
4. The School District will consider information from attached letter from the Student's primary care provider concerning the inappropriateness of additional observations, as well as the need for specially designed instruction and related services.
5. The School District will consider the Student's attendance records, including the number of days that the Parent notified the School District that the Student was absent due to mental health concerns.<sup>71</sup>

31. In returning the Ms. Parent's consent form on January 28, 2026, Ms. Parent's attorney also sent items to be considered in the evaluation: a letter from the Student's medical provider recommending special education services and a list of the Student's panic attack events that Ms. Parent believed school staff had observed.<sup>72</sup>

32. April Goodman, the District's Director of Student Support, Secondary, is the assigned administrator for the Student when special education services are being considered for her.<sup>73</sup> As of the date of the hearing, Ms. Goodman had held her current role for one-and-one-half years, and previously she had about six-and-one-half years of experience as an occupational therapist.<sup>74</sup> She has completed a master's degree in occupational therapy and a second master's degree in educational leadership.<sup>75</sup> She

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<sup>71</sup> D6, p9; see T50 (Goodman).

<sup>72</sup> D6, p2-8.

<sup>73</sup> T40 (Goodman).

<sup>74</sup> T38-39 (Goodman).

<sup>75</sup> T39 (Goodman).

holds a principal's certification and is also currently certified to work as a school administrator in Washington State.<sup>76</sup>

33. Ms. Goodman researched 11 of the 13 panic attack incidents listed by Ms. Parent.<sup>77</sup> She tried to look into all 13 incidents, but she assumed the three 2024 dates were intended to be from events in 2025, but two of the listed dates did correctly refer to events in 2024.<sup>78</sup> Ms. Goodman found no information about the earliest two events, from September and November 2024, because she looked into the wrong dates.<sup>79</sup>

34. Ms. Goodman's research did not identify any staff members who had observed the Student having a panic attack that prevented her from attending school or remaining at school.<sup>80</sup> Had Ms. Goodman located someone, Ms. LaFond would have interviewed that person as part of the evaluation.<sup>81</sup>

35. During the hearing, Ms. Parent offered two rebuttal exhibits consisting of two email threads from September and November 2024, regarding the two events that Ms. Goodman had not researched, as Ms. Parent was unaware the District had not spoken to the teacher involved until after the exhibit exchange deadline.<sup>82</sup> These threads consisted of two emails from Ms. Parent to one of the Student's teachers, Jayme Fierro, regarding incidents the Student had told Ms. Parent about.<sup>83</sup> Each email had a response from Ms. Fierro explaining her knowledge of the incident.<sup>84</sup> The September 2024 incident arose from the Student not knowing where to sit and being upset after being confronted by other students whose assigned seats she had tried to sit in.<sup>85</sup> The November 2024 incident was described by Ms. Fierro as the Student being "just overwhelmed" and "in tears" after social interactions that were too much for her.<sup>86</sup>

36. Ken Turcotte is the District's Executive Director of Student Support and Special Education.<sup>87</sup> He has 10 years of experience in his present role and 30 years of experience in education.<sup>88</sup> He has worked for schools as a speech language

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<sup>76</sup> T39–40 (Goodman).

<sup>77</sup> T51–65 (Goodman); D7; see D6, p7–8.

<sup>78</sup> D7, p1; T51–65 (Goodman); T218, 222 (Parent); see P25; P26.

<sup>79</sup> D7, p1, T51–65 (Goodman); T218, 222 (Parent).

<sup>80</sup> T51–65 (Goodman); D15, p6–7 (LaFond declaration); D8, p2.

<sup>81</sup> D15, p6 (LaFond declaration).

<sup>82</sup> See P25; P26; D7, p1.

<sup>83</sup> See P25; P26.

<sup>84</sup> See P25; P26.

<sup>85</sup> P26.

<sup>86</sup> P25.

<sup>87</sup> T167 (Turcotte).

<sup>88</sup> T167 (Turcotte).

pathologist and as a board certified behavior analyst (“BCBA”).<sup>89</sup> He has completed bachelor’s and master’s degrees in speech language pathology, a JD (a law degree), and the coursework and a 1500 hour supervised practicum to become a BCBA.<sup>90</sup> Mr. Turcotte’s experience as a BCBA trained him in evaluating students’ behaviors interfering with their ability to access their education.<sup>91</sup>

37. Mr. Turcotte is familiar with the Student because he is the District’s 504 plan coordinator.<sup>92</sup> He has also been aware of the process regarding the District’s proposed special education evaluation of the Student, though Ms. Goodman has primary administrative responsibility over that.<sup>93</sup>

38. Mr. Turcotte explained that in special education evaluations, observation of a student’s problematic behavior was important not only to understand the behavior itself, but also “the context within which that behavior occurs.”<sup>94</sup> It is important to identify the context and events occurring immediately before the behavior, along with the consequences of the behavior.<sup>95</sup> “Potential reinforcing contingencies<sup>96</sup> ... might ... perpetuate the behaviors.”<sup>97</sup> Observation can help the team determine “what is initiating the behavior, what is sustaining the behavior and what environmental manipulations might be at [the evaluation team’s] disposal.”<sup>98</sup>

39. Observation of problematic behavior is the best way for evaluators to assess how to manipulate the environment and the context, so that perhaps through program modifications or accommodations, a school district may be able to craft ways to “obviate the potential need for a student to engage in [the] behavior.”<sup>99</sup> Without observation, Mr. Turcotte cannot know with certainty whether the Student’s behavior

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<sup>89</sup> T167 (Turcotte).

<sup>90</sup> T167 (Turcotte).

<sup>91</sup> T167–68 (Turcotte).

<sup>92</sup> T171 (Turcotte).

<sup>93</sup> T170–71 (Turcotte).

<sup>94</sup> T168 (Turcotte).

<sup>95</sup> T168 (Turcotte).

<sup>96</sup> A “reinforcing contingency” is “something that occurs, something that’s added to an environment – whether that’s attention, a tangible, ...[or] a feeling, something that didn’t exist before the behavior occurred – that comes into play after the behavior occurs and makes it more likely that that behavior will occur again in the future.” T169–70 (Turcotte).

<sup>97</sup> T168 (Turcotte).

<sup>98</sup> T168 (Turcotte).

<sup>99</sup> T168–69, T171–73 (Turcotte).

in leaving school is “more motivated by accessing home attention or more motivated by escaping or avoiding a challenging setting.”<sup>100</sup>

40. Observation is also needed to determine whether a student engaging in problematic behavior needs to learn new skills, such as “self-regulation techniques,” to be able to participate in school.<sup>101</sup>

41. Ms. LaFond found that the information from Ms. Goodman’s investigation and from the November 2025 evaluation was insufficient to provide the data needed to conduct the evaluation.<sup>102</sup> The District could not use Ms. Parent’s modified consent form to conduct the evaluation because that would not allow for the observation of the Student’s ability to access school when Ms. Parent did not pick her up on demand.<sup>103</sup> Ms. LaFond explained that to be “complete or appropriate,” the evaluation required observation data to determine whether the Student needed specially designed instruction (“SDI”) and to determine specific interventions that would effectively address the Student’s school avoidance behaviors.<sup>104</sup> It also required being able to try helping the Student use different coping strategies so the team could find appropriate supports for her.<sup>105</sup>

42. On February 4, 2026, Ms. LaFond emailed Ms. Parent a PWN informing Ms. Parent that the District refused to change its proposed evaluation to comply with Ms. Parent’s deletion of the District’s proposed evaluation steps.<sup>106</sup> The PWN, dated February 4, 2026, explained the District needed observation data of the Student’s school avoidance behavior in a school setting and confirmed the District was ready to proceed with the evaluation if it received consent from Ms. Parent for the proposed evaluation.<sup>107</sup> It stated, “[o]bservations will be conducted by a school psychologist with up to date knowledge of trauma informed practices and support available for the student if signs of distress are observed.”<sup>108</sup>

43. Ms. Parent filed the Complaint in this matter on March 9, 2026. On March 23, 2026, Ms. Parent, her attorney, and the District’s evaluation team held a resolution

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<sup>100</sup> T173–74 (Turcotte).

<sup>101</sup> T172–73 (Turcotte).

<sup>102</sup> D15, p7 (LaFond declaration); T171–72 (Turcotte).

<sup>103</sup> D15, p7–8 (LaFond declaration); T68 (Goodman).

<sup>104</sup> D15, p7 (LaFond declaration).

<sup>105</sup> D15, p7–8 (LaFond declaration).

<sup>106</sup> D15, p6 (LaFond declaration); see D8.

<sup>107</sup> D8, p2–3.

<sup>108</sup> D8, p3.

meeting regarding this matter.<sup>109</sup> At Ms. Parent's attorney's request, the team agreed to obtain additional data by using the School Refusal Assessment Scale ("SRAS-R") and by reviewing the amount of time the Student had spent in class as opposed to other school locations.<sup>110</sup> Given Ms. Parent's objections to other proposed observation locations, the team also agreed to limit its first observation to be of the Student "during transition to a nonpreferred class."<sup>111</sup>

44. During the resolution meeting, the District's team members told Ms. Parent that for the District to have the necessary observational data, Ms. Parent must not pick up the Student early.<sup>112</sup> This was repeated in the PWN for this meeting, dated March 23, 2026, which stated, "[t]his [observation] will require the parent's cooperation in allowing the student to remain at school rather than picking up the student upon student request."<sup>113</sup>

45. The March 23, 2026 PWN also stated, "[o]bservation in all settings in which school refusal is reported to occur will continue to be offered as part of this evaluation, but will not be conducted at this time unless the parent becomes willing to allow observation in those settings."<sup>114</sup>

46. Ms. LaFond sent Ms. Parent the District's revised proposed consent form on March 23, 2026, and received Ms. Parent's signed form the same day.<sup>115</sup> She told Ms. Parent she would observe the Student on March 25, 2026.<sup>116</sup>

47. As planned, Ms. LaFond observed the Student on March 25, 2026, from the end of the Student's second period through some or all of third period.<sup>117</sup> The Student participated appropriately in her second period choir class, then went to the lobby of the main office.<sup>118</sup> She told Ms. LaFond that she did not plan to attend her third period class and that she was waiting for Ms. Parent to pick her up.<sup>119</sup> Ms. LaFond spoke with the Student for some time about various topics.<sup>120</sup> The Student spoke with Principal

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<sup>109</sup> T66–67 (Goodman); D9, p3.

<sup>110</sup> T67 (Goodman); D9, p3.

<sup>111</sup> D9, p3; T67–68 (Goodman).

<sup>112</sup> T68 (Goodman); see D9, p3.

<sup>113</sup> D9, p3.

<sup>114</sup> D9, p3.

<sup>115</sup> D9, p1–2; P22, p1–2; D15, p8 (LaFond declaration).

<sup>116</sup> D15, p8 (LaFond declaration).

<sup>117</sup> D15, p6 (LaFond declaration); D10, p1–3.

<sup>118</sup> D10, p1.

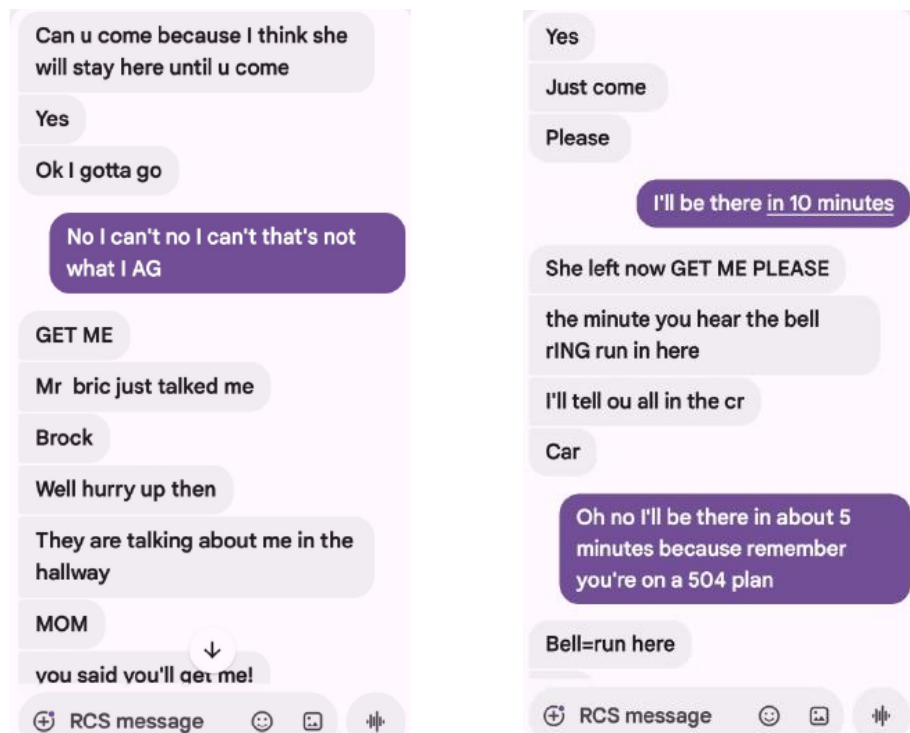
<sup>119</sup> D10, p1.

<sup>120</sup> D10, p1–3.

Anthony Brock during this time and told him she had not reached out to Ms. Parent, but that she expected Ms. Parent would pick her up as she routinely did.<sup>121</sup>

48. Ms. LaFond observed no signs or symptoms of a panic attack or “acute anxiety” during her conversation with the Student.<sup>122</sup> Ms. LaFond found that the Student “remained calm and well-regulated.”<sup>123</sup> This led her to conclude the Student could stay on campus during non-preferred classes, perhaps with “incremental, supported re-entry into” those classes, possibly using “scaffolded exposure and alternate in-building supports.”<sup>124</sup>

49. After the observation, Ms. Parent emailed Ms. LaFond to report her belief that the Student had been in a “heightened state of anxiety and panic” during her conversation with Ms. Lafond, as shown by the Student’s texts to Ms. Parent during that time.<sup>125</sup> The below images show the text exchange, with the Student’s texts on the left of the phone screen, and the earlier texts in the image on the left.<sup>126</sup>



<sup>121</sup> D10, p1; see D1, p1; D11, p3-4.

<sup>122</sup> D15, p9 (LaFond declaration).

<sup>123</sup> D10, p2.

<sup>124</sup> D10, p3.

<sup>125</sup> D11, p1-4.

<sup>126</sup> D11, p3-4.

50. The Student's texts to Ms. Parent show that during the conversation with Ms. LaFond, both before and after she spoke with Mr. Brock, the Student repeatedly asked Ms. Parent to pick her up, using a certain degree of urgency or impatience.<sup>127</sup> Ms. Parent initially stated she could not, but eventually agreed after the Student made several requests and wrote "[t]hey are talking about me in the hallway."<sup>128</sup> The texts appear to show Ms. Parent did not pick the Student up until after the bell rang to signal the end of third period.<sup>129</sup>

51. Regarding the day of the observation, Ms. Parent had not told the Student in advance that she would pick her up before third period ended.<sup>130</sup> She understood that the District had told her to pick the Student up after third period.<sup>131</sup>

52. On an unknown date around March or April 2026, Ms. LaFond administered the SRAS-R (School Refusal Assessment Scale) to the Student.<sup>132</sup> The SRAS-R is a non-standardized questionnaire that helps identify the contributing influences on a student's school avoidance.<sup>133</sup> Understanding the reasons why a student avoids school can inform the understanding of how to support the student and improve their attendance.<sup>134</sup>

53. The SRAS-R rates a student's responses to be assigned one of four reasons, or functions.<sup>135</sup> The Student's SRAS-R results show two functions had similar scores that were higher than the other two functions.<sup>136</sup> The highest scoring function was "avoidance of negative affectivity."<sup>137</sup> This "means that school avoidance enables [the] Student to avoid negative emotional experiences[,] such as anxiety."<sup>138</sup> The second highest scoring function, only one point below the first, was "pursuit of attention."<sup>139</sup> This shows "that school avoidance enables [the] Student to receive desired parental attention."<sup>140</sup>

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<sup>127</sup> D11, p3-4.

<sup>128</sup> D11, p3-4.

<sup>129</sup> D11, p4.

<sup>130</sup> T320 (Parent).

<sup>131</sup> T319-20 (Parent).

<sup>132</sup> T142-43 (LaFond); D15, p12 (LaFond declaration); see D13.

<sup>133</sup> D15, p12 (LaFond declaration).

<sup>134</sup> T143 (LaFond).

<sup>135</sup> T143 (LaFond); see D13.

<sup>136</sup> D13; T143 (LaFond).

<sup>137</sup> D13; T143 (LaFond); D15, p12 (LaFond declaration).

<sup>138</sup> D15, p12 (LaFond declaration); T143-44 (LaFond).

<sup>139</sup> D13; T144 (LaFond); D15, p12 (LaFond declaration).

<sup>140</sup> D15, p12 (LaFond declaration); T144 (LaFond).

54. With these two functions scoring similarly, the SRAS-R alone cannot identify the most important, primary motivation for the Student's behavior.<sup>141</sup> To gain this information and properly evaluate the Student, further observation is needed.<sup>142</sup> For an effective observation, the "potential contingency" of being picked up by Ms. Parent must be removed to understand "how the [S]tudent then performs in the otherwise challenging situation."<sup>143</sup> The District will also need to understand and perhaps correct for other identifiable variables, including "the environment in the classroom, [such as] the teacher, the students, the location, [and] the time of day."<sup>144</sup>

55. Simply knowing the Student's anxiety diagnosis, her behavior of school avoidance, and her scores on the SRAS-R are insufficient for the District to conduct an evaluation or devise potential accommodations or modifications.<sup>145</sup> Without having more information, the District cannot understand what accommodations or modifications might help the Student improve her school attendance.<sup>146</sup> A better understanding of the causes and potential solutions for the Student's difficulties will allow the District to "mak[e] an ultimate determination on how to address the behavior."<sup>147</sup>

56. In an email on April 1, 2026, Ms. LaFond told Ms. Parent that the evaluation team wanted to hold another observation, stating,

To address this, we would like [the Student] to remain at school beyond second period; however, if she does not attend her third period class, she would be supported in an alternate location within the building to work on class materials. This approach is intended to provide a structured and supportive setting while allowing the team to gather important information about [the Student]'s needs and to identify what strategies may be effective for her within the school environment. We can be prepared to do this on Monday April 13th, or if you would prefer that she remain at school on a different day, please let me know.<sup>148</sup>

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<sup>141</sup> See T173, T175 (Turcotte); D15, p12 (LaFond declaration).

<sup>142</sup> See D15, p12–13 (LaFond declaration); T173, T175 (Turcotte).

<sup>143</sup> T175 (Turcotte); D15, p12–13 (LaFond declaration); see T145 (LaFond).

<sup>144</sup> T175 (Turcotte).

<sup>145</sup> D15, p12–13 (LaFond declaration); T173, T175 (Turcotte).

<sup>146</sup> See D15, p12–13 (LaFond declaration); T173, T175 (Turcotte); T292–96 (Lima).

<sup>147</sup> T175 (Turcotte); see T292–96 (Lima).

<sup>148</sup> D12, p2–3.

57. Ms. Parent responded to Ms. LaFond on April 1, 2026.<sup>149</sup> Citing to the previous observation, the two IEEs, the medical provider's letter, the SRAS-R, other questionnaires and data, and the Student's continued school avoidance, Ms. Parent asserted "sufficient and consistent information already exists to support an eligibility determination."<sup>150</sup> She further stated that a second observation not occurring in the nonpreferred class might not "yield meaningful data" and that a second observation would "subject[ the Student] to repeated distress" unnecessarily.<sup>151</sup> She concluded that she "believe[d] the evaluation should proceed using the data already available."<sup>152</sup>

58. On April 13, 2026, the District issued a PWN refusing to continue the Student's special education evaluation.<sup>153</sup> The District's action was described as the following:

Parent has refused to make the [S]tudent available for observations to gather data that is necessary to determine [the Student]'s eligibility for special education and the contents of an IEP. Parent's refusal to allow the District to complete necessary evaluative activities constitutes a condition placed on the District's proposed evaluation that would make it impossible for the District to complete an appropriate evaluation. Parent's refusal to make the student available for observation therefore functions as a refusal of consent. The District is therefore discontinuing the evaluation.

If Parent becomes willing to provide consent for the proposed evaluation, including all necessary evaluative activities proposed by the District, the District will again proceed with the evaluation.<sup>154</sup>

## **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

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<sup>149</sup> D12, p1-2.

<sup>150</sup> D12, p1-2.

<sup>151</sup> D12, p1-2.

<sup>152</sup> D12, p2.

<sup>153</sup> D14, p4-5.

<sup>154</sup> D14, p4 (paragraph break added to improve legibility).

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.<sup>155</sup> In a special education due process hearing, the burden of proof is a preponderance of the evidence.<sup>156</sup>

### **Acceptance of Post-Hearing Briefs**

3. Regarding the parties’ post-hearing briefs, the April 13, 2026 Prehearing Order set the brief’s length at 25 pages, their deadline at 5:00 p.m. and a requirement of a table of contents for briefs longer than 20 pages. The parties confirmed their acceptance of these requirements at the close of the hearing. These requirements were restated in the May 27, 2026 Order Setting Due Date for Post-Hearing Briefs.

4. The District’s post-hearing brief was 28 pages long and lacked a table of contents. Ms. Parent’s brief was submitted to OAH at 5:08 p.m., due to asserted technical difficulties.

5. No prejudice to either party is apparent. First, neither party objected to the acceptance of the other party’s brief. Additionally, Ms. Parent’s attorney stated she served the District on time. Finally, Ms. Parent’s brief is 17 pages long, showing she most likely would not have benefitted from receiving an extension of the page limit, had the District requested one.

6. For these reasons, the ALJ accepted and reviewed both briefs in their entirety.

### **Evidentiary Ruling on Rebuttal Evidence**

7. Ms. Parent offered Exhibits P25 and P26 into evidence during the first day of hearing. These exhibits were not included among Ms. Parent’s proposed exhibits that were exchanged five business days before the hearing. Both exhibits are email threads consisting of two emails; each thread has one email from Ms. Parent to Ms. Fierro regarding the Student’s emotional distress during the previous day, and one response from Ms. Fierro to Ms. Parent. Exhibit P25’s emails are both dated November 14, 2024. Exhibit P26’s emails are both dated September 19, 2024. Ms. Parent offered these exhibits in rebuttal because she learned after the exhibit exchange deadline that

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<sup>155</sup> RCW 28A.155.260(1).

<sup>156</sup> RCW 28A.155.260(3).

Ms. Goodman had not investigated the incidents referred to in those exhibits and had not spoken to any District staff who had observed the Student's emotional distress.<sup>157</sup>

8. The District objected to the admission of these exhibits, arguing that as Ms. Parent did not have the burden of proof, she could not offer evidence in rebuttal, and asserting that she had the right to prohibit the exhibits under the IDEA's five business-day rule.<sup>158</sup>

9. The ALJ ruled during the hearing that the exhibits would be admitted as rebuttal evidence. He stated that the exhibits satisfied the requirements for rebuttal evidence, and he cited to his duty under RCW 34.05.449(2) to allow "all parties the opportunity to ... submit rebuttal evidence" as "necessary for full disclosure of all relevant facts and issues." Regarding the five business-day rule, he stated the typical remedy for untimely documents in OAH's OSPI hearings was to allow the opposing party the time they needed to compensate for the lack of notice. The ALJ offered the District's attorney the time she needed; she twice stated that she only needed two minutes and after taking time to review the emails, declined any additional time.

10. Due to the ALJ's error, his ruling initially occurred off the record, but the entire discussion was digitally recorded by the ALJ. In making a record of the ruling and the District's objection, the District's attorney asked the ALJ to address his ruling in a written decision. She asked that he explain why he relied on Chapter 10-08 WAC despite it being circumvented by WAC 392-172A-05100(6) when considering the timelines of WAC 392-172A-05110. The ALJ did not refer to or rely on Chapter 10-08 WAC in his oral ruling and will not rely on it in explaining his ruling below.<sup>159</sup>

11. Rebuttal evidence is admitted to allow a party to rebut a new, unanticipated matter presented by the opposing party.<sup>160</sup> A party may not strategically or negligently withhold evidence to introduce it during the proceeding as rebuttal evidence; it must be offered in response to new, unexpected information.<sup>161</sup>

12. The Washington State Administrative Procedures Act ("APA"), which governs administrative hearings in the state, provides:

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<sup>157</sup> See D7, p1 (Ms. Goodman's notes about the incidents reported by Ms. Parent in Exhibit D6, p7).

<sup>158</sup> See WAC 392-172A-05100(1)(c); 34 CFR § 300.512(a)(3).

<sup>159</sup> The audio recording of the off-the-record discussion and ruling begins at 2:00:02 on the recording entitled "Hearing Day 2, all." The parties may access this recording through OAH's participant portal.

<sup>160</sup> *State v. White*, 74 Wn.2d 386, 394, 444 P.2d 661 (1968).

<sup>161</sup> *Id.*

To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence[.]<sup>162</sup>

13. The Federal Rule of Civil Procedure (“FRCP”) 26 provides for late disclosure when the purpose of the late-proffered item is for impeachment or rebuttal purposes.<sup>163</sup> Most of the provisions of FRCP 26 state that the court may modify the timelines found in the rules.<sup>164</sup>

14. Both the federal and the state regulations implementing the IDEA provide that a party in a special education hearing

[H]as the right to ... [p]rohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing[.]<sup>165</sup>

15. *Blue Springs R-IV School District* addresses the intersection of the IDEA’s five business-day rule and the general admission rules for previously undisclosed rebuttal exhibits.<sup>166</sup> In that case, a school district witness testified that during the development of the IEP, the parents’ expert proposed only a few items to be included in it.<sup>167</sup> The parents then offered the expert’s notes that showed the expert had requested more items to be included.<sup>168</sup> During the hearing, the presiding commissioner excluded the notes based on the five business-day rule.<sup>169</sup> However, in their written decision, the commissioner admitted the notes for rebuttal purposes, stating:

Upon reconsideration, we reverse our ruling. After researching the issue, we have found no case law that would prohibit the introduction of rebuttal evidence in IDEA cases, notwithstanding the rule set forth in 34 CFR 300.512(a)(3) [the five business-day rule].<sup>170</sup>

16. In this matter, it is concluded that Ms. Parent’s rebuttal exhibits should be admitted. The exhibits were properly submitted in rebuttal because Ms. Parent did not

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<sup>162</sup> RCW 34.05.449(2).

<sup>163</sup> FRCP 26(a)(1)(A)(i, ii); FRCP 26(a)(2)(D)(ii); FRCP 26(a)(3)(A).

<sup>164</sup> See FRCP 26.

<sup>165</sup> WAC 392-172A-05100(1)(c); see 34 CFR § 300.512(a)(3).

<sup>166</sup> See *Blue Springs R-IV Sch. Dist.*, 63 IDELR 272 (SEA MO 2014).

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*; accord *Seattle Sch. Dist.*, 116 LRP 50568 (WA 2016).

know until receiving the District's exhibits that the District investigated the wrong dates for two past incidents, despite having been provided the correct years.<sup>171</sup> Under the state APA, the ALJ must create a complete record and allow both parties to rebut evidence.<sup>172</sup> Under FRCP 26, disclosures in rebuttal are required later than initial disclosures, and the court has the authority to create its own deadlines.<sup>173</sup> The District expressed no specific prejudice it faced, relying instead on its right to prohibit late evidence under the IDEA's five-day disclosure rule, and it was provided all the time it requested to react to the late submissions.<sup>174</sup> Finally, the on point cases identified that address this issue concluded late rebuttal evidence is permitted in IDEA cases.<sup>175</sup>

17. Consequently, the oral evidentiary ruling admitting Ms. Parent's rebuttal exhibits will not be disturbed.

### **The IDEA and FAPE**

18. 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."<sup>176</sup>

19. 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.<sup>177</sup> The first question is whether the state has complied with the procedures set forth in the IDEA.<sup>178</sup> The second question is whether the individualized education program developed under these procedures is reasonably calculated to enable the child to receive educational benefits.<sup>179</sup> "If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more."<sup>180</sup>

20. Procedural safeguards are essential under the IDEA, particularly those that protect parents' right to be involved in the development of their child's educational

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<sup>171</sup> See *White*, 74 Wn.2d at 394.

<sup>172</sup> See RCW 34.05.449(2).

<sup>173</sup> See FRCP 26.

<sup>174</sup> WAC 392-172A-05100(1)(c); see 34 CFR § 300.512(a)(3).

<sup>175</sup> See *Blue Springs R-IV Sch. Dist.*, 63 IDELR 272; *Seattle Sch. Dist.*, 116 LRP 50568.

<sup>176</sup> *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-01, 102 S. Ct. 3034 (1982).

<sup>177</sup> *Id.* at 206-07.

<sup>178</sup> *Id.* at 206.

<sup>179</sup> *Id.* at 206-07.

<sup>180</sup> *Id.* at 207.

plan.<sup>181</sup> 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.<sup>182</sup>

**Whether the District violated the IDEA and denied the Student FAPE by providing overly restrictive conditions for evaluation that are not compliant with the child find requirements in WAC 392-172A-02040.**

21. Ms. Parent's issue alleges that the District failed to meet its "child find" obligations by not proceeding with its special education evaluation of the Student without observing her under certain conditions.

22. Ms. Parent argues that the District has enough information to complete its evaluation.<sup>183</sup> The District asserts it cannot determine a need for SDI or identify appropriate interventions for behavior that District staff have never observed.<sup>184</sup>

#### *Child Find Requirements*

23. The IDEA requires school districts to "conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability."<sup>185</sup>

#### *Relevant Special Education Evaluation Requirements*

24. Evaluations must comply with the requirements in Chapter 392-172A WAC.

25. In conducting the evaluation, a "group of qualified professionals selected by the school district must ... [u]se a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent ...."<sup>186</sup> The group must "[n]ot use any

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<sup>181</sup> *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001).

<sup>182</sup> 20 USC §1415(f)(3)(E)(ii); WAC 392-172A-05105(2); 34 CFR §300.513(a)(2).

<sup>183</sup> Parent's Post Hearing Brief, p2 ("Parent's Brief").

<sup>184</sup> District's Post Hearing Brief, p1 ("District's Brief").

<sup>185</sup> WAC 392-172A-02040(1).

<sup>186</sup> WAC 392-172A-03020(2)(a); see 34 CFR §300.304(b)(1).

single measure or assessment as the sole criterion” to decide a student’s eligibility or educational programming.<sup>187</sup> Additionally, the group must “[u]se technically sound instruments that may assess the relative contribution of” physical, cognitive, developmental, and behavioral factors.<sup>188</sup>

26. To conduct an evaluation, the team must consider “existing evaluation data on the student.”<sup>189</sup> This must include “[e]valuations and information” submitted by the parents; “current classroom-based, local, or state assessments[;] ... classroom-based observations[,] and ... observations by teachers and related services providers.”<sup>190</sup> When school avoidance is keeping a student from attending school, observation in the home may be appropriate.<sup>191</sup> The team must also determine if additional assessments or measures are needed to collect sufficient data to decide if a student is eligible for special education services, whether a “student is eligible for special education services,” and which services they require.<sup>192</sup>

27. While the IDEA states that school districts must consider a parent’s IEE in making decisions related to special education services for a student, “it does not require a school district to adopt the conclusions of such an evaluation.”<sup>193</sup> Additionally, a school district may not “abdicate its affirmative duties under the IDEA” to evaluate a student by relying solely on a privately obtained evaluation instead of conducting its own evaluation.<sup>194</sup>

28. If parents want their children to receive special education, “they are obliged to permit [the] testing” and observation that the IDEA requires.<sup>195</sup>

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<sup>187</sup> WAC 392-172A-03020(2)(b); see 34 CFR §300.304(b)(2).

<sup>188</sup> WAC 392-172A-03020(2)(c); see 34 CFR §300.304(b)(3).

<sup>189</sup> WAC 392-172A-03025(1); see 34 CFR §300.305(a)(1).

<sup>190</sup> WAC 392-172A-03025(1)(a-c); see 34 CFR §300.305(a)(1)(i, ii).

<sup>191</sup> See *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d 1073, 1080 (8th Cir. 2020) (holding a school district’s failure to observe a chronically absent, school avoidant student outside of school made its special education evaluation “insufficiently informed and legally deficient.”); *Rodriguez v. Indep. Sch. Dist. of Boise City*, No. 1:12-cv-00390-CWD, 2014 U.S. Dist. LEXIS 42719, at \*36–43 (D. Idaho Mar. 28, 2014) (holding a district denied a student FAPE when refusing to evaluate him for homebound services though he was too anxious to return to his school after experiencing discipline there).

<sup>192</sup> WAC 392-172A-03025(2)(a)(i), (4); see 34 CFR §300.305(a)(2).

<sup>193</sup> *Michael P. v. Dep’t of Educ.*, 656 F.3d 1057, 1066 n.9 (9th Cir. 2011) (citing 34 C.F.R. § 300.502(c)(1)); see WAC 392-172A-05005(5)(a).

<sup>194</sup> *N.B. v. Hellgate Elem. Sch. Dist.*, 541 F.3d 1202, 1209 (9th Cir. 2008).

<sup>195</sup> *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1315 (9th Cir. 1987) (citing *DuBois v. Connecticut State Bd. of Ed.*, 727 F.2d 44, 48 (2d Cir. 1984); *Carroll v. Capalbo*, 563 F. Supp. 1053, 1058 (D. R.I. 1983)); see WAC 392-172A-03025(1).

29. After the “administration of assessments and other evaluation measures,” the parent of the student and qualified professionals “determine whether the student is eligible for special education and the educational needs of the student.”<sup>196</sup> To do so, a district must consider “information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student’s physical condition, social or cultural background, and adaptive behavior.”<sup>197</sup> The district must make certain “that information obtained from all of these sources is documented and carefully considered.”<sup>198</sup>

### *Services Under 504 Plans Versus Special Education*

30. 504 plans are for students who have any physical, mental, or psychological disorder that substantially limits one or more major life activities, such as learning or working.<sup>199</sup> Students on 504 plans attend general education classes and receive accommodations that support them. They receive no SDI that modifies or supplants the general education curriculum.

31. Special education is for students who

- a. have a disability in one of a limited set of categories;
- b. have an “adverse education impact” due to the disability; and
- c. have “unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and need[ ] special education and related services.”<sup>200</sup>

32. Students eligible for special education may receive accommodations, just as students would under a 504 plan. However, students eligible for special education also receive SDI, which involves “adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction:

- a. To address the unique needs of the student that result from the student’s disability; and

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<sup>196</sup> WAC 392-172A-03040(1)(a).

<sup>197</sup> WAC 392-172A-03040(3)(a).

<sup>198</sup> WAC 392-172A-03040(3)(b).

<sup>199</sup> 34 C.F.R. 104.33; 34 C.F.R. 104.3(j)(2)(ii); see Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794.

<sup>200</sup> WAC 392-172A-01035(1)(a); see 34 CFR 300.8(a)(1).

- b. To ensure access of the student to the general curriculum, so that the student can meet the educational standards ... that apply to all students.”<sup>201</sup>

33. Students eligible for special education services may also receive “related services,” which include “supportive services [that] are required to assist a student ... to benefit from special education services.”<sup>202</sup> Counseling, psychological, and behavioral services are all examples of related services, as are counseling and training for parents.<sup>203</sup> If a student is evaluated for special education and has a qualifying disability, but only requires related services, not special education services, then the student will not be eligible for special education.<sup>204</sup>

*The District did not violate the IDEA or deny the Student FAPE by requiring observation of the Student to complete its evaluation.*

34. In this matter, Ms. Parent has framed the issue as a child find issue. The District has not violated the child find requirements. It completed one evaluation in March 2024 and another in November 2025. The District attempted to complete a third evaluation beginning in January 2026, but it was unable to complete it due to Ms. Parent denying consent for the District to conduct the observations that the District is required to conduct under the IDEA.

35. Under the IDEA, the District has the authority to choose its evaluators and define what measures are needed to have sufficient data to determine eligibility, within the requirements of the IDEA.<sup>205</sup> The District “must” consider “classroom-based observations” as well as “[o]bservations by teachers and related services providers.”<sup>206</sup> The observations must be “current;” the 2024 events discussed in Ms. Parent’s Exhibit P25 and Exhibit P26 are too distant to inform the spring 2026 evaluation.<sup>207</sup> Further, the District is forbidden from abdicating its responsibility to conduct its own evaluation by relying solely on Ms. Parent’s information or on IEEs.<sup>208</sup>

36. Given the Student’s persistent school avoidance, the evidence establishes that she requires some form of support or assistance that she has not been getting.

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<sup>201</sup> WAC 392-172A-01175(3)(c); see WAC 392-172A-01035(1)(a).

<sup>202</sup> WAC 392-172A-01155(1).

<sup>203</sup> WAC 392-172A-01155(1).

<sup>204</sup> WAC 392-172A-01035(1)(c).

<sup>205</sup> See WAC 392-172A-03020(2)(a); WAC 392-172A-03025(4).

<sup>206</sup> See WAC 392-172A-03025(1)(b, c).

<sup>207</sup> WAC 392-172A-03025(1)(b).

<sup>208</sup> See *Gregory K. v. Longview Sch. Dist.*, 811 F.2d at 1315; WAC 392-172A-03025(1).

However, with the information the District currently has, it cannot be determined whether the Student needs SDI or only accommodations and related services.

37. Dr. Clawson could not determine whether the Student had a learning disability or whether her academic difficulties were due solely to her lack of attendance. Dr. Lima could not determine whether the Student had a neurocognitive disability or whether lower areas of neurocognitive scoring were due solely to her emotional dysregulation. While learning and cognitive disabilities are not required to be eligible for special education, a student eligible for special education must require more than psychological or behavioral services to access the general education curriculum.<sup>209</sup>

38. Further, Mr. Turcotte and Ms. LaFond agreed, with good reason, that the type of services and interventions needed—and thus, the Student’s eligibility for special education—could not be determined until the District could understand the Student’s motivation for leaving school. The limited data that the District currently has, including the SRAS-R results, does not explain whether the Student leaves school primarily to avoid negative feelings caused by school or primarily to receive attention from Ms. Parent. To distinguish between these two motivations, and determine the appropriate interventions, the District needs to observe the Student in a situation where she does not expect to be picked up by Ms. Parent. Though during the March 25, 2026 observation, Ms. Parent did not pick the Student up until after third period ended, the texts between the Student and Ms. Parent show the Student *expected* to be picked up, which does not provide the data the District needs.

39. While Ms. Parent argues that the District is unlawfully delaying the evaluation by using a “Response to Intervention” (“RTI”) in its attempt to identify causes of the Student’s school avoidance behavior,<sup>210</sup> this is unpersuasive. While a functional behavioral assessment (“FBA”) does not appear to have been proposed by either party, the basic purpose and steps of an FBA are instructive here. To conduct an FBA, in part, school districts collect observational data on the factors surrounding the behavior to determine the behavior’s antecedents and reinforcing consequences.<sup>211</sup> This allows a determination of “what events or circumstances trigger maladaptive behaviors and

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<sup>209</sup> See WAC 392-172A-01035(1)(c).

<sup>210</sup> Parent’s Brief, p12–13.

<sup>211</sup> See, e.g., *In re Butte Sch. Dist. No. 1*, No. CV 14-60-BU-SEH, 2019 U.S. Dist. LEXIS 13311, at \*20 (D. Mont. Jan. 28, 2019); *R.Q. v. Tehachapi Unified Sch. Dist.*, No. 1:16-cv-01485-LJO-JLT, 2018 U.S. Dist. LEXIS 233416, at \*26–28 (E.D. Cal. Feb. 8, 2018); U.S. Dept. of Ed., OSERS and OESE, *Using Functional Behavioral Assessments to Create Supportive Learning Environments*, 5–6 (Nov. 2024), <https://sites.ed.gov/idea/files/Functional-Behavioral-Assessments-11-19-2024.pdf>.

determine the true purpose behind each behavior.”<sup>212</sup> Then a strategy can be “developed to decrease the frequency of the targeted behavior, determine one or more appropriate replacement behaviors, and develop reinforcement strategies to encourage replacement behaviors.”<sup>213</sup> The District is not using RTI for its evaluation. Instead, the District aims to conduct a similar analysis as used in an FBA, through gathering observational data. That way it can determine the behavior’s antecedents and reinforcing consequences—or reinforcing contingencies, as Mr. Turcotte described them—and then determine the Student’s required services.<sup>214</sup> Once it understands what services the Student needs, it can determine her special education eligibility.

40. Ms. Parent also argues that “[t]he District is hyper[-]focused on observing the [S]tudent having panic attacks and anxiety as an interfering behavior. This is clear from the increasingly restrictive consent forms which required observations of the Student experiencing anxiety or panic attacks.”<sup>215</sup> She argues the District has sufficient information through the fact of the Student’s persistent lack of attendance and the results from the SRAS-R.<sup>216</sup> It is true that this information shows the Student requires some form of related services, but without more specific data, it does not establish precisely what services are required. Further, it does not show, without more data, that the Student’s “needs ... cannot be addressed exclusively through education in general education classes.”<sup>217</sup>

41. The District made multiple attempts to propose an evaluation and removed certain observation areas for its first observation attempts after the March 2026 resolution meeting. This shows the District made a good faith effort to work with Ms. Parent and provide the Student with an appropriate evaluation. The District’s willingness to observe the Student in the home and the car speaks well of the evaluation team’s dedication to completing an appropriate evaluation as well as understanding the Student’s needs and finding a way to help her.<sup>218</sup>

42. The District has not yet been able to complete its evaluation because Ms. Parent has refused to consent to the District’s reasonable requests to conduct the observations that are both needed and legally required for an appropriate evaluation.

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<sup>212</sup> *J.B. v. Tuolumne Cty. Superintendent of Sch.*, No. 1:19-cv-00858-, 2020 U.S. Dist. LEXIS 107152, at \*11 (E.D. Cal. June 18, 2020).

<sup>213</sup> *Id.* at \*11–12.

<sup>214</sup> See T169–70 (Turcotte).

<sup>215</sup> Parent’s Brief, p11–12.

<sup>216</sup> Parent’s Brief, p12.

<sup>217</sup> WAC 392-172A-01035(1)(a); see 34 CFR 300.8(a)(1); WAC 392-172A-01035(1)(c).

<sup>218</sup> See *Indep. Sch. Dist. No. 283 v. E.M.D.H.*, 960 F.3d at1080; *Rodriguez v. Indep. Sch. Dist. of Boise City*, 2014 U.S. Dist. LEXIS 42719, at \*36–43.

The ALJ is sympathetic to the Student's difficulties and Ms. Parent's desire to protect her from difficult emotions. However, the District cannot determine how to address the Student's difficulties without being able to learn the antecedents and reinforcing consequences of her school avoidance. If Ms. Parent wants the Student to be appropriately considered for special education services, she is "obliged to permit" the observations that the IDEA requires.<sup>219</sup>

43. Accordingly, the District has established by a preponderance of the evidence that it did not require overly restrictive conditions for its evaluation, violate the IDEA, or deny the Student FAPE.

**Ms. Parent's Requested Remedies Are Denied.**

44. The District has met its burden on the issue presented, establishing by a preponderance of the evidence that it did not violate the IDEA and did not deny the Student FAPE.

45. Accordingly, Ms. Parent is denied each of her requested remedies.

**ORDER**

The Olympia School District has established that it did not violate the IDEA and did not deny the Student FAPE. Accordingly, Ms. Parent is not entitled to any relief and her requests for relief are DENIED.

SERVED on the date of mailing.



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Marek E. Falk  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>219</sup> *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1315 (9th Cir. 1987) (citing *DuBois v. Connecticut State Bd. of Ed.*, 727 F.2d 44, 48 (2d Cir. 1984); *Carroll v. Capalbo*, 563 F. Supp. 1053, 1058 (D. R.I. 1983)); see WAC 392-172A-03025(1).

### **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](mailto: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:

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Dated July 22, 2026, at Spokane Valley, Washington.

*Lan Le*

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