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STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS **SEATTLE-OAH**  
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JAN 17 2018

Superintendent of Public Instruction  
Administrative Resource Services

January 13, 2018

Parents  
[REDACTED]

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**In re: Mukilteo School District**  
**OSPI Cause No. 2017-SE-0089**  
**OAH Docket No. 09-2017-OSPI-00399**

Dear Parties:

Enclosed please find the Findings of Fact, Conclusions of Law, and Order in the above-referenced matter. This completes the administrative process regarding this case. Pursuant to 20 USC 1415(i) (Individuals with Disabilities Education Act) this matter may be further appealed to either a federal or state court of law.

After mailing of this Order, the file (including the exhibits) will be closed and sent to the Office of Superintendent of Public Instruction (OSPI). If you have any questions regarding this process, please contact Administrative Resource Services at OSPI at (360) 725-6133.

Sincerely,

Anne Senter  
Administrative Law Judge

cc: Administrative Resource Services, OSPI  
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator

JAN 17 2018

Superintendent of Public Instruction  
Administrative Resource ServicesSTATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION

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SEATTLE-OAH

IN THE MATTER OF:

OSPI CAUSE NO. 2017-SE-0089

MUKILTEO SCHOOL DISTRICT

OAH DOCKET NO. 09-2017-OSPI-00399

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Anne Senter in Mukilteo, Washington, on November 20, 2017. The Parents of the Student whose education is at issue<sup>1</sup> appeared and were represented by Ryan Ford, attorney at law. The Mukilteo School District (District) was represented by Carlos Chavez, attorney at law. Lisa Pitsch, District director of special education, also appeared.

**STATEMENT OF THE CASE**

The Parents filed a Due Process Hearing Request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on September 25, 2017. The Complaint was assigned Cause No. 2017-SE-0089 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered September 26, 2017. After the District filed a Motion of Prejudice, an Order of Reassignment was entered October 4, 2017, reassigning the case to ALJ Anne Senter. The District filed its Response to the Complaint on October 9, 2017.

Prehearing conferences were held on October 18 and 24, and November 1, 2017. Prehearing orders were entered October 19 and November 6, 2017. An Order Granting Parents' Stay-Put Motion was entered October 31, 2017. Following the hearing, an Order Setting Due Date for Post-Hearing Briefs was entered on November 27, 2017. The parties timely filed post-hearing briefs on December 15, 2017.

**Due Date for Written Decision**

As set forth in the Order Setting Due Date for Post-Hearing Briefs, the due date for a written decision in this matter was continued to 30 days after the close of the record at the

1. In the interests of preserving the family's privacy, this decision does not name the parents or student. Instead, they are each identified as "Parents," "Mother," "Father," and/or "Student." The individuals identified as the Parents in this case have third-party custody of the Student, who is their nephew. Father, Tr. 40; Mother, Tr. 71. Because they essentially act as the Student's parents, they are referred to herein as Mother, Father, and Parents even though they are not his biological parents.

Parents' request. As the record closed when the parties submitted their post-hearing briefs on December 15, 2017, the due date for a written decision in this case is **January 14, 2018**.

### **Evidence Relied Upon**

**Exhibits Admitted:**

**District's Exhibits:** D1 - D14; and

**Parents' Exhibits:** P1 - P12.

**Witnesses Heard (in order of appearance):**

Darcy Doyle-Hupf, executive director of Northwest's Child;  
The Student's Father;  
The Student's Mother;  
Cindy Steigerwald, District director of transportation and safety;  
Tara Torpey, District special education teacher; and  
Laura Ploudre, District assistant director of special education.

### **ISSUES**

As set forth in the Second Prehearing Order, the issues for the due process hearing are:

- a. Whether the District violated the Individuals With Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by failing to provide out-of-district transportation for the Student to his daycare beginning September 6, 2017;
- b. And, whether the Parents are entitled to their requested remedies:
  - i. Out-of-district transportation to Northwest's Child for the remainder of the 2017-2018 school year;
  - ii. Reimbursement for public transportation and any other expenses incurred by the Parents due to the District's failure to provide out-of-district transportation beginning September 6, 2017;
  - iii. And/or other equitable remedies, as appropriate.

### **FINDINGS OF FACT**

#### *Background*

1. The Student was in the sixth grade at the time of the hearing. Exhibit D5, p. 1. He turned 12 years old in November 2017, shortly before the hearing. Father, Tr. 51; Mother, Tr. 107.
2. The Student has attended school in the District since he was in the second grade. Exhibit D1, p. 5. He has been diagnosed with fetal alcohol spectrum disorder, attention deficit

hyperactivity disorder, static encephalopathy, and behavior disorder, and he struggles with impulsivity, mood, and sleep problems. Exhibits D1, p. 4; P7; Mother, Tr. 72. While enrolled in the District, he has been eligible for and received special education and related services under the other health impairment disability category. Exhibits D1, D3, D4, D5. He receives special education services in the areas of reading, math, written language, organization, social/emotional/behavioral, and speech language pathology. Exhibit D5, p. 12.

3. The Student has behavioral issues that are present both at home and at school. The Parents see such issues occur two to five or more times per day. Father, Tr. 40. These issues escalate from balking to whining, complaining, yelling, screaming, pounding walls or counters, and throwing himself on the floor. Father, Tr. 41.

4. At school, the Student's behavioral challenges have impacted his placement. In October 2016, the Student's placement was changed to a behavior support center because of his increasing difficulties in managing his behavior, including three incidents of extremely escalated behavior in the beginning of that school year. Exhibit D4, pp. 6, 16; Torpey, Tr. 146. That behavior included an event in which he left the class, ran around campus, and threw rocks at staff and students, and pounded rocks on the classroom emergency doors. Exhibit D4, p. 6.

5. The Student has a behavioral intervention plan (BIP) that targets his disruptive and unsafe behavior, including screaming, swearing, yelling at others, throwing chairs, knocking over desks and getting in the personal space of others. Exhibit P3. At the time the BIP was implemented in February 2017, he had been unsafe to the point of needing to be restrained or isolated on seven occasions since he began attending the behavior support center. *Id.* at 1. It was noted that six of these unsafe incidences took place between 9:00 and 9:30 in the morning. *Id.* It was determined that a contributing factor to his behavior was that he had a difficult time coming from a highly social environment on the bus to a more structured classroom environment. *Id.* The BIP identified intervention strategies to address this, including an adult meeting the Student when he got off the bus and the establishment of a morning routine. *Id.* At some point, because of the Student's behavior at school in the morning and because of concerns of him tickling another student on the school bus, it was determined that the Student would ride in a school bus from home in the morning with no other students present. Torpey, Tr. 149; Mother, Tr. 75; Steigerwald, Tr. 138. The Student's behavior at school has also led to discipline, most recently a suspension in October 2017 for a physical assault on a teacher. Exhibit D13; Father, Tr. 64-65.

6. The Student's individualized education programs (IEPs) have included "special transportation" since March 2016. Exhibits D3, D4, D5. The IEPs have not identified what this meant. The Student's IEPs have not included after-school daycare or other after-school or extra-curricular programs as necessary for the Student to receive FAPE. *Id.*

7. The Student has been terminated from at least eight daycares since he began attending daycare as an infant. Mother, Tr. 75. All but two of these incidents took place before he began attending school in the District. *Id.* at 76. While he attended school in the District, he was dismissed by the YMCA and the Mukilteo Boys and Girls Club. *Id.* at 76. The Mother believes these daycares were not able to serve him because they were "standard" daycares and did not cater to special-needs children or have a small enough ratio of staff to students to address the Student's behavior concerns and other needs. Mother, Tr. 80.



8. The Student attended the Boys and Girls Club, which was within the District's boundaries, until approximately November 2015. Mother, Tr. 105. When he was terminated from that program, the Mother changed her work schedule and picked the Student up after school and stayed with him at home. *Id.* at 106. They did this until he began attending Northwest's Child (NW Child) after school in February 2016. *Id.*

9. NW Child is a non-profit, private program that provides after-school childcare services to students with special needs. Exhibit 12, p. 2. It has two locations – one in Seattle and one in Lynnwood. *Id.* The Student attends the Lynnwood location, which is within the Edmonds School District and approximately six or seven miles outside the District's boundaries. *Id.*; Doyle-Hupf, Tr. 15; Steigerwald, Tr. 130. At the time of the hearing, there were seven students attending the Lynnwood location. Doyle-Hupf, Tr. 15. The facility is staffed with a head teacher and two or three assistants at any given time. *Id.* at 17. The head teachers are educated and trained in the development of children with special needs and related fields but are not certificated teachers. Exhibit P12, p. 2. NW Child's staff works with the Student on his IEP goals. *Id.* Darcy Doyle-Hupf, NW Child's director executive director, testified that the facility works with children's teachers at their schools, but had not yet had significant contact with the Student's teacher for the current school year. Doyle-Hupf, Tr. 21. She did not have personal knowledge of anyone speaking with the Student's teacher from the 2016-2017 school year, and that teacher testified she had no communicated with NW Child's staff about the Student's IEP goals. *Id.*; Torpey, Tr. 147-48. Thus it cannot be found that NW Child's staff communicated with the Student's District teachers regarding his IEP.

10. NW Child's staff has generally been successful at helping the Student deescalate his negative behaviors, although staff has called the Father to pick up the Student early because of his behavior approximately once per month. Mother, Tr. 103. The Parents believe that NW Child will never kick the Student out because of his behaviors. Father, Tr. 42; Mother, Tr. 81. The Father testified that the Ms. Doyle-Hupf told him this but she did not include that statement in her own declaration or testimony. Exhibit P12; Doyle-Hupf, Tr. 11-33. Given the hearsay nature of this statement and the unlikelihood that a provider could guarantee it would never terminate a student regardless of his future behavior, no finding is made that NW Child will serve the Student indefinitely regardless of his behavior.

11. The District initially declined to transport the Student to NW Child because it was outside the District. Mother, Tr. 85-86; Steigerwald, Tr. 117-19. However, the District had previously agreed, as an exception to its general policy, to transport another District student, who attended the same District school as the Student, to NW Child. *Id.* When the Parents made another request, the District agreed to transport the Student to NW Child on the same bus as the other student. *Id.*

12. For general education students, the District provides transportation to daycares within the boundaries of a student's school of attendance. Steigerwald, Tr. 119. For special education students, the District will transport to daycares anywhere within the 50 square miles of the District's boundaries. *Id.* The District provides out-of-district transportation only to students placed by the District in services outside the District's boundaries and to homeless students entitled to out-of-district transportation under the federal McKinney-Vento Act. Steigerwald, Tr. 116, 134. While the District's policy was not to provide out-of-district transportation for other reasons, it had granted three exceptions, including the exception for the Student and the other student who attended NW Child. *Id.* at 125, 137.

13. The District receives numerous requests for exceptions to its various transportation policies, including its policy not to transport students outside district boundaries. Before the beginning of the 2017-2018 school year, the transportation department determined that it needed to develop a consistent practice for responding to requests for transportation for out-of-district daycare. Exhibit D6; Steigerwald, Tr. 121, 126. The District determined that, for special education students, IEP teams should determine whether the students required such transportation in order to access their special education services. Exhibit D6; Steigerwald, Tr. 121.

14. The District contacted the Parents to schedule an IEP meeting for this purpose and informed them that transportation to the Student's out-of-district daycare would not be provided for the upcoming school year unless the IEP team determined it was necessary for him to access his special education services. Exhibit D7.

15. An IEP meeting was held and the team determined, over the Parents' objection, that transportation to NW Child was not required for the Student to access his special education services. Exhibit D10. The District provided the Parents with prior written notice of this decision on September 5, 2017. *Id.*

16. When the current school year started, the District continued to provide morning transportation for the Student. Exhibit D12. A District bus picks the Student up from home at 7:25 a.m. Father, Tr. 67. The Mother and Father take turns getting the Student on the bus. Father, Tr. 67.

17. The Parents declined after-school transportation from school to home or to any other location within the District. Exhibit D12; Steigerwald, Tr. 139. For the first several days of school, the Father picked up the Student after school and took him to NW Child. Mother, Tr. 100.

18. Beginning September 12, 2017, the Student was transported from school to NW Child by DART bus. Mother, Tr. 100. DART is a door-to-door transportation service for individuals with special needs and the elderly provided by the county. Doyle-Hupf, Tr. 25. The Parents paid the \$2.25 bus fare each day for the Student. Father, Tr. 43-44. The Student did not have any behavior problems while taking the DART bus. Doyle-Hupf, Tr. 28; Father, Tr. 60. The Parents and Ms. Doyle-Hupf are concerned that the Student could be kicked off DART because of his behavior and be unable to get himself where he needed to go safely or that he could be taken into police custody. Exhibit P12, p. 3; Father, Tr. 49. However, no one with knowledge of DART's policies testified as to what would occur if the Student had behavioral issues on the DART bus so no finding is made in this regard.

19. Since the ALJ ordered on October 31, 2017, that that the Student's stay-put placement included transportation from school to NW Child, the District has again provided transportation. Father, Tr. 43; Order Granting Parent's Stay-Put Motion.

20. The Parents face a number of logistical problems in transporting the Student to NW Child themselves. The Father works as a legal office assistant from 8:00 a.m. to 5:00 p.m. in Everett. Father, Tr. 38-40, 50. Leaving work to pick the Student up from school and take him to daycare would cause significant changes to the Father's work schedule. *Id.* at 45. He would have to

work through his normally-scheduled lunch and then take his lunch from 2:30 to 3:30 p.m. to transport the Student. *Id.* at 46. The round trip would take him approximately an hour if there were no delays or, in a worst-case scenario, he may not make it back to work that day. *Id.* at 46. If the round trip took longer than his hour lunch period, the Father would have to make up the time at the end of the day. He could not work too much later than his normal end time, however, because he would have to pick the Student up from NW Child before it closed at 6:00 p.m. *Id.* at 46-47. The Father would lose time on occasions when he could not make up all his work. *Tr. Id.* at 48. The Father leaving during the day to transport the Student would also cause a work flow problem in his office if other employees had to cover for him. *Id.* at 45. When the Father changed his work schedule before to pick the Student up, his employer was not pleased, the Father's stress load increased, and he had migraines. *Id.*

21. The Mother works as a patient coordinator at a hospital in Kirkland from 10:00 a.m. to 6:30 p.m. Mother, *Tr.* 70. Prior to September 2017, the Mother worked 8:00 a.m. to 4:30 p.m. *Id.* at 92. She changed her shift because she had been trading shifts with her coworkers to be home with the Student in the morning. *Id.* The Mother cannot take time off work during the day to transport the Student because of the nature of her job. *Id.* at 90. The family does not have anyone else available to transport the Student to NW Child. *Id.* at 59.

22. The Student cannot go home after school because he cannot be left unsupervised there. Father, *Tr.* 48. In the past, he has tried to light a towel on fire at home, tried to choke the family's cat in anger, and has wandered to the wrong place when he left the house to visit a friend. *Id.*

23. The Parents believe that there is no daycare provider within District boundaries that could serve the Student. Father, *Tr.* 43; Mother, *Tr.* 76. The Mother received a list of childcare and preschool providers within the District from another parent, who had obtained it from the District. Exhibit P11; Mother, *Tr.* 76. The list contains 29 providers. Exhibit P11. The Mother ruled out one of the providers, based on the information provided on the form, because that provider closed at 5:00 p.m. before the Parents could pick up the Student given their work schedules. Exhibit 11; Mother, *Tr.* 77. The Mother ruled out 26 of the providers because she determined the Student was too old based on the ages the providers served. Exhibit P11; Mother, *Tr.* 77-78. Ruling out these providers left two potential providers within the District for the Student. Exhibit 11; Mother, *Tr.* 79. The Mother called one of those providers twice but the voicemail box was full. *Id.* at 79. She called again shortly before the hearing and it was again full. *Id.* She called the second provider and learned that it was not accepting school-age children at the time. *Id.*

24. The Mother also conducted an online search through a Department of Social and Health Services program called Childcare Aware to look for providers that could address students with special needs. Mother, *Tr.* 88. When the Mother entered the Student's needs and goals, the website did not provide any results within the District. *Id.* She consulted another website, childcare.us, entered the same information, and was provided with the names of approximately seven providers. *Id.* She determined that the Student was too old for all but two of them. *Id.* She called those two. *Id.* One did not call her back and one reported that it did not serve children over the age of 12. Mother, *Tr.* 88, 102.

25. When the Mother considered which providers could not serve the Student because of his age, she interpreted statements such as ages "infant to 12 years" as meaning a provider would

not serve a student who was 12. Mother, Tr. 107. This is not a reasonable interpretation. A statement that a provider serves ages “through 12” or that it does not serve children “over 12” both reflect that the provider would serve children, like the Student, who were 12. On the list of providers within the District, 10 of them stated that they served children who were 12 years old. Exhibit 11. None of those providers stated that they closed before 6:00 p.m. *Id.* Additionally, one of the providers the Mother found online after inputting the Student’s special needs stated that it would serve students who were 12. Mother, Tr. 88, 102. Thus the Mother learned of 11 providers within the District, one of which was the result of a search inputting the Student’s special needs, that she did not contact before the hearing.

26. The Mother attempted to call seven more of the providers on the list during the lunch break at the hearing. Mother, Tr. 157. She did not identify which providers she called. She left messages for two or three providers and the others said they were either full or not taking middle-school students. *Id.* She also called Kindercare and learned that it was full. *Id.* There are two Kindercare facilities on the list and the Mother did not identify which one she called. Exhibit 11; Mother, Tr. 157.

27. The Mother also testified that she spoke with another parent during the lunch period and that parent reported that she had called every provider on the list except for Kindercare and they were all either full or could not accommodate a child who had behavior concerns or had been kicked out of another daycare for behavior concerns. *Id.* This statement is inconsistent with the Mother’s testimony that the other parent left messages for some providers that were not returned and that the other parent had determined her child was too old for some of the providers. See *id.* at 157. The record in this case does not contain the age of the other parent’s child. The hearsay statements require clarification that could not be obtained at the hearing because the other parent was not present. The Parents argue that these hearsay statements are especially reliable because the other parent testified in a different hearing before OAH. The ALJ may not look outside the record of this case to develop the facts here even if the Mother had identified the name of the other parent in her testimony, which she did not. No finding is made based on the Mother’s hearsay testimony about what another District parent told her about calling the daycare providers on the list.

28. Without knowing which providers the Mother spoke with at lunch, it cannot be determined that they were any of the 10 facilities on the list that would have accepted students who were 12 years old. Even if it is assumed that the Mother called only providers accepting 12-year-old students, including the Kindercare that does so, she only identified talking to 5 or 6 of them, including Kindercare, meaning there were still 4 or 5 providers on the list that may have accepted the Student that she did not speak with. Nor did she attempt to call the provider she had found online that purported to accept 12-year-old students with the Student’s special needs. Accordingly, there are still at least 5 or 6 potential providers in the District that might be able to serve the Student, including one purporting to address his special needs, that the Mother has not contacted to confirm their ability or inability to serve him.

## 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 thereunder, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. See *Schaffer v. Weast*, 546 U.S. 49 (2005). As the Parents are the party seeking relief in this case, they have the burden of proof.

### The IDEA

3. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures 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.

*Id.* at 206-207 (footnotes omitted).

4. A "free appropriate public education" consists of both the procedural and substantive requirements of the IDEA (formerly the EHA). The *Rowley* court articulated the following standard for determining the appropriateness of special education services:

[A] "free appropriate public education" consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child "to benefit" from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State's educational standards, approximate the grade levels used in the State's regular education, and comport with the child's IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a "free appropriate public education" [FAPE] as defined by the Act.

*Id.* at 188-189.

5. A district is not required to provide a "potential-maximizing" education" in order to provide FAPE, but only a "basic floor of opportunity" that provides "some educational benefit" to the Student. *Id.* at 200-01. A district must provide a student with a "meaningful benefit" in order to satisfy the FAPE requirement. *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 852 (9<sup>th</sup> Cir. 2014).

6. The Supreme Court recently clarified the substantive portion of the *Rowley* test quoted above:

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. . . [H]is educational program must be appropriately ambitious in light of his circumstances . . .

*Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. \_\_\_, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Endrew F.* standard as follows:

In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can "make progress in the general education curriculum," taking into account the progress of his non-disabled peers, and the child's potential.

*M.C. v. Antelope Valley Union High Sch. Dist.*, 852 F.3d 840 (9th Cir. 2017)(citation omitted).

#### Transportation to a Daycare Outside the District as a Related Service

7. A FAPE is expressly defined as including both special education and "related services." WAC 392-172A-01080. "Related services," in turn, is defined as "transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education. . . ." WAC 392-172A-01155(1). Transportation, for this purpose, "includes travel to and from school and between schools." WAC 392-172A-01155(3)(p). Thus transportation to and from school is a necessary related service when it required to assist an eligible student to benefit from his special education.

8. The issue presented here is whether transportation by the District to the Student's daycare provider outside the District is required for him to benefit from his special education and therefore qualify as a necessary related service.

9. The District argues that transportation to an out-of-district daycare is only required if the daycare services themselves are an educational necessity for the Student. *See, e.g., Fick v. Sioux Falls Sch. Dist.*, 39 IDELR 151 (8th Cir. 2003)(transportation to daycare rather than home not necessary for student to benefit educationally from her IEP rather than for the parent's convenience or preference); *Kimberly Area Sch. Dist.*, 114 LRP 36099 (SEA WI 2014)(transportation to daycare outside district's geographical boundaries not required where it was a private decision made by the parents); *Mukilteo Sch. Dist.*, 43 IDELR 231 (SEA WA 2005)(transportation to aunt's home home outside of school district for child care not necessary for student to achieve educational benefit but for parent's convenience). If this is the standard, the Parents would not prevail. Although there is no doubt that NW Child is beneficial for the Student and his family as a daycare provider, there is no evidence that the services it provides are necessary for him to benefit from the special education he receives at school.

10. The Parents argue, in contrast, that because of the lack of daycare providers available to serve the Student within the District and the Parents' inability to transport him to NW Child, out-of-district transportation is necessary for the Student to benefit from his special education

because he would otherwise be unable to go to school at all. See, e.g., *In the Matter of Ameer W.*, 508 LRP 8655 (SEA WA 1986)(transportation to out-of-district daycare when there was no daycare in the district to serve handicapped children was reasonable and necessary because student could not otherwise attend school and obtain educational benefit); *In re Jesse D. v. Hartford Bd. of Educ.*, 401 IDELR 356 (SEA Conn. 1989)(transportation to daycare outside of district is necessary related service where parent had unsuccessfully made good faith effort to enroll the student in a district daycare and, as single parent, would be faced with losing her job if she had to transport him); *In re: Student with a Disability*, 117 LRP 43129 (SEA LA 2017)(out-of-district transportation to the only local facility willing to provide student with after-school care is appropriate related service in light of student's circumstances).

11. Neither the Ninth Circuit nor Washington courts appear to have addressed this precise issue. It is not necessary, under the facts of this case, to determine which of these arguments should control and whether the Parents must prove that the daycare services themselves provide an educational benefit necessary for the Student to receive FAPE. Nor is it necessary to determine whether transportation to an out-of-district daycare that does not itself provide an education benefit is a necessary related service if attending that daycare is the only way for a student to attend school given his parents' work schedules and ability to transport him. This is because the Parents have not met their burden of proving that there is no appropriate daycare option within the District for the Student. For that reason, they have not demonstrated under either standard that transportation to NW Child is required for the Student to benefit from special education.

#### The Parents' Other Arguments

12. The Parents also argue that the District denied the Student FAPE because it failed to evaluate him before discontinuing his out-of-district transportation. However, this claim was not identified in the Parents' Complaint or included in the statement of the issues. Nor was it raised at the hearing. For these reasons, this issue is not addressed.

#### ORDER

1. The Parents have not proven that the District violated the Individuals with Disabilities Education Act or denied the Student a free appropriate public education.
2. The Parents' requested remedies are denied.

Signed at Seattle, Washington on January 13, 2018.



Anne Senter  
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, Administrative Resource Services.

**CERTIFICATE OF SERVICE**

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein.



Parents



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cc: Administrative Resource Services, OSPI  
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator