

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Steilacoom Historical School District

Docket No. 04-2026-OSPI-02900

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2026-SE-0069

A due process hearing was held before Administrative Law Judge (ALJ) Niles McDonald on July 13-16 and 20, 2026, via videoconference. The Parent of the Student whose education is at issue¹ appeared and was represented by Mary Griffin, attorney at law. The Steilacoom Historical School District (District) was represented by Carlos Chavez, attorney at law. Also present for the District was Kari Terjeson, Director of Special Education.

STATEMENT OF THE CASE

Procedural History

Ms. Parent filed a due process hearing request (Complaint) on April 17, 2026, which was assigned cause number 2026-SE-0069. The matter was assigned to ALJ Niles McDonald on April 21, 2026. A prehearing conference was held on May 20, 2026, and the due process hearing was set for July 13-16, 2026, with a readiness conference set for July 2, 2026.

The readiness conference took place as scheduled on July 2, 2026. The due process hearing was held as scheduled from July 13-16 and 20, 2026.

Due Date for Written Decision

The due date for a written decision in this case is thirty (30) calendar days after the close of the record. The record closed when the parties timely filed post-hearing

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

briefs on September 1, 2026, and the due date for the written decision is October 1, 2026.

On September 29, 2026, the Parent sent an email to OAH stating that her attorney, Ms. Griffin, was no longer working for her employer, the Northwest Justice Project (NWP). Ms. Parent identified a flaw in the argument of the closing brief submitted by Ms. Griffin on September 1, 2026, as well as an unasked-for remedy of placement at a non-public agency (NPA). Ms. Parent also made several other arguments regarding civil rights and requesting orders compelling behavior from NWP, all of which are outside the jurisdiction of OAH and the ALJ. Ms. Parent also requested this matter be continued to allow her time to hire a new attorney. As the decision due date in this matter is October 1, 2026, and the record closed on September 1, 2026, a continuance is not granted. However, the ALJ will ignore the concession identified by Ms. Parent and will not grant Ms. Parent the unwanted remedy of placement at an NPA.

EVIDENCE RELIED UPON

Exhibits Admitted:

District's Exhibits: D1-D18

Parent's Exhibits: P1-P9

Witnesses Heard (in order of appearance):

Ms. Parent

Christopher Gonzales – Special Education Coordinator

Kaci Gonzales – Special Education Teacher

Angela Brinkhaus – Speech Language Pathologist (SLP)²

Rachel Carney – School Psychologist

Joanne Fernandes – School Principal

Kristie McKiddy – Highly Structured Classroom Teacher

² SLP may refer to either a Speech Language Pathologist as a profession, or Speech Language Pathology, as a practice.

Anthony Rabon – Paraeducator

Kari Terjeson – Special Education Director

Amy Marlow – Student’s Former Special Education Teacher

Helen Brooks – Student’s Advocate and Aunt

Jennifer Nehr – Student’s Caregiver

Katrina Robinson – Student’s Caregiver

Armand Ruffin – Campus Supervisor

ISSUES

1. The issues for the due process hearing are:
 - a. Whether the District’s February 2025 evaluation was appropriate, and if not, whether the Parent is entitled to an Independent Educational Evaluation (IEE) at public expense.
 - b. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:
 - i. Failing to implement the Student’s February 2025 IEP, including not providing full day support;
 - ii. Failing to implement the Student’s behavioral supports, as required by the February 2025 IEP and Behavior Intervention Plan (BIP);
 - iii. Isolating the Student in ways inconsistent with training;
 - iv. Denying Parental Participation by failing to follow reporting and notification requirements of WAC 392-172A-02110 and RCW 28A.600.485;
 - v. Failing to obtain parental consent for an Emergency Response Protocol as required by WAC 392-172A-02105;

- vi. Placing the Student in a room by himself in May 2025, following a manifestation determination review, rather than returning the Student to the placement from which he was removed, as required of 20 U.S.C. § 1415(k) and WAC 329-72A-05147;
- c. And, whether the Parent Is entitled to her requested remedies:
 - i. Declaratory relief that the District violated the IDEA and state law concerning restraint isolation and emergency response protocols;
 - ii. Declaratory relief finding the District denied the Student FAPE;
 - iii. An Order requiring the District to fund an IEE at public expense;
 - iv. Compensatory education in an amount to be determined at hearing;
 - v. An Order for prospective placement at a non-public agency;
 - vi. Or other equitable remedies, as appropriate.

FINDINGS OF FACT

1. At the time of the hearing, the Student was entering the ninth grade. T. p.26 (Ms. Parent).³ He has qualified for special education services since preschool. D9 p.13.
2. The Student has [REDACTED], which limits his movement. Tr. p.27 (Ms. Parent). The Student requires assistance throughout his day. Tr. p.27 (Ms. Parent). The Student has [REDACTED]. Tr. p.27 (Ms. Parent). The Student received a [REDACTED] [REDACTED]. Tr. p.74-75 (Ms. Parent) and Tr p.491 (McKiddy).
3. The Student currently qualifies for special education under the category of Autism. D9 p.1. The Student receives specially designed instruction (SDI) in math, reading, written language, communication, behavior, social emotional, and adaptive. D9 p.3. The Student receives supplementary aids and services in occupational therapy

³ The hearing transcript is cited as "Tr." with references to the page of the cited testimony. For example, a citation to "Tr. p.80" is to the testimony at page 80 of the transcript. Exhibits are cited by party ("P" for Parents, "D" for District), exhibit number, and page number. For example, a citation to "D1 p.5" is to the District's Exhibit 1 at page 5.

(OT) for twenty minutes per month; consultation with a SLP for ten minutes per month; and paraeducator support for an hour per day. D9 p.13.

4. As of 2025, the Student spends a majority of his time in a self-contained special education setting. D9 p.13. The Student's classroom is considered a "Highly Structured Classroom" (HSC) and primarily serves students with moderate to severe disabilities, primarily nonverbal students. Tr. p.472 (McKiddy). Ms. McKiddy was the Student's teacher in the 2024-2025 school year. Tr. p.478 (McKiddy).

5. The Student was first evaluated for special education services in March 2015. D9 p.13. The Student then qualified for special education under the category of Developmental Delay. D9 p.13. On April 25, 2023, the Student received a triennial reevaluation. D1 p.1.

6. Ms. Parent chose to have the Student start school late for the 2023-2024 and 2024-2025 school year and would drop him off about 90 minutes after school started. Tr. p. 159-160 (Ms. Parent) and Tr. p.520 (McKiddy). Ms. Parent initiated the delayed start time to facilitate the Student's dysregulated sleeping pattern. Tr.p.66 (Ms. Parent).

The Student's May 2024 Functional Behavioral Analysis

7. On November 29, 2023, Ms. Parent provided written consent for a Functional Behavioral Analysis (FBA). D2 p.3. Ms. Parent was concerned, as the Student exhibited behavior of falling onto the floor. Tr. p.48-49 (Ms. Parent). Ms. Parent was concerned that the Student's behaviors were stemming from the classroom environment. Tr p.46-48 (Ms. Parent).

8. The District conducted an FBA during the 2023-2024 school year, which was completed in May 2024. D2 p.9. The May 2024 FBA was completed by the school psychologist, Dr. John Jones.⁴ D2 p.9; Tr. p.34-35 (Ms. Parent). The May 2024 FBA noted the Student can become physically aggressive, including pushing, shoving, and hitting, in any setting. D2 p.7. The Student's behavior is often triggered by being told "no" or other negative language when he wishes to do something or experiences unexpected changes. D2 p.5.

9. The FBA team held a meeting and discussed the results of the FBA and proposed updating the Student's BIP. D2 p.9. At the end of the meeting, the District

⁴ Dr. Jones did not appear at hearing and did not provide testimony.

issued prior written notice (PWN) to Ms. Parent, on May 7, 2024. D2 p.9. The FBA team recommended the IEP team consider an updated BIP for his behavior. D2 p.8.

The Student's November 2024 Functional Behavioral Analysis

10. During the 2024-2025 school year, the Student was in the seventh grade. D11 p.1.

11. On November 13, 2024, the Student's IEP team met to discuss a BIP for the Student. D5 p.1. At the meeting, Ms. Parent voiced concern that the May 2024 FBA was too out of date and that any BIP built on an expired FBA would be necessarily flawed and incapable of properly meeting the needs of the Student. Tr. p.35-39. She believed a new FBA would be required to develop an appropriate and effective BIP. Tr. p.35-39 (Ms. Parent). The rest of the IEP team agreed, and a new FBA was scheduled. D6 p.3.

12. The District sought and received consent for an FBA on November 26, 2024. D10 p.1. The school set about conducting a new FBA and scheduled a meeting for February 4, 2025, to discuss the results and provide additional input for the FBA. D10 p.12.

13. Following the February 4, 2025 meeting, the IEP team held a dual-purpose meeting on February 12, 2025, to discuss the final results of the new FBA, implement a new BIP, and discuss the Student's new evaluation (discussed below). D12 p.1. The new FBA focused on the Student's aggression and elopement issues. D12 p.3-4.

The Student's February 2025 Reevaluation

14. On December 11, 2024, Ms. Parent gave consent for the Student to be reevaluated. D9 p.34. The District proposed evaluating the Student in academic, cognitive, fine motor, social/emotional, medical-physical, communication, behavior, and adaptive skills, and proposed including a review of existing data, general education teacher report, student observation, and an FBA. D9 p.35.

15. The Student's evaluation team met on February 4, 2025, to discuss the results of the team's reevaluation of the Student. D9 p.5. The meeting was attended by Ms.

Parent, Ms. Carney,⁵ Ms. McKiddy,⁶ Angela Brinkhaus,⁷ Kami Miller,⁸ Ms. Parent, Ms. Terjeson,⁹ Ms. Fernandes,¹⁰ and Anthony Rabon.¹¹ D9 p.5.

16. The Communication section of the reevaluation was conducted by Ms. Brinkhaus. D9 p.13. As part of her evaluation, Ms. Brinkhaus included a file review, review of therapy notes, a functional communication checklist, and a parent report. D9 p.13. Ms. Brinkhaus does not appear to have conducted classroom observations as part of her reevaluation. During the parent report, Ms. Parent shared that she would like to see the Student improve in decoding, comprehension, and generation of written language. D9 p.13. Ms. Brinkhaus found that the Student continued to qualify for SLP services for communication. D9 p.13.

17. The Cognitive section was completed by Ms. Carney. D9 p.13-14. Ms. Carney employed a review of records. D9 p.14. Ms. Carney, at Ms. Parent's request, also attempted to gather an updated cognitive assessment. D9 p.14. Ms. Carney attempted

⁵ Ms. Carney is a licensed psychologist, who has worked as a school psychologist since 2013, with her first year at the District being in 2024. Tr. p.335 (Carney). She received a bachelor's degree in human services from the Evergreen State College (TESC) in 1996, a master's degree in counseling and guidance and a Master of Education in counseling and guidance through City University. Tr. p.336 (Carney). She has a certification as a school psychologist in Washington State. Tr. p.336-337 (Carney).

⁶ Ms. McKiddy is a special education teacher who received her undergraduate degree in early childhood education from Wright University and a Master of Special Education from Miami University. Tr. p. 473—474 (McKiddy). She has worked as a special education teacher for four years, and previously eight-and-a-half years as a general education teacher. Tr. p.473 (McKiddy). She is licensed to teach special education in Washington State. Tr. p.474. (McKiddy).

⁷ Ms. Brinkhaus is a licensed SLP, who has practiced in her field since 1999. Tr. p. 305 (Brinkhaus). She received her undergraduate degree in SLP and Audiology, as well as a Master of SLP, all from the Idaho State University. Tr. p.306 (Brinkhaus). She is licensed to work as an SLP in Washington State, as well as a national certification. Tr. p.306 (Brinkhaus).

⁸ Ms. Miller did not appear for hearing and did not provide testimony as to her educational or background information.

⁹ Ms. Terjeson is the special education director for the District, a role which she has been in for two years. Tr. p.662 (Terjeson). Ms. Terjeson began teaching in the general education setting in 1988 and has worked as a special education law professor at University of Washington (UW) and served as a director of special education for Yakima School District. Tr. p.662-664 (Terjeson). Ms. Terjeson received a bachelor's in elementary education in 1988, followed by a master's in Elementary Education from Gonzaga University. Tr. p.664 (Terjeson). She received her Ph.D. in special education from UW. Tr. p.664 (Terjeson).

¹⁰ Ms. Fernandez is the principal of Pioneer Middle School for the District, with 10 years in the position as of the hearing. Tr. 395 (Fernandez). Ms. Fernandez has worked in education for 25 years. Tr. 395 (Fernandez). Ms. Fernandez has completed her Bachelor of Arts in Education at Pacific Lutheran University (PLU) with a double major in English and history; a master's in education from the University of Washington in 2009 and completed a principal credential from SPU. Tr. p.396 (Fernandez).

¹¹ Mr. Rabon is a works as a paraeducator and worked directly with the Student on a regular basis. Tr. p.647-649 (Rabon).

to administer the Comprehensive Test of Nonverbal Intelligence, Second Edition (CTONI-2) on several occasions in December, 2024, and January, 2025, but was unsuccessful due to the Student's disengagement. D9 p.14; Tr. p.345 (Carney). CTONI-2 testing was dropped, following an administration attempt in which the Student became agitated and threw an item at the teacher on January 5, 2025. D9 p.14.

18. The Fine Motor section was completed by Ms. Miller. D9 p.14. Ms. Miller relied on a review of records, observation at school, staff interviews, the Sensory Profile 2, and the Beery-Buktenica Developmental Test of Visual Motor Integration – 6th Edition (VMI). D9 p.14. On the Sensory Profile 2, the Student's testing showed "significant sensory processing differences within the school setting." D9 p.18. On the VMI, the Student scored in the 1st percentile in ability to integrate visual and motor abilities, the 0.7th percentile in the visual perception tests, and the less than .02% percentile in the motor coordination subtest. D9 p.15-16. The Student's performance across the board on the VMI was "very low range as compared to same age peers." D9 p.16. Ms. Miller recommended the Student receive school-based OT, as well as a Chromebook for typing, lined paper for handwriting, noise reducing headphones, and access to a study carrel. D9 p.18.

19. The Behavior section of the evaluation was completed by Ms. Carney. D9 p.18. Ms. Carney employed the Vineland Adaptive Behavior Scales – 3rd Edition (Vineland-3) which included classroom observation notes and feedback from the Student's teacher, Ms. McKiddy, as well as Parent feedback. D9 p.18-19. Ms. McKiddy rated the Student in the clinically significant range for internalizing and externalizing problems.¹² D9 p.19. Ms. Parent scored the Student in the moderately high range for internalizing and externalizing problems. D9 p.19. The test also noted the Student showed severe maladaptive behaviors in often getting fixated on objects or parts of objects; often engaging in compulsive behavior; and sometimes wandering or darting without regard for safety. D9 p.19. The Behavior section also included teacher observational data, which included a list of Student incidents in school, 11 of which included physical aggression, between September 5 and December 6, 2024. D9 p.19. There were approximately 65 school days, not factoring in days off, in that section, meaning the Student had a physically aggressive event every 6 days on average. D9 p.19-20. Ms. Carney concluded that the Student engaged in "elopement or physical aggression" when presented with transition or sensory input." D9 p.21.

20. The Social/Emotional section of the reevaluation was completed by Ms. Carney. D9 p.21. Ms. Carney relied on the Behavior Assessment System for Children, Third

¹² Internalizing problems deal with emotional tests and Student's responses, while external measures the Student's trouble with acting out. D9 p.18-19.

Edition (BASC-3). D9 p.21. The BASC-3 relies on data provided by teachers and parents. D9 p.21. Ms. McKiddy scored the Student as at-risk regarding hyperactivity, aggression, conduct problems, anxiety, depression, attention problems, learning problems, and withdrawal, adaptability, social skills, and leadership, and clinically significant regarding atypicality and functional communication. D9 p.22-23. Ms. Parent scored the Student as at-risk regarding adaptability, social skills, and functional communication. D9 p.22-23. The content scale narratives regarding teacher scoring place the Student in the clinically significant range for anger control, developmental social disorders, emotional self-control, executive functioning, and negative emotionality; Ms. Parent's scoring does not place the Student in the clinically significant range in any category. D9 p.23-24.

21. Ms. Carney also deployed the Vineland-3 for the Social/Emotional section of the reevaluation. D9 p.24. This test showed the Student as significantly behind in the interpersonal relationships subdomain (30 points behind peers), average for the play and leisure subdomain, and average in the coping skills subdomain. D9 p.24-29.

22. Ms. Carney also completed the Adaptive section of the reevaluation. D9 p.29. In completing the Adaptive section, Ms. Carney employed the Vineland-3. D9 p.29. The Vineland-3 was completed by Ms. McKiddy and Ms. Parent. D9 p.30. Ms. McKiddy scored the Student in the 56th percentile for communication, 66th percentile in daily living, and 39th percentile for socialization, scoring overall in the 59th percentile for the overall test. D9 p.29-31. Ms. Parent scored the Student in the 68th percentile for communication, 66th percentile for daily living, and 74th percentile for socialization, scoring overall in the 74th percentile. D9 p.29-31. Ms. Carney notes that the Student's adaptive skills appear to be mostly low to moderately low across environments. D9 p.31.

23. The evaluation team proposed continuing eligibility for the Student under the eligibility category of Autism, and recommended SDI in reading, writing, math social/emotional, adaptive, behavior, communication, and the related service of OT. D9 p.33. Ms. Parent attended and two parental advocates were present at the meeting, as were Ms. Carney, Ms. McKiddy, Ms. Fernandes, Ms. Miller, Ms. Brinkhaus, and Mr. Anthony. D9 p.33.

24. At the conclusion of the 2025 evaluation meeting, Ms. Carney, Ms. McKiddy, Ms. Brinkhaus, Ms. Miller, Ms. Parent, Ms. Terjeson, Ms. Fernandes, and the Student's paraeducator, all signed off on the evaluation. D9 p.36. Each signature was signed on February 4, 2025. No dissenting opinions were logged. D9 p.36.

25. The District issued PWN to Ms. Parent proposing the team continue the Student's eligibility. D9 p.33. The team agreed to develop an IEP within 30 days. D9

p.33. The team provided Ms. Parent with a copy of procedural safeguards and agreed to provide her with the final report. D9 p.33.

The Student's February 2025 IEP

26. The IEP team developed an IEP for the Student and met to discuss the proposed IEP on February 26, 2025. D11 p.5. The District informed Ms. Parent of the IEP team meeting on February 13, 2025. D11 p.3. At the team meeting, the IEP team provided Ms. Parent with PWN proposing the District initiate a new IEP, based on the February 2025 Reevaluation. D11 p.24-25.

27. At this meeting, the team consisted of Ms. Parent, Ms. Carney, Ms. Terjeson, Ms. McKiddy, Ms. Pilon,¹³ Ms. Brinkhaus, and Ms. Miller. D11 p.26

28. In the general education section of the February 2025 IEP, the general education teacher reported that the Student required 1:1 adult support in general education in order to monitor impulsive and unsafe behaviors. D11 p.5. The team also considered the Student's strength and weaknesses, the communication needs of the Student, assistive technology devices and services needs, appropriate strategies for positive behavioral interventions, and visual impairment needs. D11 p.4. The IEP specifically noted the Student to be fun-loving, enjoying walking and interacting with peers. D11 p.4. Ms. Parent worried the Student was regressing. D11 p.4. The IEP suggests picture schedules, work system, consistent routine, consistent/familiar staff, and picture cues for changes in routine to help minimize triggers. D11 p.4.

29. The Math section of the February 2025 IEP notes the Student is working on basic number recognition, counting skills, understanding sequences, the concept of 5-minute intervals, single/double digit addition and subtraction, coin identification, and clock use. D11 p.5-6. Notes of his current performance are included in the general information, including the Student's IEP goal performance and notes as to where he was succeeding and failing to make progress. D11 p.5-6. The Math section contained the following three goals:

¹³ Ms. Pilon was the Student's general education teacher in the 2024-2025 school year and has worked with the District since 2018. Tr. p.873 (Pilon). Ms. Pilon has previous experience as a special education teacher in self-contained special education classrooms. Tr. p.874 (Pilon). She received an associate's degree from South Puget Sound Community College (SPSCC), bachelor's and master's degrees in teaching from St. Martin's University, and a doctorate in educational leadership from UW Tacoma. Tr. p.875.

Annual Goal: Math

Skill: Telling Time

By 03/12/2026, when given a clock (analog or digital) [REDACTED] will tell (verbally or written) the time to the minute improving math skills from telling time to the quarter hour in 0 out of 5 opportunities to telling time to the minute in 4 out of 5 opportunities as measured by classroom data

D11 p.6.

Annual Goal: Math

Skill: Money

By 03/12/2026, when given the price of several item(s) and a budgeted amount to "spend" [REDACTED] will calculate the sum to determine total cost improving money management skills from determining if he has enough money in 2 out of 5 opportunities to determining if he has enough money to purchase all items in 4 out of 5 opportunities as measured by classroom data

D11 p.6.

Annual Goal: Math

Skill: Money Identification

By 03/12/2026, when given a group of coins up to \$1.00 [REDACTED] will identify and count the coins to determine their value improving coin identification from identifying the coin and value of the coin in 0 out of 5 opportunities to determining the value of a group of coins in 3 out of 5 opportunities as measured by classroom data

D11 p.6.

30. The Reading section of the February 2025 IEP notes the Student has been working on basic reading skills and comprehension and works currently at the 1st to 2nd grade level. D11 p.7. The reading section also notes the Student's performance on previous IEP goals, what words the Student can identify, and his growth as a reader. D11 p.7. The Reading section included the following goals:

Annual Goal: Reading

Skill: Decoding

By 03/12/2026, when given a structured systematic approach [REDACTED] will demonstrate the ability to decode single and multi-syllabic words improving decoding skills from decoding single syllable words with 83% accuracy and multi-syllabic words with 22% accuracy to decoding single syllable words with 100% accuracy and multi-syllabic words with 80% accuracy as measured by data collection sheets

D11 p.7.

Annual Goal: Reading

Skill: Comprehension

By 03/12/2026, when given visual organizer (sentence maps, frames, cloze format) and a text of 3-5 paragraphs (read aloud) [REDACTED] will generate a response improving reading comprehension skills from novel responses (critical thinking, making predictions, retelling) of at least 5 words in 7% of opportunities to novel responses (critical thinking, making predictions, retelling) of at least 5 words in 50% of opportunities as measured by classroom data

D11 p.7.

31. The Writing section of the February 2025 IEP notes the Student is able to independently write his first and last name, copy a sentence from a visual, use a word from a word bank to fill in a sentence, and continues to require a word bank for reading and writing. D11 p.7-8. The Writing section included the following goal:

Annual Goal: Written Language

Skill: Writing

By 03/12/2026, when given a writing tool (i.e. dictation, pencil/paper or predictive word processing) [REDACTED] will write at least 3 sentences on a topic of interest or in response to a prompt improving writing skills from writing 1 sentence on a topic with prompting and visual supports in 1 out of 5 opportunities to writing at least 3 sentences on a topic with prompting and visual supports in 4 out of 5 opportunities as measured by classroom data

32. The Communication section of the February 2025 IEP notes the Student continued to qualify for SLP services, the Student's developing ability to use rising intonation to ask questions, and includes input from Ms. Parent as to what she felt would be the best place to focus. D11 p.8. Ms. Parent was stated to be most concerned about progress in the Student's decoding, comprehension, generation of written language. D11 p.8. The Communication section had one goal:

Annual Goal: Communication

By 03/12/2026, when given direct instruction on identifying bodily sensations (e.g., related to hearing, sight, internal sensations such as hunger) [REDACTED] will label at least 5 corresponding feelings and/or emotions improving emotional / feeling vocabulary skills from 0/5 trials independently to 4/5 opportunities independently as measured by SLP documentation

D11 p.9.

33. The Fine Motor section of the February 2025 IEP appears to be identical to the February, 2025 Reevaluation Fine Motor section in all but one regard: the 2025 IEP adds the sentence: "OT will support his written language goal and adaptive goal as well as related accommodations." Comparing D9 p.18 and D11 p.9.

34. The Behavior section of the February 2025 IEP notes the Student engages in elopement or physical aggression when experiencing unexpected transition or sensory input, often as manifestations of escaping or invading sensory input or transition. D11 p.9. The section also notes the Student does best with a highly structured routine with a clear schedule in his notebook. D11 p.9. The Behavior section included the following goal:

By 03/12/2026, when given prompts and visual or physical coping tools [REDACTED] will reduce the number of emotional outbursts (e.g., yelling, throwing, pushing) improving self-regulation skills from having an outburst in 38.4% of school days present to having an outburst no more than once per month as measured by classroom data

D11 p.9.

35. The Social/Emotional section of the February 2025 IEP repeated all the information available in the February 2025 Reevaluation. D11 p.10-16. Additionally, one goal was included, which stated:

Annual Goal: Social/Emotional

Skill: Problem Solving

By 03/12/2026, when given the daily school routine and access to visual support for waiting (e.g. timer, visual schedule) [REDACTED] will verbally request items or activities they want (e.g. toys, materials, access to technology, recess) and accept a teacher direction to wait for access to the item or activity while maintaining a safe body improving social emotional skills from 10% of opportunities to 90% of opportunities as measured by data collection sheet

D11 p.16.

36. Likewise, the Adaptive section of the February 2025 IEP included information taken from the February 2025 Reevaluation, with the addition of the following goal:

Annual Goal: Adaptive

Skill: Emergency Contact

By 03/12/2026, when given a request (verbal or visual) to give his phone number, high tech AAC or paper and pencil [REDACTED] will give his mother's full name and phone number verbally or by typing on his AAC keyboard or using written numbers improving adaptive skills from giving his emergency contact information in 0 out of 5 opportunities to giving his emergency contact information in 4 out of 5 opportunities as measured by classroom data

D11 p.17.

37. The Adaptive section also notes the Student's progress, performance metrics provided by Ms. Parent and Ms. McKiddy, in the form of the Vineland-3. D11 p.16-17.

38. The February 2025 IEP offered 12 accommodations, including tools like calculators and text-to-speech, repeated directions, limitation to sensory distractions, a structured learning environment, etc. D11 p.18.

39. The February 2025 IEP offered the following services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Transportation	Transportation Provider	Transportation Provider	25 Minutes / 2 Times Daily	Special Education	03/13/2025	03/12/2026
Yes	Occupational Therapy	Occupational Therapist/COTA	Occupational Therapist	20 Minutes / 2 Times Monthly	Special Education	03/13/2025	03/12/2026
Special Education							
No	Social/Emotional	Special Education Staff	Special Ed Teacher	15 Minutes / Daily	Special Education	03/13/2025	03/12/2026
No	Behavior	Special Education Staff	Special Ed Teacher	15 Minutes / Daily	Special Education	03/13/2025	03/12/2026
No	Written Language	Special Education Staff	Special Ed Teacher	30 Minutes / Daily	Special Education	03/13/2025	03/12/2026
No	Math	Special Education Staff	Special Ed Teacher	55 Minutes / Daily	Special Education	03/13/2025	03/12/2026
No	Reading	Special Education Staff	Special Ed Teacher	55 Minutes / Daily	Special Education	03/13/2025	03/12/2026
No	Social/Emotional	Special Education Staff	Special Ed Teacher	15 Minutes / Daily	General Education	03/13/2025	03/12/2026
No	Behavior	Special Education Staff	Special Ed Teacher	10 Minutes / Daily	General Education	03/13/2025	03/12/2026
No	Adaptive	Special Education Staff	Special Ed Teacher	10 Minutes / Daily	Special Education	03/13/2025	03/12/2026
Yes	Communication	Speech & Language Pathologist	Speech & Language Pathologist	120 Minutes / Monthly	Special Education	03/13/2025	03/12/2026
No	Adaptive	General/Special Education Staff	Special Ed Teacher	20 Minutes / Daily	General Education	03/13/2025	03/12/2026

D11 p.21.

40. The IEP also offered the following supplementary aids/services:

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Yes	Student specific support	Special Education Staff	Special Ed Teacher	1340 Minutes / Weekly	Special Education	03/13/2025	03/12/2026
Yes	Consultation	Speech Language Pathologist	Speech Language Pathologist	10 Minutes / Monthly	Special Education	03/13/2025	03/12/2026

41. D11 p.21.

42. This converted to total of 1150 minutes per week in a special education setting, of 1340 total minutes of education per week, equating to 14.18% of time spent in the general education curriculum. D11 p.21.

43. In the Student's 2024 IEP, the Student's time in general education and percentage were inaccurately calculated, as they did not reflect the 90 minutes late start Ms. Parent had set for the Student. Tr. p.159-160 (Ms. Parent); Tr. p.679-682 (Terjeson). In the February 2025 IEP, the hours accurately reflect the 90 minutes per day the Student was not in school. Tr. p.679-682. (Terjeson). This change altered the percentage of time the Student was in general education from 45.4% in 2024 to

14.18% and reduced the total time from 1740 minutes per week of school to 1150. Comparing D1 p.13 and D11 p.21.

44. The February 2025 IEP includes a note which states that Ms. Parent requested the Student not participate in general education PE until such a time as the brace the Student had on his right foot could be safely removed. D11 p.22. This section also notes that the Student would not be placed in a general education PE environment. D11 p.22. The Student instead attended adaptive PE, during which he was able to address his social emotional goals. Tr. p.514-515 (McKiddy).

45. The February 2025 IEP also noted that Ms. Parent was concerned that the evaluation did not include sufficient observation of the Student. D11 p.24-25. The IEP also noted that after the February 26, 2025, IEP meeting, District staff attempted to reach out to Ms. Parent on multiple dates to receive consent for the IEP and stated the District would be implementing the proposed IEP, BIP, and Emergency Response Protocol (ERP) on March 13, 2025. D11 p.25. These contact attempts were made via email, twice on March 3, 2025, once on March 5, 2025, and once on March 10, 2025. D11 p.25.

The 2025 BIP

46. In addition to discussing the IEP, the February 26, 2025, meeting also included discussion of the Student's 2025 BIP. D12 p.1.

47. The BIP was based on the Student's 2025 FBA, and noted the Student was triggered by changes in routine or schedule, task demands, or when being denied access to preferred activities or tangibles. D12 p.4.

48. The BIP targeted the Student's elopement and physical/verbal aggression. D12 p.3-4.

49. To address elopement, the BIP recommended targeting and reducing/removing triggers, alternative replacement behavior, and maintaining consequences of replacement behavior. D12 p.5-7. The BIP recommended positive reinforcement in the form of high levels of praise and attention. D12 p.7.

50. To minimize triggers for verbal and physical aggression, the BIP recommended avoiding trigger language, using non-verbal examples of what to do rather than telling the Student no, providing ample wait time before prompting the Student, minimizing distractions and adjusting the classroom to be less overstimulating, and providing a quiet space. D12 p.8. The BIP also included a number of tools to reduce triggers, such

as priming, positive reinforcement, high probability request sequences, and providing choices. D12 p.9.

51. The BIP required the Student to be provided with a safe calm down space in response to challenging behaviors. D12 p.7. It also recommended short phrases be used when the Student was in escalation and providing him with a calm down activity once in the safe calm down space. D12 p.7. These policies were regularly practiced as appropriate. See D16; Tr p.412 (Fernandes); Tr. p.492-494 and 538 (McKiddy);

52. The safe calm down space available to the Student was a room within the Student's main classroom, with a glass window and door, measuring approximately 6 feet by 6 feet. Tr. p. 171 (Ms. Parent).

53. The BIP included a crisis and recovery plan, which required the staff to clear the room if any escalation was noticed, and to call a case manager to respond if escalation took place. D11 p.25.

54. Prior written notice of the District's intent to initiate the BIP was provided to Ms. Parent on March 12, 2025, and Ms. Parent requested additional time to review the documents. D12 p.18. The BIP was implemented on March 13, 2025. D12 p.18.

55. On March 27, 2025, Ms. Parent sent an email entitled "formal complaint" to Ms. Terjeson. P3 p.1. In her email, Ms. Parent notes that she would not sign off on the FBA, the BIP, or the IEP, and states that the emergency plan should mark "no" to use of restraints. P3 p.2. Ms. Parent made numerous demands for changes and additional supports/services, such as extended school year (ESY) services, a picture directory of staff and students, and an increase to 40% of the Student's time in general education, from the 13% he was receiving. P3 p.2. Ms. Parent also requested a new "placement" within the District, as she felt that the process had irrevocably broken down. P3 p.2.

Emergency Response Plan

56. The ERP called for restraint following the Right Response Protocol and Isolation within a designated break room inside the classroom. P2 p.1. Additional precautions were noted for the Student, including the use of short concise phrases when the Student is elevated, calm down exercises which would be taught to staff working with the Student, a maximum of 10 minutes of time in the cool down room, and calling the administrative team when isolation or restraint took place and notifying Ms. Parent by phone as soon as the situation had become safe. P2 p.1. The plan noted restraint must be discontinued as soon as risk of serious harm has dissipated. P2 p.1.

57. On March 12, 2025, District staff shared their proposed ERP with Ms. Parent. P2. The ERP was written by Ms. McKiddy, Ms. Fernandes, and Ms. Barton. P2 p.1. Several attempts to reach Ms. Parent took place between the PWN and implementation. P2 p.2, D11 p.25.

58. In her March 27, 2025 email, Ms. Parent noted that she did not support restraints for the Student in the ERP. P3 p.2. The ERP appears to have never been signed.

Behavioral Incidents And Manifestation Determination, Spring 2025

59. The Student had many reported incidents of violent or eloping behavior. See D16. In 2025, the Student was isolated 4 times and restrained 5 times. D16 p.1-2. It should be noted that the District recorded isolation when the Student was asked to or chose to go to his cool down room, which was not locked and which he could leave at any time, while still viewing class through a window. Tr. p.541-544 (McKiddy). The Student sometimes placed himself in the calm down room, rather than being told to go. D16 p.25;

60. On January 23, 2025, the Student threw a laptop at another student, striking them in the head. D16 p.1. Ms. McKiddy informed Ms. Parent of this incident the next day on January 24, 2025, and included the official isolation report on the next school day, January 27, 2025. D7 p.1-2.

61. On March 3, 2025, the Student was removed briefly from the class for shoving another student, and upon return, struck the other student, injuring them. D16 p.1. The Student was then brought to a separate break room. D16 p.1. Ms. McKiddy sent Ms. Parent a copy of the isolation report on March 5, 2025. D13.

62. One incident of particular note took place on April 16, 2025. D16 p.2. During adaptive PE, the Student left his [REDACTED] and attacked multiple people, starting by shoving another student and escalating to punching multiple staff members, multiple times, while throwing himself to the ground. D16 p.2; P9. Staff repeatedly placed the Student back in the [REDACTED] after which he would stand and start attacking people after a few moments. D9. The Student's teacher radioed for the office support and the Principal and Campus Supervisor, Mr. Ruffin,¹⁴ arrived. D16 p.2. Mr. Ruffin repeatedly restrained the Student and placed him in his [REDACTED] whenever the Student would get up and try to strike someone again. P9. After approximately 10 minutes, Mr. Ruffin

¹⁴ Mr. Ruffin is the campus supervisor for the Pioneer Middle School and has worked for the District since 2011. Tr. p.951 (Ruffin). Prior to this, he worked at a juvenile detention center. Tr. p.951 (Ruffin).

and another staff member placed the Student in his [REDACTED] and held his arms down to keep him in place, which is a Right Response approved restraint hold. P9; Tr. p.941 (Ms. Parent); Tr. p.955-958 (Ruffin). Mr. Ruffin also demonstrated to other staff how to perform restraints. Tr. p.941 (Ms. Parent.) Mr. Ruffin testified that he conducted his restraints in accordance with Right Response training. Tr. p.968-969 (Ruffin). The purpose of Right Response is to minimize additional harm when Students are demonstrating unsafe behavior while keeping everyone safe. Tr. p.968 (Ruffin). The Student's paraeducator, Brian, who repeatedly restrained the Student before Mr. Ruffin's arrival, had been trained in Right Response. Tr. p.630 (Fernandes.) During testimony, Ms. Pilon, a Right Response certified trainer, testified she believed the use of restraint she saw on April 16 followed Right Response Training. Tr. p.892 (Pilon). At hearing, Ms. Marlow, who has received Right Response training, testified that she did not believe the video of the April 16 event showed proper adherence to Right Response, as insufficient efforts were made to deescalate the Student. Tr. p.719 (Marlow). Ms. McKiddy testified that she complied with her Right Response training in the moment, and that all parties attempted to deescalate. Tr. p.537 (McKiddy). In the video, staff can be seen surrounding the Student as he is placed back in his [REDACTED] and then building distance to give him room once he stopped struggling to get back up. D9. Whenever the Student stood and attacked someone again, staff would close in so that he could not run away. D9.

Ms. Marlow Credibility Determination

63. In her testimony, Ms. Marlow stated that she did not believe the restraints employed during the April 2025 field incident were aligned with Right Response training. Tr. p. 719 (Marlow). This conflicts with the testimony of multiple parties who were trained in Right Response and present at the time of the incident. Further, Ms. Marlow made her determination based upon video evidence with no audio. Tr. p.719 (Marlow). Additionally, Ms. Marlow did not identify any specific ways in which Right Response was not followed, beyond stating she did not believe parties attempted to de-escalate sufficiently. Tr. p.719-721 (Marlow).

64. Meanwhile, Mr. Ruffin, and Ms. McKiddy were present for the event, trained in Right Response, and testified that all parties conducted themselves in compliance with Right Response training. Tr. p. 968-969 (Ruffin); Tr. p. 536-538 (McKiddy). Ms. Pilon, who was trained in Right Response and reviewed the footage later, also testified that she believed Right Response was followed. Tr. p. 892 (Pilon).

65. Thus, Ms. Marlow's testimony regarding the April 2025 field incident is accorded little weight.

Stool Incident and Manifestation Determination

66. On May 7, 2026, the Student used a stool to hit a staff member, Ms. Desue, on the head. Tr. p.440-442 (Fernandes). This was severe enough that Ms. Desue required multiple staples in her head and missed work. Tr. p.105 (Ms. Parent); Tr. p. 440-442 (Fernandes); Tr. p.509 (McKiddy); and Tr. p.781 (Terjeson). Ms. Desue was a paraeducator who has been trained as a Registered Behavior Technician (RBT). Tr. p. 437-438. In her role she performed the duties of a paraeducator, with the additional duties of gathering data and providing recommendations to other staff regarding student's behavior.

67. Following the stool event, the Student was removed from school while a manifestation meeting was scheduled. D14 p.6. The Student was removed May 7, 2025, and placed in a one-on-one classroom. D14 p.6. Because of the removal, the District held a Manifestation Determination Meeting. D14 p.6.

68. The Manifestation Determination Meeting was held on May 20, 2025. Tr. p.770 (Ms. Brooks). Present at the meeting were Ms. Parent, Ms. Terjeson, Ms. Nehr, Ms. Capusan,¹⁵ Ms. Brooks, Ms. Fernandes, Ms. McKiddy, Ms. Desue,¹⁶ and Ms. Swift. D14 p.6.

69. During the meeting, the team found that the Student's behavior was a manifestation of his disability. D6 p.14. The team further concluded that District staff acted in compliance with the Student's IEP and that the manifestation was not a direct result of the District's failure to implement the IEP. D6 p.15.

70. During the meeting, Ms. McKiddy became upset and began yelling at Ms. Parent, calling Ms. Parent "aggressive" after Ms. Parent stated that she felt her son had been discriminated against. Tr. p.773 (Ms. Brooks); Tr. p.821 (Nehr); Tr. p.103-104 (Ms. Parent). Ms. McKiddy left the meeting and did not return. Tr. p.104-105.

71. On May 28, 2025, Ms. Parent removed the Student from attendance within the District. Tr. p.420, (Fernandez). The Student did not attend school within the District for the 2025- 2026 school year. Tr. p. 130-133 (Ms. Parent).

¹⁵ Ms. Capusan did not appear at hearing to provide testimony, and her professional and educational background are not known.

¹⁶ Ms. Desue did not appear at hearing to provide testimony, and her professional and educational background is not known. She is a paraeducator for the District with special training as an RBT. Tr. p.674 (Terjeson). Ms. Desue reported to Rachel Axtelle, a BCBA for the District. Tr. p.675 (Terjeson).

CONCLUSIONS OF LAW

Jurisdiction And Burden Of Proof

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

2. The District bears the burden of proof in this matter. RCW 28A.155.260(1). In a due process hearing, the burden of proof is a preponderance of the evidence. RCW 28A.155.260(3).

The IDEA And FAPE

3. Under the IDEA, a school district must provide free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity.” *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).

4. In *Rowley*, the U.S. Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA. The first question is whether the state has complied with the procedures set forth in the IDEA. The second question is whether the individualized education program developed under these procedures is reasonably calculated to enable the child to receive educational benefits. “If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.” *Rowley*, 458 U.S. at 206-07.

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

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

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

(III) caused a deprivation of educational benefits.

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

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

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

Was the District's 2025 Reevaluation Appropriate, And If Not, Is The Parent Entitled To A New IEP At District Expense?

8. The Parent argues that the 2025 Reevaluation of the Student was not appropriate, that it denied the Student FAPE, and that the Parents are entitled to an IEE at public expense.

9. When conducting a special education evaluation of a student, a district is required to "use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student...." WAC 392-172A-03020(2)(a). The district must "[n]ot use any single measure of assessment as the sole criterion" to determine if a student is eligible for special education. WAC 392-172A-03020(2)(b). The district must also ensure "[t]he student is assessed in all areas related to the suspected disability...." WAC 392-172A-03020(2)(e).

10. Further, Under WAC 392-172A-03025:

As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate must:

1. Review existing evaluation data on the student, including:
2. Evaluations and information provided by the parents of the student;
3. Current classroom-based, local, or state assessments, and classroom-based observations; and
4. Observations by teachers and related services providers

11. School districts “must ensure that...[t]he student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.” WAC 392-172A-03020(3)(e).

12. Evaluation activities must be completed by qualified individuals. See WAC 392-172A-03020(3)(iv); 34 C.F.R. § 300.304(c)(1)(iv). The evaluation report must include a statement of whether the student has a qualifying disability, a discussion of the assessments and review of data supporting that determination, and the date and signature of each professional member certifying that the report represents their conclusion. WAC 392-172A-03035.

13. Further, the IDEA does not give Parents the right to dictate the areas in which a school district must assess a student as part of a special education evaluation. See *Letter to Unnerstall*, 68 IDELR 22 (OSEP 2016); *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834, 2019 WL 2023567 (W.D. Wash 2019) (citing *Avila v. Spokane Sch. Dist.* 81, 686 F. App'x 384, 385 (9th Cir. 2017)), *aff'd sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022).

14. Here, the District used a variety of assessment tools and strategies in formulating the evaluation. The District assessed the Student using file reviews, including therapy notes, a functional communication checklist, parent reports; observation at school; staff interviews; the VMI; the Vineland-3; and the BASC-3. The team also attempted to administer the CTONI-2, though it was discontinued. Further, the District relied on the observations of multiple staff members, as well as Ms. Parent's input. Thus, the District has shown by a preponderance of the evidence that it complied with WAC 392-172A-03020(2)(a) and WAC 392-172A-03020(2)(b), and WAC 392-172A-03025.

15. In this matter, the District assessed the Student in all areas of suspected disability. In their PWN, the District suggested evaluation in academic, cognitive, fine motor, social/emotional, medical-physical, communication, behavior, and adaptive.

After receiving Ms. Parent's consent, the District's February 2025 evaluation assessed the Student in academic, cognitive, fine motor, social/emotional, communication, behavior, and adaptive. Although medical/physical was not denoted as a separate section in the evaluation, medical data and OT information and assessment were spread throughout the evaluation, contemplating these needs. Thus, the District has shown it complied with WAC 392-172A-03020(2)(e) and WAC 392-172A-03020(3)(e).

16. The evaluation was completed by qualified individuals, including licensed school psychologist Ms. Carney; Ms. Brinkhaus; a licensed SLP; Ms. Miller; a licensed OT; and Ms. Terjeson, a former professor of special education law and long-term special education director. The District's February 2025 reevaluation report included discussion of the Student's current qualifying disability of autism, how that conclusion was reached, and what data supported the determination, particularly the Student's history and previous qualifying disability. Further, the evaluation summary was signed by each participating member of the evaluation team on February 4, 2025, with no dissenting opinions noted. Thus, the District has shown by a preponderance of the evidence that it complied with WAC 392-172A-03020(3)(iv), 34 C.F.R. § 300.304(c)(1)(iv), and WAC 392-172A-03035.

17. For the above reasons, the District has shown by a preponderance of the evidence that the February 2025 evaluation was appropriate, and the Parent is not entitled to an IEE at public expense.

Issues Not Raised

18. A party requesting a due process hearing may not raise issues during a due process hearing that were not raised in the complaint unless the other party agrees. WAC 392-172A-05100(3); 20 U.S.C. § 1415(f)(3)(B). "Administrative and judicial review in IDEA cases is specifically limited to the issues raised in the due process complaint, unless the parties agree otherwise." *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834 *34-35 (W.D. Wash. May 8, 2019), *aff'd sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 2022 U.S. App. LEXIS 907 (9th Cir. 2022) (upholding ALJ's refusal to address claims raised for first time in post-hearing brief where Parents cited no evidence that parties agreed to expand scope of due process hearing). This is consistent with Washington administrative law requiring that a notice of hearing include a statement of the issues (RCW 34.05.434) and that prehearing orders identify all issues and provide an opportunity to object. WAC 10-80-130. An exception to this rule is when an issue was actually tried by the parties at an administrative hearing. *M.C. v. Antelope Valley Union High School Dist.*, 858 F.3d at 1196; *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 *15-16 (E.D. Cal. Mar. 7, 2019), *aff'd* 810 Fed. Appx. 588 (9th Cir. 2020); see also *Issaquah Sch. Dist.*, at *37 (holding that

parents failed to show any of claims not considered by ALJ were tried by consent, contrasting with *Antelope Valley*: “[b]oth sides in *Antelope Valley* ‘presented extensive evidence,’ including witness testimony, regarding the omitted claim”).

19. In this case, extensive testimony was heard as to the appropriateness of the Student’s February 2025 IEP. Both the District and the Parent provided testimony as to its formulation, its appropriateness, and if Ms. Parent was allowed to participate in the process. Additionally, both parties raised argument regarding the appropriateness of the 2025 IEP and Ms. Parent’s participation in that process. Thus, under the *M.C. v. Antelope* exception, the question of whether the 2025 IEP was appropriate, and if Ms. Parent was denied participation in that process, will be considered.

20. The following issues were raised by Parent in their closing brief, which were not raised as issues for hearing, which the District did not agree to hear, and for which testimony was not raised:

1. If the District denied the Student FAPE by failing to conduct an adequate FBA in the 2023-2024 school year;
2. If staffing issues denied the Student FAPE between September and December, 2024;
3. If the District denied the Parent meaningful participation by creating a hostile atmosphere;
4. And, whether the Student made inadequate progress during the 2024-2025 school year.

21. As these issues were not raised prior to hearing, were not tried during hearing, and were not consented to by the District, they fail to meet the *M.C. v. Antelope* exception.

22. For the above reasons, no issues not set out in the issue section of this Order will be considered, other than the issue of the 2025 IEP’s appropriateness, as set out in Conclusion of Law 19.

Was The District’s 2025 IEP Appropriate, And If Not, Did It Deny The Student FAPE?

23. Although not an issue for hearing, numerous arguments were raised and testimony provided as to the appropriateness of the February 2025 IEP. The Parent contends that the IEP was not appropriate and denied the Student FAPE. Additionally, testimony was raised regarding parental participation in the IEP process.

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

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

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

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

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

1. The pattern of behavior(s) that impedes the student's learning or the learning of others;
2. The instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team;
3. The positive behavioral interventions and supports to:
 - a. Reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors;

b. Ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities;

4. The skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior for the Student.

WAC 392-172A-01031.

29. An IEP team must review a student's IEP periodically and not less than annually to determine whether the student is achieving their goals. WAC 392-172A-03110(3).

30. Procedural safeguards are essential under the IDEA. The Ninth Circuit has stated:

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

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

31. The IDEA requires that parents have the opportunity to "participate in meetings with respect to the identification, evaluation, and educational placement of the child." WAC 392-172A-03100; 34 CFR §300.322. To comply with this requirement, parents must not only be invited to attend IEP meetings but must also have the opportunity for "meaningful participation in the formulation of IEPs." *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007).

32. A district violates this procedural requirement if it predetermines a student's placement, meaning that it "independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification." *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). Likewise, a district "may not enter an IEP meeting with a 'take-it-or-leave-it' approach." *Id.* However, preparation by a district prior to an IEP meeting, including developing a draft IEP, does not itself establish predetermination. *Lee's Summit R-VII Sch. Dist.*, 112 LRP 14677 (SEA MO 2012). Also, parents do not have veto power over individual provisions or the right to dictate any particular educational program. *Ms. S.*, 337 F.3d at 1131.

33. In this case, the IEP team considered the strengths of the Student in multiple sections of the IEP, including information on the Student's general strengths and

weaknesses in math, reading, communication, and adaptive skills. Every section of the IEP includes information from, or review of, the Student's February 2025 evaluation. The IEP includes consideration of the Student's academic, developmental, and functional needs in notes for each area of SDI, as well as with the consideration of services and additional supports the Student required. Thus, the 2025 IEP meets the requirements of WAC 392-172A-03110(1).

34. The 2025 IEP included the Student's annual IEP goals in math, reading, written language, communication, social/emotional, and adaptive skills. These goals included clearly defined metrics of progress, reporting, and targets. The 2025 IEP also noted other goals that would be necessary for the Student to participate in the classroom, including the social/behavior and adaptive goals necessary to participate. Thus, the 2025 IEP meets the requirements of WAC 392-172A-03090(1)(b).

35. The 2025 IEP included a list of services the Student would need to make progress toward grade level in general education, including the SDI minutes, supplementary aids and services, and other supports the Student needed. The IEP offered 290 minutes per week in a general education setting, and 1140 minutes per week in the special education setting. The IEP also included the accommodations, modifications, and support the Student needed, such as text to speech and a structured learning environment. Thus, the 2025 IEP meets the requirements of WAC 392-172A-03090(1)(d).

36. The 2025 IEP included consideration of the appropriate strategies, particularly the appropriate forms of positive reinforcement, which would aid in addressing behavior by the Student that impacted his or others' learning. Thus, the 2025 IEP is consistent with WAC 392-172A-03110(2)(a)(i) and 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i).

37. The 2025 IEP was accompanied by the Student's 2025 BIP. The BIP noted the Student's pattern of elopement or aggression, particularly as it resulted in disruption to his and his peers' education. The BIP included information as to the instructional and environmental factors that triggered the Student's behavior, such as telling him "no" or "you can't." The BIP discussed positive reinforcement tools, praise, and rewards, as methods for reducing the Student's behaviors both in the short and long term. The BIP noted the Student's need for a controlled classroom, including adjustments to levels of distraction and sensory input, to create an environment best suited to minimizing the triggers for the Student's elopement and aggression. The BIP included modeling skills, via modeling and repetition, and tools for self-advocacy, to further minimize both elopement and aggression behavior. Thus, the 2025 BIP meets the requirements of WAC 392-172A-01031.

38. The Parent was an active participant in IEP team meetings, and her input was considered. This is especially clear during the BIP process, where the Parent's concerns regarding the validity of an FBA, due to timeliness, led to the IEP team agreeing to perform a new FBA. Nowhere does it appear the District offered a "take it or leave it" approach with Ms. Parent. Thus, the District has complied with the requirements of WAC 392-172A-03100 and 34 CFR §300.322.

39. The District has shown by a preponderance of the evidence that the 2025 IEP was appropriate and did not violate the IDEA. Further, the District has shown that the Parent was not denied meaningful parental participation in creation of the 2025 IEP. Because the 2025 IEP was appropriate and complied with the IDEA, it did not fail to provide the Student FAPE.

Did The District Implement The 2025 IEP And BIP?

40. The next issue is if the District failed to implement the 2025 IEP, including by failing to provide full day support for the Student, and by failing to implement the Student's behavioral supports, per his IEP and BIP.

41. The IDEA requires that school districts provide special education and related services in conformity with a student's IEP. 34 C.F.R. § 300.323(c); WAC 392-172A-03105. However, a school district does not necessarily violate the IDEA when it does not perform exactly as called for by the IEP. *Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811, 815 (9th Cir. 2007). "There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education." *Id.* at 821. Rather, a "district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP." *Id.* at 815. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP. *Id.* at 822.

42. The District implemented all services written in the Student's 2025 IEP, as written. The District provided the Student with access to special education in social/emotional, behavior, written language, math, reading, adaptive, behavior, and communication as laid out in the IEP's service table. The accommodations, such as text to speech, providing breaks, limit to sensory distractions, and the other listed in the 2025 IEP, appear to have been implemented as written. Thus, the District has shown it implemented the 2025 IEP appropriately.

43. Regarding the relevant BIP, the District worked to reduce known classroom triggers, avoid using the words "no" and "you can't," and avoided changes to his routine, as well as the other tools for addressing elopement and aggression. The

District implemented the tools as written. There are repeated indicators in the record that the District staff used the appropriate calming behaviors, such as “check-ins.” The Student was repeatedly praised for their positive behaviors, as required by the BIP. The District complied with the BIP.

44. Here, the Parent argues that the District failed to implement the Student’s 2025 IEP regarding the provision of general education, because the Student was receiving less general education time than they did in the 2024 IEP. As noted above, the Student received less general education time in his 2025 IEP than in his previous year, as the 2024 IEP failed to account for the late start Ms. Parent chose for her student. This is not a compelling argument as the issue before the court is whether the District failed to implement the 2025 IEP. The Student was receiving services in compliance with his 2025 IEP. The lack of additional general education time appears to be a direct result of the late start Ms. Parent required of the District and is consistent with the offer in the 2025 IEP.

45. Parent also argues that the Student was not allowed to participate in general education PE. This argument is not persuasive, as the District followed the IEP language, which specifically states the Student was not to be in general education PE until his foot healed, at Ms. Parent’s request.

46. For the above reasons, the District has shown, by a preponderance of the evidence, that it did not fail to implement the 2025 IEP or BIP.

Did District Staff Isolate Or Restrain The Student In Ways Inconsistent With Training Or In Violation Of Law, Or Fail To Properly Report Such Incidents?

47. In Washington, isolation or restraint shall be used only when a student’s behavior poses an imminent likelihood of serious harm. WAC 392-172A-02110. The limited use of isolation, restraint, or restraint device not prohibited in WAC 392-172A-02076 is conditioned upon compliance with the following procedural and substantive safeguards:

(1) Isolation. The use of isolation as defined by RCW 28A.600.485 is subject to each of the following conditions:

(a) The isolation must be discontinued as soon as the likelihood of serious harm has dissipated.

(b) The isolation enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy.

(c) The isolation enclosure shall permit continuous visual monitoring of the student from outside the enclosure.

(d) An adult responsible for supervising the student shall remain in visual or auditory range of the student at all times.

(e) Either the student shall be capable of releasing himself or herself from the enclosure, or the student shall continuously remain within view of an adult responsible for supervising the student.

(f) Any staff member or other adults using isolation must be trained and certified by a qualified provider in the use of isolation, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.

WAC 392-172A-02110

48. Additionally, under WAC 392-172A-02110(4), school districts must follow the documentation and reporting requirements for any use of isolation, restraint, or restraint device consistent with RCW 28A.600.485. RCW 28A.600.485 also controls the reporting of such restraints.

49. Under WAC 392-172A-02110(2)(c):

“Any staff member or other adults using a restraint must be trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention (including de-escalation techniques) and such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency.”

50. Under WAC 392-172A-01107, isolation is defined as “restricting the student alone within a room or any other form of enclosure, *from which the student may not leave*. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavior intervention plan.”

51. Under WAC 392-172A-05149, school personnel may remove a student to an alternative educational setting for up to 45 days, without regard to if their behavior is a manifestation of disability, if the student carries a weapon; possesses, sells, buys, or uses narcotics, or inflicts serious bodily injury upon another person as defined under Section 1365 (h)(3) of Title 18, U.S.C. Section 1365 (h)(3) of Title 18, U.S.C. defines

serious bodily injury as “bodily injury which involves— (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

52. Serious bodily injury has not been found to occur when only minor injuries are present, such as in *Booneville Sch. Dist.*, 82 IDELR 145 (SEA AR 2022), where a staff member only required rest and over-the-counter pain medications after an incident with a student.

53. Here, the evidence shows that the Student was isolated only twice prior to the 45 day interim setting which began May 8, 2025, as the Student was never placed in a room he could not leave. Per WAC 392-172A-01107, isolation can only occur when a student *may not leave the space*. Here, the record shows the Student was never locked in the calm down room, only instructed to go there. Further, the Student can only be considered isolated if said isolation does not comport with a BIP and if the Student has not placed themselves in isolation on their own. Here, the Student sometimes placed himself in the calm down room, and his BIP called for the calm down room as an appropriate positive behavior intervention plan. The use of the calm down room was not isolation as defined by Washington law.

54. The two exceptions to this took place on January 23, 2025, and March 3, 2025. During these two events, the Student was placed in a separate break room. On these instances, the Student had a staff member with them and the Parent was sent an incident report detailing what took place.

55. Thus, the District has shown, by a preponderance of the evidence, that it complied with RCW 28A.600.485 and did not deny the Student FAPE by inappropriately isolating the Student. Further, the District reported incidents of the Student being sent to the break room and complied with Washington law on those dates.

56. The Student was placed in an isolated setting on May 8, 2025, and remained in that setting until Ms. Parent removed the Student from the District on May 28, 2025. This is within the 45 days contemplated by WAC 392-172A-05149(1)(c) for an interim placement following a manifestation determination. The Student was placed in the isolated setting after hitting Ms. Desue with a stool, for which she required staples in her head. Parent argues that this does not meet the definition of “serious bodily harm.” However, being struck in the head with a stool clearly carries a substantial risk of death. Although Ms. Desue did not die from her wounds, she easily could have and she required medical intervention well and beyond rest and over-the-counter medication in the form of several head staples.

57. For the above reasons, the District has shown by a preponderance of the evidence that it did not isolate the Student in ways inconsistent with training or in violation of the law. The District did not violate 20 U.S.C. § 1415(k) or WAC 329-72A-05147.

58. The Parent argues that the majority of the Student's paraeducators were not trained in Right Response, and that this means the District violated WAC 392-172A-02110(2)(c). However, Ms. McKiddy, the paraeducator Brian, and Mr. Ruffin are the only parties that restrained the Student. All of them were trained in Right Response. Nowhere does WAC 392-172A-02110(2)(c) require that all staff be trained in the use of restraints, only that those who employ restraints need to be.

April 2025 Field Incident Restraint

59. Ms. Parent argues that the restraints used during the April, 2025 field incident did not comply with Right Response training.

60. In the face of multiple trained parties stating the staff acted in ways appropriate to Right Response during the April 2025 field incident, and given the credibility determination of Ms. Marlow in the Findings of Fact above, the Parent's argument is not persuasive. Thus, the District has shown it used restraint appropriate to training during the April 2025 Field Incident.

Did The District Fail To Seek Parental Involvement With An Emergency Response Protocol?

61. Under WAC 392-172A-02105(1)(a), a District is required to receive a Parent's consent before implementing an ERP.

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

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

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

63. In this case, the District sought Ms. Parent's involvement in the ERP on five different occasions. Ms. Parent did not consent to the District's proposed ERP. Thus, the District violated the IDEA and denied the Student FAPE by denying Ms. Parent meaningful participation in the ERP process.

Is The Parent Entitled To Her Requested Relief?

64. The District violated the IDEA by failing to secure Ms. Parent's consent for the ERP and thus denied the Student FAPE. Next, the appropriate remedy must be crafted.

65. Courts act in equity when remedying IDEA violations. *Reid v. District of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005). "The essence of equity jurisdiction is to do equity and . . . mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it." *Id.*

66. Here, the District failed to receive consent for the proposed ERP. However, nothing in the ERP was any different than the information included in the Student's IEP or FBA. In effect, the ERP codified the already-existing behavioral intervention protocols but didn't change anything. So, although the District denied the Student FAPE, the impact was meager.

67. As such, the District shall provide training on the requirements of implementing emergency response protocols, which is to include coverage of parental consent requirements. This training is required for all staff responsible for developing and implementing ERPs at Pioneer Middle School. Training is not required for general education teachers. The training should be provided by a person(s) of the District's choosing who has the necessary education, training, and experience to conduct such training, but is not to be an employee of Pioneer Middle School. The training should not be less than two hours in duration. The training shall be received within six months of the date of this order.

68. There has been no indication that the Student failed to receive instruction because of this denial of FAPE. The District has proven, by a preponderance of the evidence, that the other issues raised by the Parent were not violations of the IDEA or denials of FAPE. Thus, the Parent's requested remedies are not granted.

ORDER

The District violated the procedural requirements of the IDEA and denied the Student FAPE when it failed to receive Ms. Parent's consent for the 2025 ERP, as outlined in Conclusion of Law in 61, 62, and 63. The District is ordered to provide training as described in Conclusion of Law 67.

The Steilacoom Historical School District has proven by a preponderance of the evidence that it did not violate the IDEA or deny the Student FAPE regarding the Parent's other alleged issues. The Parent's requested remedies are denied.

SERVED on the date of mailing.



Niles McDonald
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:

Mary V. Griffin
Northwest Justice Project
401 2nd Ave S, Suite 407
Seattle, WA 98104

via E-mail
mary.griffin@nwjustice.org
louise.akerblom@nwjustice.org

Parent


via First Class Mail

Kari Terjeson
Director of Special Education
Steilacoom Historical School District
511 Chambers St
Steilacoom, WA 98388

via E-mail
kterjeson@steilacoom.k12.wa.us

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

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

Dated September 30, 2026, at Spokane Valley, Washington.



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

cc: Administrative Resource Services, OSPI