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October 15, 2018

Mother
[REDACTED]

Karen Remy-Anderson, Executive Director for Student
Support Services
North Thurston School District
305 College St NE
Lacey, WA 98516-5390

Philip A. Thompson, Attorney at Law
Perkins Coie
10885 NE Fourth St, Ste 700
Bellevue, WA 98004-5579

In re: North Thurston School District
OSPI Cause No. 2017-SE-0109
OAH Docket No. 12-2017-OSPI-00439

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

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Superintendent of Public Instruction
Administrative Resource Services

STATE 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-0109

NORTH THURSTON SCHOOL DISTRICT

OAH DOCKET NO. 12-2017-OSPI-00439

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

A due process hearing was held in the above-referenced matter before Administrative Law Judge (ALJ) Anne Senter on February 26 - 28, March 2, 5, 6, 7, and 12, April 18, 20, and 26, and May 2, 3, 4, 7, 17, 18, and 22, 2018, pursuant to notice mailed to the parties. The Parents of the Student whose education is at issue¹ appeared and were accompanied and advised throughout the hearing by [REDACTED], [REDACTED], and [REDACTED], their advocates. The North Thurston School District (District) was represented by Philip A. Thompson, attorney at law. Also present for the District was Donnita Hawkins, District director of secondary special education.

STATEMENT OF THE CASE

The Mother filed a Due Process Hearing Request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on December 4, 2017. The Complaint was assigned Cause No. 2017-SE-0109 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered December 6, 2017, which assigned the matter to ALJ Anne Senter. The Mother requested to amend the Complaint on December 31, 2017, and her request to amend was granted effective January 3, 2018.

Prehearing conferences were held on January 3, 12, 25, and 31, 2018. Prehearing orders were entered January 8, 17, and 29, and February 2, 2018. Orders adding hearing dates were entered March 2, April 3 and 24, and May 10, 2018.

At the beginning of the hearing, the District moved to dismiss the Parents' amended Complaint on the grounds that it was not properly served on the District. The motion was denied. Later during the hearing, at the conclusion of the Parents' case-in-chief, the District moved to dismiss some of the Parents' issues and requested remedies. It was determined that the motion would be addressed in the order following the hearing, and the parties were informed they could address the motion in their post-hearing briefs.

The parties agreed at the conclusion of the hearing, based on when the written transcripts were expected to be complete, to file and exchange post-hearing briefs by August 16, 2018. After learning that the transcripts would not be completed when expected, the parties agreed to submit

¹To ensure confidentiality, names of parents and students are not used. Instead, they are identified as "Parents," "Mother," "Father," and/or "Student."

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post-hearing briefs by August 27, 2018. Post-hearing orders were entered on June 20 and July 16, 2018.

The parties' post-hearing briefs were timely received on August 27, 2018. In addition to their brief, the Parents submitted an untitled "attachment A," which contains additional argument. They also submitted a memorandum in opposition to the District's motion of dismissal and a declaration of the Father in opposition to the motion. The District filed a motion to strike impermissible portions of the Parents' post-hearing submissions, and the Parents filed a request to dismiss the District's motion to strike. These motions are addressed below.

Due Date for Written Decision

As set forth in the first Prehearing Order, the due date for a written decision in this case was continued at the District's request to 30 days after the close of the record. As the record closed with the receipt of the parties' post-hearing briefs on August 27, 2018, the due date for the written decision in this case was September 26, 2018.

Evidence Relied Upon

Exhibits Admitted:

District's Exhibits: D1 through D42; and

Parents' Exhibits: P1 - P5; P7 - P14; P16 - P18; P19 (except p. 2 and handwriting); P20 - P28; P32 - P34; P35 (except p. 3); P37; P39 - P41; P43 (pp. 2 - 4 only); P44 (p. 2 only); P46 - P47; P49; P50 (pp. 1, 2, and 4 only); P51 - P54; P55 (pp. 2, 9, 10, and 11 only); P56 - P62; P64; P69; P71; P73; P74 (p. 119 only); P75 - P76; P78 - P80; P81 (p. 1 only); P82 - P83; P85; P87 (pp. 2 - 5 only); P89 (pp. 3 - 8, 11 - 20, 21-22, 25, and 26 only); and P90 - P92.

Witnesses Heard (in order of appearance):

The Student's Aunt, childcare provider;
Kathryn Holley, University of Washington behavior and education consultant;
Dr. Beth Harvey, Pediatric Associates pediatrician;
Jennifer Sharp, District special education teacher;
Ryan Hannig, Imagine Behavioral and Developmental Services program director;
Larry Williams, District bus driver;
Lisa O'Gorman, District speech-language pathologist;
Michela Laverty, District special education teacher;
Beverly Cleo Thompson, Club Z! Tutoring tutor;
Dr. Donnita Hawkins, District special education director for secondary schools;
Dr. Patricia Matestic, Ph. D., University of Washington licensed clinical psychologist;
Theresa Schmitz, District occupational therapist;
Rebekah LaMarche, District school psychologist;
Gregory K. Goble, Jr., District assistant principal;
Teresa Stoudemire, District paraeducator;
Nathan Keogh, District speech-language pathologist;
Renee Kilcup, District general education teacher and coach for Unified Sports program;
Linda Dittmar, District autism specialist/board-certified behavior analyst;

Jeff Birbek, District general education teacher;
The Student's Father; and
The Student's Mother.

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:
 - i. Failing to develop an appropriate individualized education program (IEP) on September 15, 2017, by:
 - A. Not including appropriate present levels of performance;
 - B. Not including appropriate measurable annual goals;
 - C. Not providing appropriate accommodations and modifications;
 - D. Not providing appropriate assistive technology;
 - E. Not providing appropriate special education and related service minutes;
 - F. Not providing appropriate supports for school personnel;
 - G. Not providing appropriate related services, supplementary aids, or services;
 - H. Not providing for the Student's least restrictive environment;
 - I. Providing that a paraeducator rather than a special education teacher would deliver and monitor the Student's special education services;
 - ~~ii. Failing to appropriately implement the IEP dated September 15, 2017, by failing to provide an appropriate paraeducator for the Student;²~~
 - iii. Failing to develop an appropriate behavior intervention plan (BIP) on September 15, 2017, by:
 - A. Failing to appropriately address the Student's elopement and withdrawal;
 - B. Failing to allow the Student to be educated in the least restrictive environment;

² This issue was modified and moved to a subsection of the issue above at the request of the Parents. See Second Prehearing Order. The issue appears above struck-through rather than omitted in order to preserve the numbering of the remaining issues.

- C. Failing to appropriately address instructional or environmental conditions or circumstances that contribute to the pattern of behaviors;
 - D. Failing to include appropriate positive behavioral interventions and supports to reduce the pattern of behaviors that impede the Student's learning and increase the desired pro-social behaviors;
 - E. Failing to appropriately ensure the consistency of the implementation of positive behavioral interventions across the Student's school, home, and community;
 - F. Failing to appropriately provide for skills that will be taught and monitored as alternatives to challenging behaviors for a specific pattern of behavior of the Student;
 - G. Failing to consider positive behavioral interventions to include the consideration of environmental factors that may trigger challenging behaviors and teaching the Student the skills to manage his own behavior;
- iv. Failing to meet with the Parents when the Student's behaviors continued;
 - v. Failing to properly convene an eligibility meeting related to a functional behavior assessment in September 2017 by:
 - A. Not obtaining the Parent's³ signature on the consent form;
 - B. Sending an invitation on September 22, 2017, for a meeting held on September 15, 2017;
 - C. Incorrectly listing meeting participants;
 - D. Not obtaining excusal forms for those not present;
 - vi. Depriving the Parent of the opportunity to meaningfully participate in the decisions of the Student's IEP team during the 2017-2018 school year by:
 - A. Indicating only certain courses of action were available for the Student;
 - B. Prohibiting certain services or placements;
 - C. Unreasonably refusing to schedule an IEP meeting at Parent request;
 - D. Making decisions outside of IEP meetings;

³ The Mother filed the Complaint and the Father had not participated in the case at the time the issues were developed. Presumably the references to the Parent in the singular in the statement of the issues are to the Mother.

- E. Refusing to listen to the Parent's concerns;
- vii. Conducting the initial resolution meeting in this case on December 18, 2017, without the intent to discuss a resolution and without relevant members of the IEP team present;
- viii. Providing prior written notices (PWNs) on September 21, 2017, and September 22, 2017, that:
 - A. Failed to address Parent requests and indicating acceptance or denial of the requests;
 - B. Failed to list appropriate reasons for some denials;
 - C. Failed to allow the Parent enough time to respond or seek a dispute resolution option before implementing District decisions;
- b. And, whether the Parent is entitled to her requested remedies:
 - i. Placement and location change to North Thurston High School with special education teacher, Michela Laverty, immediately with daily and weekly communication written into the Student's IEP with the type of communication and response action to be developed for clear understanding and purpose;
 - ii. Monthly progress report meeting between the case manager and the Parent to be written into the Student's IEP to review all data sheets, and curriculum, including the curriculum progress guide (Styer-Fitzgerald Functional Curriculum) used, and to collaboratively develop solutions and gain additional support, including service providers such as board certified behavior analysts (BCBAs), occupational therapists (OTs), speech language pathologists (SLPs), etc.;
 - iii. Assistive technology (AT) written into the Student's IEP to include:
 - A. An AT evaluation with AT specialists in a clinical setting (Maci Revelli and Jo Ristow at Seattle Children's Hospital) looking at the iPad and available apps such as MemoCal Picture Daily Calendar, Scene Speak, and Pictello;
 - B. Results meeting with the Parent and the Student's case manager;
 - C. Monthly review of Student's results;
 - iv. Reading goals added to the Student's IEP in the following areas:
 - A. Phonological awareness: rhyming, beginning and ending sounds, segmenting and blending syllables and sounds;
 - B. Phonics: letter-sound correspondence for consonants, vowels, and consonant digraphs;

- C. Beginning, ending, and medial letter identification and sound manipulation;
 - D. Automaticity/fluency: timed letter and word recognition, modeled paragraph reading goals;
 - E. Vocabulary goals;
 - F. Spelling goals;
 - G. Comprehension: comprehension of words and word parts, comprehension of sentences, paragraphs and stories, and picture support to enhance comprehension of words, phrases, sentences, and paragraphs;
- v. Reading specialist to be added to the Student's IEP to include:
- A. Direct services;
 - B. Meetings twice per week with the case manager;
 - C. Weekly and monthly reporting and progress meetings;
- vi. Parent Student access to Reach for Reading and AR Reader through the District's learning link, including training for the Parent and Student;
- vii. Including in the IEP as an accommodation the requirement that the District provide copies of all curriculum and materials to be used at home, including handouts, online programs, etc.;
- viii. The development of a written plan between the case manager and the Parent to increase the Student's involvement with typically developing peers with the plan to be reviewed month at a monthly progress report meeting between the case manager and the Parent;
- ix. The development of a new BIP to include the District's BCBA, Parent, and IEP team to address interventions at school, home, and in the community regarding engagement, safety, elopement, withdrawal, and participation in the least restrictive environment;
- x. A weekly progress report to be written into the Student's IEP to include:
- A. All interventions, including visual, fidelity checklist with instructions, the ABC component of the fidelity checklist, a behavioral observation, outlined interventions, and the responsibility of school staff;
 - B. Determining the efficacy of the intervention, implemented daily with fidelity. School to check that the fidelity checklist is complete and evaluated weekly with a copy provided to the Parent;
 - C. 20 minutes weekly support of BCBA to Parent to support collaborative communication regarding school and home behavior;

- xii. The District to contract with the University of Washington autism team that provided the independent educational evaluation (IEE) for the Student in March 2017 to present their findings to the new case manager and service providers, including the Parent and any outside providers of the parent. All recommendations from the IEE to be reviewed and decisions made whether they will be incorporated into the Student's IEP;
- xiii. And/or other equitable remedies, as appropriate.

FINDINGS OF FACT

Background

1. The Student is [REDACTED] and was in the tenth grade at the District's Timberline High School (Timberline) at the time of the hearing.
2. The Student started attending Timberline during the 2016 - 2017 school year, when he was in the ninth grade. He was in the life skills program with Jenny Sharp as his special education teacher and case manager. Sharp, Tr. 2800.⁴⁵ Life skills is a program that focuses on functional skills that students will need to be independent, including functional academics, building adaptive self-help skills, and accessing the community. Sharp, Tr. 468. Cognitively, the Student is at approximately the level of a five-year-old. Sharp, Tr. 2824; Father, Tr. 1831.
3. The District's most recent special education reevaluation of the Student was completed in October 2016. Exhibit D2. It resulted in a determination that the Student continued to be eligible under the multiple disabilities eligibility category. *Id.* at 4. The reevaluation recommended that the Student receive specially designed instruction (SDI) in adaptive (self-regulation, self-advocacy, and independently accessing his environments); social skills (appropriate social interactions with peers and adults, increasing peer interactions); math (functional math); reading (functional reading), and written language (functional written expression). *Id.* at 5. The reevaluation also recommended that the Student receive occupational therapy (OT) and speech language therapy (SLP) as related services and that he have a one-on-one paraeducator to support his transitions and access to all school environments. *Id.*
4. The District's reevaluation confirmed that the Student's cognitive abilities are in the extremely low range, which was consistent with previous cognitive testing of the Student. Exhibit D2, p. 37. The Student was evaluated with respect to gross motor functioning and it was

⁴ Citations to the hearing record are to the name of the witness followed by the page number(s) in the transcript on which the testimony appears. For example, the citation above refers to the testimony of Jennifer Sharp found on page 2800 of the hearing transcript.

⁵ Ms. Sharp has a Master's degree in teaching with endorsements in elementary and special education. Sharp, Tr. 466. She is certificated by OSPI to teach special education at any grade level and to teach elementary general education. *Id.* at 2704. The 2017-2018 school year was her eleventh year teaching life skills in the District. *Id.* at 2794-95.

determined he was not eligible for services in that area because he was able to physically access his educational environment. *Id.* at 48.

5. The medical-physical findings area of the reevaluation identified information received from the Parents and the Student's pediatrician, Beth Harvey, M.D., as well as information from a dentist, a prior independent educational evaluation (IEE) conducted by Dr. Allison Brooks, Ph.D., and file review. *Id.* at 7. Dr. Harvey diagnosed the Student with autism, neuronal migration disorder, and mixed developmental delays, and indicated that educational impacts of the diagnoses are aggressive behavior, anxiety, difficulty with language and communication, fine motor challenges, and being easily overstimulated. *Id.* Other medical issues identified in the reevaluation are dental phobia, overanxious disorder, periventricular heterotopia in the brain, intellectual disability, poor nutritional intake, congenital anomaly of horseshoe kidney, poor visual motor attention to task, poor visual perceptive disorder, poor fine motor coordination, poor body awareness, sensory processing skills, cicada rhythm disorder, history of multiple otitis media, and two pressure equalization tubes. *Id.* It included a statement that the Student should wear ear plugs and a hair cap for swimming to protect the ear tubes he has for pressure equalization. *Id.*

6. The Student's functional behavior assessment (FBA) was updated in October 2016 as well. Exhibits D6, D8. This resulted in a review and update of his behavior intervention plan (BIP), which focused on the target areas of withdrawal, unwelcome touching and proximal finger pointing, and unexpected vocal outbursts. Exhibits D5, D7.

7. In November 2016, the District granted the Parents' request to provide an IEE in the areas of academics (reading, writing, and math), cognitive, social/emotional to include executive functioning, speech, fine motor, gross motor, an FBA, and behavior. Exhibit D9.

8. The transition to high school had been challenging for the Student and he exhibited a number of concerning behaviors, including running from class or from District staff during transitions on campus, an inability to maintain personal space with those close to him, unprompted verbal outbursts, and refusing to get off the bus in the morning when he arrived at school. Exhibit P92, p. 5; Hannig, Tr. 3109. The District enlisted the help of Ryan Hannig,⁶ a board certified behavior analyst (BCBA) who worked for a private company, to provide assistance with the Student's behavior, in January 2017 before the Student's individualized education program (IEP) was updated. Exhibit P92, p. 5; Hannig, Tr. 3108. Mr. Hannig provided behavior intervention support for the Student's school team. Hannig, Tr. 626.

9. A new IEP was developed for the Student in January 2017. Exhibit P2. The IEP provided for SDI in reading, math, written language, adaptive, and social skills, as well as related services in SLP and OT, and individual paraeducator support. *Id.* at 38. Although the IEP's special education matrix states that the Student would participate full-time in the special education setting, the IEP also states that he would participate in general education physical education (PE). *Id.* at

⁶ Mr. Hannig is the program director for the Tacoma branch of Imagine Behavioral and Developmental Services. Hannig, Tr. 3087. He has been a third-party contractor with the District since 2016. *Id.* at 625. He has a Master's degree in special education and curriculum and has been a BCBA since 2013. *Id.* at 625, 3103. He has worked with school districts with respect to applied behavior analysis (ABA) for over 13 years. *Id.* at 3104.

38 - 39. This discrepancy is not explained in the IEP itself or in the related prior written notice (PWN) but the Student attended a general education PE class for at least portions of his ninth-grade year under that IEP. See Exhibit D12, pp. 16, 19-20, 23, 28.

10. On January 30, 2017, the Student eloped off campus. Father, Tr. 1767. This was the first time Student had ever done that. Hawkins, Tr. 9957.

11. Mr. Hannig began working with the team in January 2017, providing strategies for addressing the Student's concerning behavior, including visual supports, reinforcements, and interventions. Exhibits P41; P92, p. 14; Hannig, Tr. 3108. At some point in the spring of 2017, Mr. Hannig developed a detailed plan for the Student's transition off the bus when it arrived at school in the morning. Exhibit D20, p. 8; Hannig, Tr. 3150. The Student had a history of refusing to get off the bus and engaging in withdrawal behavior to stay on the bus. *Id.* The plan was to systematically phase out the Student's need for one-on-one support to get off the bus. *Id.*

12. Mr. Hannig introduced a strategy called "positive practice" for use with the Student. Hannig, Tr. 3111. Positive practice is an applied behavior analysis (ABA) strategy used when an individual is engaged in maladaptive behavior. *Id.* The maladaptive behavior is halted and the student is brought back to the onset point of the maladaptive behavior and prompted to engage in the expected behavior successfully. *Id.* This strategy is most commonly used when the maladaptive behavior is reinforcing to the student or will lead to something reinforcing to the student. *Id.* at 3112.

13. Positive practice was used with the Student to address his maladaptive behavior of running ahead from his paraeducator toward the gym during transitions to PE. Hannig, Tr. 3114. This behavior was concerning because he was running away from staff outside near a street. *Id.* at 3114 - 15. Because this behavior usually took place when the Student was on his way to PE, Mr. Hannig hypothesized that the maladaptive behavior was being maintained because getting to the gym, which was a preferred activity for the Student, was reinforcing to him. *Id.* at 3115. Applying positive practice, it was determined that the Student should not be allowed to enter the gym if he ran ahead until he went back to the place he started to run and walked from there. *Id.* The Student was also positively reinforced when he walked with staff appropriately by earning something like an M & M. *Id.*

14. The IEE agreed to in November 2016 was conducted during the spring of 2017. The Parents selected the providers. Hawkins, Tr. 3957. The fine motor portion of the IEE was conducted by an occupational therapist at Seattle Children's Hospital (Children's), Cherie J. Duval-White, who recommended in part that the Student would continue to benefit from OT services as part of his IEP. Exhibit D10. The gross motor portion of the IEE was conducted by a physical therapist at Children's, Solveg M. Hart, who did not recommend any direct PT services but stated that it was "possible" the Student would benefit from a physical therapy consultation at school with respect to his participation in PE. Exhibit D11.

15. The remainder of the IEE was conducted by the University of Washington (UW) Autism Center, which conducted testing on March 1, 6, 7, and 9, 2017. Exhibit D12. The Mother identified her primary concerns as being her perception that the Student's program was not appropriate for a student with autism and should be created and supervised and his team trained by a BCBA with expertise in autism. Exhibit D12, p. 1. The Parent also identified that she would like more regular progress reports and to be actively involved in evaluating, writing, and deciding on IEP goals. *Id.*

She also wanted greater clarity on a safety plan and to have clear channels of communication when upsetting incidents happen at school, such as the time the Student left school grounds during the day. *Id.* at 1 - 2. The Mother also expressed concern that the Student was not given enough opportunities to attend general education classes and activities, and she was hopeful that he would be able to participate in a general education PE program each day. *Id.* at 2. She also identified concerns with his functional communication, especially at school, and was worried he was missing instructional time due to escaping and evading work time. *Id.* at 9. She reported that he previously used Proloquo2Go, a communication application, on his iPad, but was no longer using it and she did not feel it was necessary for him. *Id.* She did, however, express a desire for continued work on functional communication with the use of an iPad or other communication device. *Id.* at 26. The Mother reported the Parents had to put special locks on the doors at home to deter the Student from leaving without their knowledge. *Id.* at 2. He has left the home when he was upset that someone had left him and he attempted to follow them home. *Id.* With respect to behavior, the Mother reported her primary concerns were the amount of time the Student spends withdrawn and the problems he has had with his gym class, again noting that she would like him to continue in a general education gym class. *Id.* at 16. She reported that her goals for the UW IEE were to decrease the amount of time he spends withdrawn, ensure he has access to preferred reinforcers, have the paraeducator trained in behavior strategies, and to increase communication between the school and home. *Id.*

16. The Student's academic achievement was assessed with the Wechsler Individual Achievement Test – Third Edition (WIAT-III). Exhibit D12, p. 4. The standard scores he earned in receptive vocabulary, basic reading composite, word reading, and pseudoword decoding all resulted in a percentile below 0.1. *Id.* at 5. His receptive vocabulary scores resulted in an age equivalency below four years old and a grade equivalency below pre-kindergarten. *Id.* Likewise, his standard scores for the word reading and pseudoword decoding subtests resulted in an age equivalency below age 6 and a grade equivalency below first grade. *Id.* The Student's reading comprehension was assessed using the Gray Oral Reading Test, Fourth Edition (GORT-4), resulting in an overall oral reading quotient of less than 52, which is less than the first percentile. *Id.* at 6.

17. The UW IEE made a number of recommendations, which are summarized as follows:

- Appropriate training and support for teachers and other staff working with the Student and direct involvement and ongoing consultation with a skilled ABA consultant. Exhibit D12, pp. 26 - 27.
- When teaching academic goals, teach and emphasize the use of skills in natural, contextual settings, as this is likely to increase the Student's motivation and functional use of these skills. *Id.* at 27. As an example, teach reading and math skills, not through isolated drills, but in the context where the Student is likely to see and use the skills such as reading safety words on actual signage. *Id.*
- The Student should have exposure to and interaction with typically developing peers. *Id.*
- The Student will likely do best in classrooms and settings that provide: an adequate level of stimulation while not overwhelming; predictable and routine environment; clear structure without being overly rigid; a high level of skilled teacher and/or paraprofessional support; preparation for transitions; use of visual supports to promote independence, reinforcement verbal instruction, expectations for the schedule, transitions, learning, organization, etc.; Direct non-punitive support for

emotion/behavior regulation issues (positive behavior supports), including emphasis on pro-active strategies and strategies for increasing the Student's participation in expected activities. *Id.*

- Using the Student's areas of interest when teaching him and developing lesson plans, especially in skills that are more challenging for him. *Id.*
- Having a quiet, comfortable place where the Student can go to de-escalate when he feels overwhelmed before he becomes escalated, which should not be forced or presented as a punishment but as a positive coping strategy. *Id.*
- Because the Student appears easily overwhelmed when presented with academic work, break tasks down and contextualize academic instruction so it mimics a more naturalistic way to learn and practice skills and use work periods based on time (such as two minutes and then a break) and increase the work time. Frequent breaks will be important. *Id.*
- Provide concrete visual cues to reinforce verbal instructions, expectations for the schedule, expected behaviors and learning such as a picture schedule or first/then cues. *Id.* at 28 – 29.
- Consider using peer mentoring/peer buddy programs since the Student appears to be motivated by interaction with peers. *Id.* at 29.
- The Student would continue to benefit from individual and team-based SLP at school, with adjustments to goals to include more social opportunities for the Student and teaching the Student appropriate phrases and sentences for initiating and responding to conversations. *Id.*
- Development of a comprehensive plan to phase the Student back into gym class because of his current challenges regarding transition to gym, recommending that it initially place reasonable, smaller demands on the Student to be systematically increased. *Id.*
- Incorporate regular breaks into the Student's schedule because he appears to engage in withdrawal behavior to create his own breaks. It is recommended that the time is structured with a visual timer and a choice board to structure what activities are available to him during his breaks. *Id.*
- Engage with the Student around his interests to expand his community of reinforcers and continue to build rapport. *Id.*
- Staff to create a variety of opportunities for the Student to access reinforcement and have varied reinforcers rather than just accessing reinforcement for completing work tasks. Staff should target four praises for every one corrective feedback and deliver positive reinforcement for all appropriate behavior including social, communication, and work behaviors. *Id.*
- The Student had been observed to physically interact with staff, including linking arms with them as well as patting them on the head. Due to his age, it is recommended that the school implement a hands-off policy and that he be expected to transition independently throughout the school and not be allowed to pat others on the head to learn and maintain personal boundaries as he gets older. *Id.*
- Utilize behavioral momentum strategy using easy or mastered tasks to gain compliance before presenting difficult or novel tasks to gain and maintain compliance. *Id.*
- A parent education advocate is recommended to work with the family to increase and mediate communication between the Parents and the school team. *Id.*

The evaluation also recommended some written resources and noted that the UW Autism Center conducts trainings that might be relevant for the Student's school team. *Id.* at 29 - 30

18. The UW IEE included an FBA and a BIP to address the Student's withdrawal and elopement behaviors at school. Exhibit D12, p. 13.

19. Prior to the UW generating its written UW IEE report, it conducted a feedback meeting with the Parents as well as Donnita Hawkins, District special education director for special services, and Megan McGroarty, Timberline assistant principal. The IEE reports from UW and Children's were provided to the Student's reevaluation team. Hawkins, Tr. 3961.

20. In March 2017, the Mother reported to the District that she believed the positive practice strategy, which she referred to as "do-overs,"⁷ was creating a problem for the family at home.

21. In a list of suggestions following a meeting on March 22, 2017, Mr. Hannig wrote:

If [The Student] is attempting to create "do-over" opportunities at home, that's something that can be generalized and taken advantage of, but it would have to be to **(sic?)** the parent's discretion and appropriate limits would need to be created.

The BCBA is willing to hear examples of how this behavior is being manifested at home and can help create effective interventions around this strategy.

Exhibit P41, p. 3.

22. In an email to Ms. Sharp and Ms. McGroarty dated March 24, 2017, the Mother provided four examples of the Student requesting a "do over" after coming home and wanting to return to a previous location – Timberline, basketball, and church. Exhibit P89, p. 6. In two of the examples, the Student left the home, once at 5:30 in the morning. *Id.* The record does not reflect what action, if any, the District took after receiving the examples Mr. Hannig had expressed a willingness to consider.

23. The Parents filed two due process hearing requests regarding the Student in 2017, which were both resolved by a settlement agreement that was effective May 24, 2017. Exhibit D13. The agreement provided, in part, (1) that the District would contract with the UW Autism Center to participate in the development of the Student's IEP; (2) the Student's IEP would include six hours of ABA training for the Student's IEP service providers, language providing for breaks during academic work, supports for staff in the form of 20 minutes of weekly consultation between the District's BCBA and the Student's special education teacher and/or case manager, and monthly consultation for 15 minutes between the District's BCBA and the Student's private service providers retained by the Parents; and (3) development of a new IEP at a meeting facilitated by

⁷ The District contends it has never used the term "do over" and has both written to the Parent and testified that this is the wrong terminology, at one point even telling her in a letter that the appeared on data sheets because it was "apparently conceived" by the Student's paraeducator to describe the implementation of a strategy developed by Mr. Hannig. Exhibits D37, D39; Sharp, Tr. 2979; Hannig, Tr. 3116, 3120. Yet it is the term Mr. Hannig used in his written suggestions to the District in March 2017, and Ms. Sharp used the term in an email to Mr. Hannig in February 2017. Exhibits P41, p. 3; P92, p. 12.

Sound Options, an organization that provides facilitators for IEP meetings, not to exceed six hours. *Id.* The agreement contains a mutual waiver and release of all claims regarding the Student that arose under the IDEA prior to the effective date of the agreement. *Id.*

24. It was not possible to schedule the agreed IEP meeting before the end of the school year because of the number of people involved and their schedules. A meeting was scheduled for September 15, 2017, to address the Student's FBA, IEP, and BIP.

25. On June 16, 2017, the District provided a notice of meeting to the Parents, notifying them that an eligibility meeting was scheduled for September 15, 2017, for the Student to address his FBA, noting that the Parents had requested and been granted an IEE for an FBA with the UW. Exhibit D14. On June 16 and 21, 2017, the District provided separate invitations to the Parents for a meeting at the same time as the eligibility meeting to review the IEP, BIP, FBA, and IEE. Exhibits D15, D18, p. 1.

26. Sometime prior to July 11, 2017, the Mother filed a citizen complaint with OSPI, arguing the District had impacted her ability to participate in a scheduled IEP meeting by inviting the District's attorney to attend and by not having staff who work directly with the Student present at a meeting to review the IEE. Exhibit D41. OSPI informed the Mother in a letter that day that the circumstances described do not violate the IDEA. *Id.*

27. The Student did not leave campus again during the 2016-2017 school year. Hawkins, Tr. 9957. The behavior tracking reports from January 30, 2017, to June 19, 2017, when the District had been using techniques recommended by Mr. Hannig, showed trend lines generally going down for withdrawal, elopement and attempted elopement, and running during transition, although the behavior was highly variable. Exhibit D19, p. 7; Hannig, Tr. 3140-43; Dittmar, Tr. 1581. The Parents remained very concerned about the number of elopements and attempted elopements and the amount of time the Student was withdrawn and not working. Exhibit P57.

2017 - 2018 School Year

28. The Student was in the tenth grade at Timberline during the 2017 - 2018 school year. He remained in Ms. Sharp's life skills class and she continued to be his case manager. He was assigned a new one-on-one paraeducator, Teresa Stoudemire. Stoudemire, Tr. 1222.

29. Greg Goble was the new assistant principal at Timberline this school year. At or near the beginning of the school year, the Mother began approaching him in person and by email with her many concerns about the Student's program, especially her desire that Ms. Sharp no longer be his teacher or case manager. Her primary concerns about Ms. Sharp appear to have been that she was not as collaborative as the Mother would like. The Mother also expressed concerns about the number of elopements and withdrawals the prior spring and, as school got started, concerns about withdrawals and elopements during the first days of school. Exhibit P57; Mother, Tr. 2561. She was also concerned that Ms. Sharp had signed the Student's yearbook the prior year by writing "the meanest teacher ever." Exhibit D35. She also renewed her concerns about the effect "do overs" were having on the Student at home. Exhibit P51, p. 5.

30. On September 13, 2017, the Mother sent many members of the IEP team an email with 15 attachments, which she referred to as reports from professionals. Exhibit P24.

31. Prior to the IEP meeting, Ms. Sharp requested that the Parents complete a parent input form. Exhibit D16. The Parents completed the form, including information about the Student's strengths and motivations, most important goals they would like to see accomplished in the coming year, and their concerns. Exhibit D16.

32. The Parents' input form and the outside provider information submitted by the Parents were provided to the IEP team members before the meeting. The Parents also provided additional written input for the team either prior to or at the meeting. Exhibit P7, pp. 48 – 70. The IEP team members reviewed this information. FBA, IEP, and BIP drafts were provided to the Parents prior to the meeting. Exhibit P4, p. 53; Sharp, Tr. 2806.

33. On September 14, 2017, Mr. Goble wrote in an email to the Mother that “[m]oving forward, all communication will go through me, until we can establish better boundary protocols.” Exhibit P51, p. 6. The record does not reflect what specifically prompted this email.

September 2017 IEP meeting

34. The meeting to address the Student's FBA, IEP, and BIP took place on September 15, 2017. Exhibit D17, p. 1. The meeting was facilitated by Kristine Sogn with Sound Options. *Id.* Also present were the Parents and their advocate, Helen Caldart; Dr. Hawkins; Ms. Sharp; Ms. Stoudemire; Jeff Birbeck, the Student's general education PE teacher; Rebekah LaMarche, District school psychologist; Mr. Hannig, Kathryn Holley, a UW BCBA who had participated in the UW IEE; Nathan Keogh, District SLP; James Van Dusen, District PT; Terry Schmitz, District OT; Assistant Principal Goble; and Philip Thompson, the District's attorney. *Id.* The District invited the Student and a representative of the State Developmental Disabilities Administration but they did not attend. Exhibits D18, P51, p. 6.

35. The meeting took place over the course of seven hours and the Parents and their advocate had the opportunity to participate throughout. Exhibit D17. The team did not go over the UW or Children's IEEs or the Parents' written input and submissions from professionals at the meeting, but the District team members had reviewed those documents in advance.

36. Mr. Hannig led a discussion of the draft FBA and BIP, explaining his involvement in the Student's program since the prior year, how data was collected, the target behaviors – withdrawal and elopement, and the strategies for each of them. Exhibit D17.

37. The Parents disagreed with the proposal that the Student not link arms with adults during transitions because he is tactile and needs touch, especially when he is in emotional distress. Exhibit D17, pp. 3-4. Additionally, they wanted to clarify that he would still be allowed to link arms with an adult for safety when he is out in the community, and requested that additional language about safety be added. *Id.* The team confirmed that the Student could still hold on to an adult in the community and that additional language would be added for safety as well as for other more appropriate ways for the Student to touch, such as on the shoulder or a fist bump. *Id.* The final BIP included language about the Student being able to hold an adult's hand during transitions while out in the community and included teaching him appropriate ways to engage in physical touch. Exhibit D20, p.4.

38. The Parents raised concerns that they were still having problems at home with the “do overs” when the Student wants to go back someplace they have been and will bolt away. Exhibit D17. According to the meeting minutes taken by a District representative:

Ryan H[annig] noted that it was discussed than (sic) [the Student] has generalized it on his own terms in his own way with his parents. The behavior is not happening in school. Ryan H[annig] recommended he will assist in using the strategies on how to create some of the visual for home with a focus on the antecedent strategies so they can generalize between school and home to help [the Student] process and expect the given expectation.⁸

Exhibit D17, p. 5. The Parents reported that the Student was running every day when he gets off the bus. *Id.* The team explained that positive practice had been successful for the Student at school and it remained in the BIP. The District suggested that the family find other resources for home-based services and agreed at the meeting that Mr. Hannig would provide an hour of training for the Student’s family members who meet the bus. Exhibit D17, pp. 5, 9.

39. The Parents made other suggestions and requests that were adopted into the final FBA and BIP – that immediate reinforcements be provided when the target behavior is displayed, that the hypothesis state that the Student has issues with transition from the bus to home as well as from the bus to school, and the incorporation of the plan Mr. Hannig had developed for the Student getting off the bus at school. Exhibit 17; *Compare* Exhibit P4 with Exhibit D19.

40. The team also discussed the IEP, going through each of the sections. Exhibit D17. The Parents raised a number of questions and made a number of requests, specifying that they would like the District’s denials to be addressed in prior written notices. *Id.*

After the meeting

41. Following the meeting, Dr. Hawkins attempted to confirm the Parents’ allegations that the Student was eloping when he got off the bus at home. Hawkins, Tr. 932. She contacted the transportation department and learned that there were no videos that would show the Student getting off the bus. *Id.* The driver reported that the Student was not running from the bus. *Id.* Without consulting or notifying the Parents, Dr. Hawkins arranged for a District staff person to observe the Student getting off the bus and take data to address the conflicting reports between the Parents and the bus driver. *Id.* at 930-32. On the first three days of observation, the Student exited the bus, entered the family’s home, and stayed there without incident. Exhibit D22, pp. 1 - 3. On two other days, the observer saw the Student run away from the person who had met him at the bus shortly after the bus left. *Id.* at 4 - 5.

⁸ Mr. Hannig was not questioned about this opinion at the hearing, where he offered the differing opinion that the Student’s eloping behavior at home was not caused by the use of positive practice at school. Hannig, Tr. 3121.

42. The District provided the Parents with three prior written notices (PWNs). Exhibit D21. One of the PWNs was dated September 22, 2017, and stated that its purpose was to initiate an FBA. *Id.* at 1.

43. Another PWN, also dated September 22, 2017, stated its purpose was to initiate an IEP, FBA, and BIP. *Id.* at 2. That PWN stated that the team had agreed to the Parents' requests to invite the District BCBA to progress-report meetings, make the Student's curriculum available for review by the Parents, and add a reinforcement list to the BIP. *Id.*

44. The third PWN, dated September 21, 2017, stated as its purpose refusing to initiate Parent requests from the IEP meeting. *Id.* at 4 - 5. It listed 14 specific requests the Parents made at the IEP meeting, which the team was denying: 1) in-home support and assignment of a paraeducator to the Student's bus for transitions from the bus to home; 2) activation of the camera on the Student's school-provided iPad; 3) use of Lexia Core 5 and TEACHH reading programs; 4) progress report meetings between the Parents and the teacher every four weeks; 5) provision of the Student's reading curriculum for home use; 6) OT services 3 times per week for 30 minutes each session; 7) training by a District reading coach for the Student's paraeducator; 8) review of the Student's program by the District's reading curriculum committee; 9) development of a plan to increase the Student's time in general education; 10) setting out in the IEP the description of desirable classroom characteristics from the UW IEE; 11) a detailed visual schedule; 12) a peer mentoring/buddy program for the Student; 13) a comparison of what is working at home with what is working at school every 60 days; and 14) an OT consultation and collaboration with the Parents' private vision evaluator. Exhibit D21, pp. 4 - 5.

45. For each of the fourteen items, the PWN set forth a reason the District was refusing to take action:

1. The data does not demonstrate the Student needs this level of support at this time. See "other factors" for additional information.
2. This technology is not appropriate or necessary for Student at this time.
3. The Student's existing reading program meets his needs and circumstances do not warrant prescribing a particular curriculum or methodology.
4. Quarterly meetings to discuss progress is more than sufficient to meet Student's needs and provide FAPE.
5. Providing a copy of the Student's reading curriculum for use at the home is not necessary for the Student to receive a FAPE.
6. Increasing OT services is not necessary for FAPE and would unnecessarily interfere with other services the Student needs.
7. The paraeducator training requested is not necessary for the Student to receive a FAPE.
8. The IMC's [reading curriculum committee's] role is to review curriculum for adoption for students broadly, as opposed to what curriculum should be used by an individual student.
9. The IEP prescribes the extent to which the Student will participate in general education. Development of a detailed plan is not necessary to provide a FAPE.
10. A detailed description of Student's classroom is not needed in order for Student to receive FAPE and is not a required component of an IEP.
11. The existing language in the IEP related to Student's access to and use of a visual schedule is sufficient to provide Student with a FAPE.

12. The IEP prescribes the extent to which the Student will participate with typically developing peers and Student does not need a mentoring/buddy program to receive a FAPE.
13. Comparing what is working at home with what is working at school is not required to provide the Student with a FAPE.
14. The District OT reviewed the report from the private vision evaluator. Prescribing ongoing consultation and collaboration in the IEP is not needed to provide the Student with a FAPE.

Exhibit D21, pp. 4 - 5.

46. The following was provided under "other factors" in the third PWN:

The district could not substantiate Parent's assertion that a Positive Practice implemented at school was impacting [the Student's] ability to transition from the school bus home. However, to address parents' concern regarding [the Student] exiting the school bus at home the District is providing in home bus transition training for the family to include training of up to 3 hours by Kathryn Holley (UW Autism Center) and Fidelity check-list follow-up meetings for up to four, one hour meetings. Parents must set this up by calling the UW Autism Center.

Id. at 5. Neither the PWN nor the IEP provided for training by Mr. Hannig as discussed in the IEP team meeting.

47. All three PWNs stated that the actions would be initiated on September 26, 2017. *Id.* at 1 - 5.

48. In addition to the PWNs, the District sent the Parents an FBA consent form, which they received on or after September 22, 2017. Exhibit P8, p. 1; Mother, Tr. 2310-11. There is no explanation in the record as to why the District generated this form or provided it to the Parents after the meeting was complete. The Parents were also provided the final FBA, IEP, and BIP.

September 2017 functional behavioral analysis (FBA)

49. The FBA listed Megan McGroarty, the former Timberline assistant principal, as participating in the FBA as the District administrator. Exhibits D19, p. 1; P8, p. 4. Mr. Goble, the new assistant principal, was the administrator who actually participated in that meeting but he was not listed on the FBA. Exhibits D17, p. 1; D19. The FBA also failed to identify as participants Sound Options facilitator Kristine Sojn; UW behavior consultant Kathryn Holley, and others who were present for the meeting. *Compare* Exhibits D19, p. 1; P8, p. 4 with Exhibit D17, p. 1. There is no evidence in the record as to why the FBA did not correctly list the participants.

50. The FBA was revised to address information provided from the UW IEE and behavioral data from the 2016-2017 school year. Exhibit D19, p. 1; Hannig, Tr. 3130.

51. The FBA identifies two target behaviors – withdrawal and elopement. Exhibit D19, pp. 2 - 4. It describes "withdraw" as "[h]ead on desk, hands in front of face, pulling shirt over head, tightly closing eyes, facing wall, standing in corner or behind a door, and/or not responding to prompts or redirection within 15 seconds." *Id.* at 2. The FBA includes a hypothesis that the contributing

factors are that the Student will withdraw and refuse to participate when there is a deviation from a known schedule, unexpected event, change in the known environment, one-on-one attention placed beforehand, success or lack thereof regarding previous tasks and transitions, the amount of sleep the night before, and the amount of food eaten in the day. *Id.* at 3. The hypothesis states that the behavior occurs in the following settings: transition from bus, unfamiliar people in the environment, large groups, and when there is consistent, loud noises in the environment. *Id.* at 3. The hypothesis identifies as antecedents or triggers transition outside of the classroom, group activities, presentation of non-preferred activities, and loud noises in the immediate environment. *Id.* The identified functions are avoiding or escaping a demand or expectation and avoiding or escaping the environment and/or stimuli within. *Id.*

52. The FBA recommends to the IEP team that a BIP be considered for the withdrawal behavior and recommends as a replacement behavior that the Student appropriately ask for a break and use calming and self-regulation strategies. *Id.* The FBA recommends as setting event strategies that the Student be prepared for new people, activities, and environments, have headphones available, and be provided reinforcement for successful transitions. *Id.* The FBA recommends as antecedent strategies to minimize or prevent the behavior the use of visual schedules and supports, prep the Student for changes in routines, create opportunities for social engagement, establish clear reinforcement prior to demands, create frequent breaks in routines, provide attention non-contingently, and to allow for medium-preferred items such as fidgets to engage in during such environments. *Id.* at 3 - 4.

53. The FBA recommends as teaching strategies related to the withdrawal behavior the following positive behavior skills: self-recognition of emotions (such as a 5-point scale), reading and using a visual schedule, establishing how to ask for a break appropriately and having visual cues and models available, teaching ways to engage in appropriate physical touch to satisfy the Student's tactile sensory needs, such as high-fives, fist-bumps, side-hugs, and games like thumb-wrestling. *Id.* at 4. The FBA recommends as consequence strategies consistent error correction procedures and using prompting procedures and visuals, including timers, to show expectations, with chosen reinforcements to be immediately provided after a replacement behavior is exhibited. *Id.*

54. The FBA describes the second targeted behavior – elopement – as “exiting classroom or other designated area without given permission.” Exhibit D19, p. 4. The FBA identifies as a hypothesis for the contributing factors that the Student understands his schedule before transitioning, changes in routine, novel changes in known environments, the Student's expectation and reinforcement schedule and events preceding the transition. *Id.* at 5. It identifies as a hypothesis for the settings for the elopement transition from the bus, unfamiliar people in the environment, large groups, and consistent, loud noises in the environment. *Id.* The FBA provides as a hypothesis for antecedents or triggers for the behavior transition outside the classroom, group activities, presentation of non-preferred activities, and loud noises in the immediate environment. *Id.* The behavior was described as running from his support and current environment, often announcing just beforehand his intention to do so. *Id.* The hypothesis for the function of the behavior is to avoid or escape the expectation, demand, or environment, and to gain access to preferred environments. *Id.*

55. The FBA recommends to the IEP team that a BIP be considered for the elopement behavior and recommends as replacement behavior that the Student ask to leave the environment, go for a walk, return to a predesignated area, and continue teaching self-regulation strategies. *Id.* at 5.

The FBA recommends as setting event strategies that the student be prepared for new people and activities, have headphones available, be provided reinforcement for successful transitions, and be engaged in an interest area and that the interest area be tied to a transition. *Id.* at 5 - 6.

56. The FBA recommends as antecedent strategies for elopement the use of visual schedules and supports, prepare the Student for changes in routines, create opportunities for social engagement, establishing clear reinforcements prior to demands, creating frequent breaks in routines, providing attention non-contingently, and having the Student verbally restate the expectation. *Id.* at 6. It recommends as teaching strategies for prosocial skills related to elopement self-recognition of emotions (such as a 5-point scale), reading and using a visual schedule, establishing how to ask for a break appropriately, having visual cues and models available, decreasing the allowance of the Student holding a paraeducator or teacher's hand during transitions on campus to allow him to increase the ability to walk independently, and teaching various ways to engage in appropriate physical touch to help satisfy tactile sensory needs. *Id.* The FBA recommended as consequence strategies consistent error correction procedures and using prompting procedures and visuals, including timers, to show expectation, and that chosen reinforcements be immediately provided after replacement behavior is exhibited. *Id.*

September 2017 individualized education program (IEP)

57. The IEP includes a "team considerations" section, which notes that the Parents' memorandum sent September 12, 2017, was attached to the IEP to address the Student's strengths and the Parents' concerns for enhancing the Student's education. Exhibit D18, p. 7. The memorandum was not attached to the IEP submitted by the District as a hearing exhibit but is included as an attachment in IEP Online, the program the District uses for writing and tracking IEPs. Exhibit D18.

58. The "present level of educational performance" section of the IEP spans six single-spaced pages. Exhibit D18, pp. 8 - 13. Information is provided about the Student's social and emotional needs, including data related to his prior goals on greeting others and providing responses to a question and a comparison with same-aged peers. *Id.* at 8 - 9. Information is included about the Student's adaptive needs, his present levels on "jigs," transitioning, and showing his identification card, providing baselines for the IEP's adaptive goals. *Id.* at 9. The adaptive section also discusses the Student's ability to be independent with dressing, bathroom care, pacing, tying shoelaces, and going through the lunch line, and compares his abilities with his same-aged peers. *Id.* With respect to academics, present levels are provided for math, reading, and writing related to his goals and comparing his performance with same-aged peers. *Id.* at 10 - 11. The Student's communication abilities are addressed, including his ability to engage with staff, participate in group activities, and his need for prompting, and his abilities in those areas are compared with those of his same-aged peers. *Id.* at 11 - 12. With respect to fine motor, the Student's ability to tie his shoes and to handle and assemble objects are addressed as well as his writing and keyboarding skills. *Id.* The Student's needs with respect to transition are included as well his strengths and need for support during community outings and participating in classroom jobs. *Id.* at 13. His preferences and interests from a vocational interest inventory are included as well. *Id.* For each of the Student's goals set forth in the IEP, the present levels include baseline measurements. *Id.* at 8 - 13. The present levels state that the Student can write his name.

59. The draft IEP's present levels did not include a "medical-physical" section but it was added to the final IEP based on the Parents' request to add such a section and input the Student's "diagnosis." *Compare* Exhibits P4 and D18; Exhibit P7, p. 65. Under "medical-physical," it is noted that, according to medical information provided in 2011, the Student was diagnosed with autistic disorder, intellectual disability, and periventricular nodular heterotopia. *Id.* at 8. His other diagnoses and medical or physical needs are not expressly identified. *Id.*

60. The IEP contains two written language goals. Exhibit D18, p. 17 - 18. The first is to address writing:

By 09/17/18, when given a model of his address and a form to fill out [the Student] will fill out a form improving accuracy of copying his address from 32% to an average of 60% or better as measured by [the Student] writing his address on a form.

Id. at 17. The goal is broken down into two objectives - to copy his address onto a form with accuracy of 40% by February 2, 2018, and accuracy of 50% by April 13, 2018. *Id.* Writing his address from a model was a continuation of the Student's previous goal but shaped to be more functional by requiring that the Student complete it on a form. Sharp, Tr. 2835.

61. The second written language goal is for keyboarding:

By 9/17/2018, when given only a model of personal information or words to enter into the computer and no visual and verbal cuing of the individual letter/number of characters [the Student] will type personal information or words improving keyboarding skills from 53% average to 75% or better as measured by teacher created data tracking sheets.

Exhibit D18, p. 18. The goal has two objectives – to complete the activity at a 60% average by February 2, 2018, and to complete it at a 70% average by April 13, 2018. *Id.*

62. For social skills, the IEP contains a social interaction goal:

By 09/17/2018, when given an individual social interaction with a familiar person (peer or staff) [the Student] will increase frequency in which he provides a topic relevant response to a question or initiate a contextually appropriate social interaction (e.g., answer questions, make choices or comments, and self-advocacy) improving appropriate social interactions from 61% accuracy in 5/5 consecutive opportunities to 75% accuracy in 4/5 consecutive opportunities as measured by teacher created data tracking sheet.

Id. at 18 - 19. The goal has two objectives – to complete the activity with 65% accuracy by February 2, 2018, and to complete it with 70% accuracy by April 13, 2018. *Id.* at 19.

63. The IEP includes three adaptive goals. The first addresses transitioning:

By 09/17/2018, when given an opportunity to transition [the Student] will independently complete transitions while walking on school campus improving his ability to transition appropriately from 90% with 1:1 support (physical – student hold

staff member's arm or student placing hand on staff member's hand or verbal prompt) to 80% without 1:1 support (physical or verbal prompts) 4 out of 5 opportunities as measured by teacher created data tracking sheet.

Id. at 19 - 20. This goal has short-term objectives related to increasing the Student's independence in transitioning. The first is that by February 2, 2018, the Student will complete on-campus transitions with only verbal or gestural prompting with 80% accuracy in 4 out of 5 opportunities. The second is that by March 30, 2018, the Student will complete on-campus transitions with only proximal (distance of 3 feet between adult and student) prompting with 60% accuracy in 4 out of 5 opportunities. *Id.* at 20. This goal was included because of the Student's prior reliance on holding a staff member's arm. Sharp, Tr. 2843. When he did this, he often kept his head down and expected the adult to lead him through the environment. *Id.* Walking independently is more appropriate for his age and helps him be more independent. *Id.* The goal expressly states that it applies on the school campus, alleviating the Parents' concerns about the Student not holding onto an adult in the community.

64. The second adaptive goal is for showing his identification (ID) card:

By 09/17/2018, when given the verbal prompt of what to do if he were lost or directly asked "Are you lost?" [the Student] will display his i.d. card improving personal safety skills from 0/5 opportunities with familiar people on campus to 4/5 opportunities with unfamiliar community helpers (e.g., city bus driver, employees at a business, security or police officer, etc.) as measured by teacher created data sheet.

Exhibit D18, p. 20. This goal also has short-term objectives to increase the people the Student shares his ID card with. The first is that by February 2, 2018, the Student will display his ID card among at least three familiar school staff in five of five opportunities. The second is that by April 13, 2018, the Student will display his ID card among unfamiliar school staff five out of five opportunities. The third is that by June 15, 2018, the Student will display his ID card among community helpers in three of five opportunities. *Id.* at 21. This goal was developed because the Student could not be relied on to communicate his address in a situation where he was lost and the team was looking at increasing off-campus opportunities for him. Sharp, Tr. 2846.

65. The Student's third adaptive goal is for fine motor "jigs":

By 09/17/2018, when given a 6 piece picture jig task by following the sequential order improving sequencing and fine motor skills from 84% accuracy on 5-6 part jig tasks with step by step prompts to completing 6 step picture jig tasks independently 4/5 opportunities as measured by therapy data and classroom performance.

Exhibit D18, p. 26 - 27. This goal is broken down into short-term objectives to increase the complexity of the jig tasks. By February 2, 2018, the Student will complete a step-by-step three-part picture jig task independently and by April 13, 2018, he will complete a step-by-step four-part picture jig task independently. *Id.* at 27. The "jigs" teach the skill of following a visual task analysis, which is a pictorial breakdown into steps to accomplish a task. Sharp, Tr. 2857. The Student has worked on a jig that explains the task of sorting cubes and blocks, putting them in a plastic bag,

and storing them as a way of learning to use the jigs. *Id.* Jigs can then be used for more practical applications like using a padlock to help the Student be independent. *Id.*

66. The Student has three math goals. The first math goal addresses money:

By 09/17/2018, when given a range of items priced between \$1 and \$11 dollars [the Student] will apply next dollar-up strategy when making a payment in classroom practice purchases improving ability to make an appropriate payment from paying prices in whole dollar amounts between \$5 and \$10 to paying prices between \$1 and \$11 dollars with 80% accuracy in 4 out of 5 opportunities as measured by teacher created data tracking sheets.

Exhibit D18, p. 22. The goal has two objectives, increasing the mastery criteria percentages at two intervals. *Id.* "Next dollar up" means rounding up when a price includes coins, such as paying \$3.00 when the price is \$2.99. Sharp, Tr. 2848. This builds on the Student's prior money goal of producing bills in whole-dollar amounts.

67. The second math goal addresses the use of a calculator:

By 09/17/2018, when given two prices as shown on a price tag and no pointing or verbal cuing of the individual numbers or decimal on the price tags [the Student] will enter and add the prices using a calculator improving calculator skills from 57% accuracy to 90% in 4 out of 5 opportunities as measured by teacher created data sheet.

Exhibit D18, p. 23. The goal has two objectives – increasing the mastery criteria percentages at two intervals. *Id.* This goal builds on the Student's prior goal of entering prices in a calculator but with less prompting. Sharp, Tr. 2849.

68. The third math skill is telling time:

By 09/17/2018, when given an analog clock with 5 minute increments marked on the outside of the clock [the Student] will accurately read the time on the clock improving ability to tell time from telling the 15 minute increment at 90% when provided verbal or pointing cues to differentiate the clock hands to telling the 5 minute increment without cues to differentiate the clock hands at 70% in 4 out of 5 opportunities as measured by teacher created data tracking sheet.

Exhibit D18, pp. 23 - 24. The goal has three objectives. By November 9, 2017, the Student will accurately read a digital clock to the hour and five-minute increment at 80% in four out of five opportunities. *Id.* at 24. By November 9, 2017, the Student will accurately read the hour and minute hand placement on an analog clock to the 15-minute increment 80% of the time in four out of five opportunities. *Id.* at 24. By February 2, 2018, the Student will accurately read the minute hand placement on an analog clock at 80% in four out of five opportunities. *Id.*

69. The Student has a reading goal regarding community-based words:

By 09/17/2018, when given a set of community-based words [the Student] will recognize community-based words improving ability to recognize community-

based words from 63 words to 85 words in at least three different print formats (e.g. font, context, environment) in 4/5 opportunities as measured by teacher created data tracking sheet.

Id. at 25. The goal has two objectives, increasing the mastery criteria percentages over two intervals. *Id.* The goal builds on his prior goal for community-based words by increasing the number of words identified as well as varying the print formats to help generalize identifying the words. Sharp, Tr. 2853 - 55.

70. The Parents wanted the Student to have traditional reading goals like phonological awareness, fluency, and spelling, but the team determined that a functional reading goal was more appropriate for him given his circumstances. The Student has not demonstrated that he has the capacity to acquire these skills beyond a kindergarten level as he plateaued on similar goals for several years in the past. Sharp, Tr. 482-83; Hawkins, Tr. 3975-76. Given the Student's age and his need to be safe in the community, the District determined it is more appropriate at this point to focus on functional reading, identifying safety words and words he might use in a leisure setting, such as words on a menu. *Id.*

71. The IEP states that progress on all the goals will be reported quarterly. Exhibit D18, pp. 17 – 27. Although the IEP does not specify say so, the Parents have quarterly progress meetings with the Student's teacher and related services provider, which other parents in Ms. Sharp's class do not have. Sharp, Tr. 2962.

72. As accommodations, the IEP provides for breaks during academic work time in the special education class, preferential setting throughout the school day, and visual supports, including schedule and choice options, in all settings. Exhibit D18, p. 28. For modifications, the IEP provides for replacement curriculum in the general education setting. *Id.*

73. For the Student's assistive technology needs, the IEP provides for "low tech devices" in the form of picture supports and access to a word processing device. Exhibit D18, p. 7.

74. With respect to state or District-wide assessments, students in the life skills class typically present at the level where the Washington Access to Instruction and Measurement (WA-AIM) test is the appropriate assessment. Sharp, Tr. 2865. At the time the IEP was developed, Ms. Sharp did not realize that tenth graders would be taking that assessment so the Student's IEP did not reflect that he would take it. Exhibit D18, p. 30; Sharp, Tr. 2865. Ms. Sharp later learned that sophomores would participate in WA-AIM for English/Language Arts (ELA) and math. Sharp, Tr. 2866. The IEP was later amended to reflect that change and the Student took the exam. Sharp, Tr. 2868. The amended IEP reflecting this change is not in the record. The WA-AIM is checked in the September 2017 IEP for the "next grade tests," meaning the Student would take that test in his eleventh-grade year. Exhibit D18, p. 31; Sharp, Tr. 2867. No accommodations are listed for the WA-AIM for that year. Exhibit D18, p. 31.

75. The IEP provides that the Student will receive 30 minutes of SLP services two times per week to be provide by an SLP. Exhibit D18, p. 33. It also provides for 30 minutes twice per week of OT services to be provided by an OT. *Id.* Additionally, it provides for individual paraeducator support for 1800 minutes per week, which is the Student's total minutes per week spent in school. *Id.* Although it is not noted in the IEP, the Parent receives weekly service logs from the OT and the SLP. Exhibits D24, D25; Keogh, Tr. 1375; Schmitz testimony.

76. With respect to SDI, the IEP provides for the following to take place in the special education setting on a daily basis: 60 minutes of written language, 55 minutes of social skills, 100 minutes of adaptive, 50 minutes of reading, and 50 minutes of math. Exhibit D18, p. 33. It also provides for 55 minutes of social skills to be provided in the general education setting. *Id.* The IEP provided that all of the special education services would be provided by a paraeducator and monitored by a special education teacher. Exhibit D18, p. 33. The general education time was the Student's PE class. Sharp, Tr. 2871. The team determined this was a reasonable amount of time for the Student to spend in the general education setting at the time the IEP was developed given his difficulty with transitions around campus and participating in PE the prior year. Sharp, Tr. 2869; Hannig testimony.

77. The Student's IEP provides that he will spend 1635 minutes of his 1800-minute week in the special education setting, with the balance in the general education setting, which is 9.17%. Exhibit D18, p. 33. The IEP states that placement options with a greater amount of time in the general education setting were rejected because academic and non-academic benefits cannot be satisfactorily achieved and because of the effect the Student would have on the teacher and other students. *Id.* Specifically, the IEP noted that the Student requires SDI in reading, math, written expression, social skills, and adaptive skills in order to make progress toward general education standards but is able to participate with general education peers in PE, at lunch, in assemblies, with student-teacher assistants in the special education class, and in all extracurricular and nonacademic activities as permitted by the Parents. *Id.* A one-on-one paraeducator is available to the Student for extracurricular and nonacademic activities. *Id.*

78. The IEP provides the following supports for school personnel: 20 minutes per week of consultation between the District BCBA and the Student's case manager; 15 minutes per week of consultation between the District BCBA and service providers retained by the Parents; six hours of ABA training for the Student's special education service providers; and 15 minutes twice monthly collaboration between the OT and the Student's classroom staff. Exhibit D18, pp. 28 - 29.

79. The IEP states that the Student does not have an emergency response protocol, which would be required for the use of isolation or restraint. Exhibit D18, p. 35; Sharp, Tr. 2876. The Student does not demonstrate a need for such a protocol and has not been isolated while at Timberline. Sharp, Tr. 2876.

September 2017 behavioral intervention plan (BIP)

80. The Student's BIP includes a statement of his strengths and interests. Exhibit D20, p. 1. It summarizes data collection from the 2016 - 2017 school year and from the UW IEE FBA. *Id.* It identifies two target behaviors – withdrawal and elopement. *Id.* at 2 - 7.

81. The BIP describes "withdraw" using the same definition as the FBA and incorporates the same hypotheses for contributing factors, settings, antecedents, and functions. *Compare* Exhibit D19, pp. 2 - 3 *with* D20, pp. 2 - 3.

82. The BIP includes a number of intervention strategies for the target behavior of withdrawal, incorporating and expanding the recommendations from the FBA. *Compare* Exhibit D19, pp. 3 - 4 *with* D20, pp. 3 - 5 .

83. The replacement behaviors the Student will be taught with respect to withdrawal are appropriately asking for a break and using calming and self-regulation strategies. Exhibit D20, p. 3. The setting event strategies, meaning how the environment will be set up to decrease the likelihood of the target behaviors, include preparing the Student for new people, activities, and environments with visual supports, having headphones available, and providing reinforcement for successful transitions. *Id.*

84. The antecedent strategies for withdrawal, which is how the events that immediately precede the target behavior will be addressed to minimize or prevent the behavior, are creating visually-oriented boards for cueing, including an incentive board, where numerous preferred items are shown for the Student to pick from and earn; maintaining a comprehensive visual schedule, broken down by period, with picture representations of every classroom/school activity the Student is likely to participate in; allowing the Student to arrange his own schedule, with assistance, so he can better process and feel in control of his expectations; using visual schedules for him to identify the current/next activity and verbally confirm; allowing the Student to make as many choices as possible and lay out his visual schedule and incentives accordingly; using visual-oriented materials to lessen the need for continued verbal prompting, which has been observed to be only intermittently effective; using physical icons with Velcro because of his observed preference for tactile objects to manipulate before transitioning to a screen-based tablet communication system; priming the Student for upcoming events and having him repeat the information to show comprehension and compliance; decreasing repeating the same verbal instruction and instead using a prompting hierarchy, incorporating his visual schedule. *Id.* at 3.

85. The strategies to teach the Student positive behavior skills regarding withdrawal are: consistently using timers to set effective limits for preferred items or activities with the Student to be praised when he voluntarily relinquishes an item or activity and with the Student stopping and starting his own timer; a token board with the Student placing his own tokens on the board to increase ownership of his progress with the tokens eventually being phased into simple "first-then" behavior contract agreements; providing the Student sensory items on a non-contingent basis but considering preferred items as an incentive to be earned when he meets expectations; decreasing the Student holding an adult's arm during transitions while on campus and increasing his ability to walk independently. *Id.* Additionally, the Student will be taught various ways to engage in appropriate physical touch to help satisfy his tactile sensory needs, such as high-fives, fist-bumps, side-hugs, and games like thumb-wrestling. *Id.*

86. The consequence strategies for after the replacement behavior occurs and after the target behavior occurs are: headphone utilization to help the Student feel more in control of his environment, asking if he wants a break or to continue earning incentives, and offering to take him for a walk. Exhibit D20, p. 4. When he accepts a break, it is timed and, when the timer goes off, he is given the opportunity to resume his task or take another break. *Id.* This is repeated until he resumes the expected task. *Id.*

87. The reinforcement plan for withdrawals includes an interest inventory of high interest items, which is assessed at two-week intervals to be sure the items are still motivating for him. Exhibit D20, p. 4. The Student can choose his own reinforcer and place his own tokens on the token board to take ownership of the process. *Id.*

88. The BIP describes the second target behavior, elopement, in the same way as the FBA and includes the same hypotheses. *Compare* Exhibit D19, pp. 4-5 *with* Exhibit 20, pp. 5.

89. The replacement behaviors the Student will be taught are to ask to leave the environment, to go for a walk or return to a pre-designated area, and self-regulation strategies. Exhibit D20, p. 6. The setting event strategies are to prepare the Student for new people and activities, have headphones available, provide reinforcement for successful transitions, and engage the Student in an interest area and tie it to transitions. *Id.*

90. The antecedent strategies set forth in the BIP are the same as those for withdrawal as well as positioning one's self in the space to decrease opportunities for elopement. Exhibit D20, p. 6.

91. The teaching strategies are to decrease the Student holding an adult's arm during transitions and increase his ability to walk independently, staying close enough and one step ahead during transitions to properly respond, block any elopement attempts and to practice reading and understanding the visual schedule. Exhibit D20, p. 6. The Student may hold an adult's hand during transitions while at public community events. *Id.* at 7. Response blocking means physically blocking the Student from leaving the area with one's body without touching the Student. Hannig testimony.

92. The consequence strategy for elopements is positive practice: when the Student elopes, he will be prompted to return to the onset point and "try again" to successfully complete the given expectation. Exhibit D20, p. 7. An adult will stay within close proximity of the Student and maintain environmental control, use response blocking, and radio for a second team member if necessary. *Id.* The Student is given as much time as needed to engage in the positive practice and is praised for his effort and provided a previously agreed-upon incentive when he engages in the positive practice and completes the expectation successfully. *Id.*

93. The reinforcement plan for elopements includes the same preference assessments used for the withdrawal behavior, as well as providing opportunities for the Student to take a break independently. Exhibit D20, p. 7. No reinforcement list was added to the BIP as the District had agreed to do in the PWN. Exhibit D30.

94. The bus transition plan that Mr. Hannig developed in the spring was incorporated into the September 2017 BIP. Exhibit D20, p. 8.

95. Several of the strategies in the BIP are those the team had begun using with the Student during the prior spring at Mr. Hannig's suggestion. *Compare* Exhibit D20 *with* Exhibits P41; P92, p. 14.

96. Although not specifically set forth in the BIP, the Parents receive the Student's BIP data sheets on a daily basis. Exhibit D30.

Events after the September 2017 FBA, IEP, and BIP were developed

97. On September 27, 2017, the Mother sent an email to Dr. Hawkins and copied to it Mr. Goble and Ms. Sharp. Exhibit D36, pp. 2 - 5. The email contained multiple complaints about the Student's educational program as well as inappropriate and insensitive derogatory comments about Dr. Hawkins and Ms. Sharp. *Id.* At the hearing, the Mother explained that she intended

her comments as constructive criticism and hoped her letter would lead to a more collaborative relationship with the District. Mother testimony.

98. The same day, Dr. Hawkins wrote to the Mother and stated that her email went far beyond the boundaries of appropriate constructive criticism or civil discourse and that her discourteous treatment of Ms. Sharp would no longer be tolerated. Exhibit D36, p. 1. Dr. Hawkins stated that the District was blocking communications to Ms. Sharp and that all emails to Ms. Sharp would be routed to Mr. Goble and, if a response was warranted, she would receive a response from him. *Id.* at 2 - 5. At some point, around this time, the daily BIP data sheets were amended. The form had previously had a place for Parent comments, but this was removed because the Parents' comments had not been productive and would now be routed through Mr. Goble.

99. During the prior school year, the District had established an internal protocol that staff members would not meet with the Mother by themselves because they did not feel comfortable doing so. Hawkins, Tr. 4030. Additionally, as part of the District's protocol, if the Parents send a communication to a staff person, that person would direct it to the appropriate staff person for response because the Mother had a history of contacting multiple staff when she did not get her desired response or did not get a response as quickly as she had hoped. *Id.* at 4058. It is not clear when this part of the protocol began or whether it was communicated to the Parents.

100. On October 11, 2017, the Student's pediatrician, Dr. Beth Harvey, participated in a phone conversation with Mr. Goble and the Mother. Harvey, Tr. 408. Dr. Harvey had observed the Student eloping in her office and had learned from the Mother her concerns the elopements might be caused by the behavior plan used at school and about the communication problems with the District. *Id.* at 424, 426. She hoped to mediate the Mother's conflict with the school to help get the Student's needs met. *Id.* at 406.

101. On October 16, 2017, Dr. Hawkins wrote to the Mother, stating that the school team had not and does not use the phrase "do over." Exhibit D37. She also stated that, while there have been occasional elopements at school, the behavior described by the Mother in her handwritten note dated September 17, 2017, is not something the District was observing in the school setting. *Id.* Dr. Hawkins wrote that the District was providing training for the Parents to support the Parent-reported behavior and encouraged the Parents to continue using the training provided by the District through Ms. Holley and to engage in home-based services as outlined in the UW IEE. *Id.* The note Dr. Hawkins was responding to does not appear to be in the record but it can be inferred that the Parent was continuing to raise concerns about her belief that positive practice was causing the Student's elopements at home.

102. Pursuant to the PWN issued after the September 2017 IEP meeting, Ms. Holley developed a BIP with the goal being for the Student to independently get off the bus, transition into the home, and remain in the home without the occurrence of challenging behaviors such as elopement for 15 minutes or until the start of the next routine or new activity, whichever occurred first, across 20 consecutive school days. Exhibit D33. Ms. Holley developed the plan, including visual supports, social stories, and a fidelity checklist, in consultation with Mr. Hannig, prior to observing the Student disembark the bus. Holley, Tr. 354-55, 357.

103. On October 20, 2017, Ms. Holley conducted an observation of the Student getting off the bus at home. *Id.* at 4. He handed his backpack to the Mother, said "I need to check," and then ran down the street. *Id.* After a chase, the Mother and bus driver got him back on the bus and

returned him home. *Id.* Based on this observation, Ms. Holley made changes to the BIP she had previously developed. *Id.* Ms. Holley explained the plan and materials to the family and recommended that it be implemented every day. *Id.*; Holley, Tr. 356.

104. On November 1, 2017, the Mother emailed Mr. Goble and attached letters from two of the Student's doctors. Exhibit 52, p. 2. The Mother asked for an IEP team meeting to address behavior strategies and her request that the Student be served at a different District high school by a specific special education teacher.⁹ *Id.* The next day Dr. Hawkins sent the Mother an email asking her to sign consent forms so the District to talk to the doctors. *Id.* at 3. On November 7, 2017, Dr. Hawkins notified the Mother she could not respond to her requests until she talked to the providers. *Id.* at 2. On November 10, 2017, the Mother signed the consent forms, adding language that she be allowed to participate in conference calls with the doctors. *Id.* at 1. At some point in November, a phone conference took place with one of the doctors, the Mother and Dr. Hawkins, but no phone conference took place with the other doctor. Mother, Tr. 3426-27; Hawkins, Tr. 1061, 3987, 3989.

105. No IEP meeting was scheduled as a result of the Parents' request and the District did not notify the Parents of any decision about their request. Dr. Hawkins did not schedule an IEP meeting because she did not believe there was any reason to hold one.¹⁰

106. In November or December 2017, the Parents provided to the District an accommodation checklist for children with autism with the Student's name on it prepared by Jacqueline Watson, OT. Exhibit P90, p. 4. There is no record evidence as to what this document is, why it was prepared, or under what circumstances it was provided to the District, and Ms. Watson did not testify. The document contains a number of recommendations with respect to sensory processing, social relating and interacting, motor planning and organizational strategies, self-care and learning. *Id.*

107. On December 13, 2017, Ms. Holley conducted a fidelity check at the Student's home to determine whether the BIP she developed was being implemented as written. Exhibit D34, p. 1.

⁹ The Mother testified that she may have requested an IEP meeting verbally and in emails to Mr. Goble, "probably" in September, October, and November. Mother, Tr. 2277. However, Mr. Goble did not recall such a request, the Parents did offer any emails earlier than the one from November 1, 2017, and the Mother's testimony is not sufficiently clear to establish an earlier date. Goble, Tr. 1191

¹⁰ The District's brief argues that the District did not refuse to schedule an IEP team meeting. The District argues that Dr. Hawkins did not have sufficient time to speak with both of the Student's doctors and then reach a decision about whether an IEP meeting should be scheduled before the Parents filed their Complaint. District Brief, p. 41. The testimony does not support this argument. When the Parent asked Dr. Hawkins at the hearing why there had not been another IEP meeting, she responded, "What would be the reason for an IEP meeting?" Hawkins, Tr. 1061. When questioned by the District's attorney about her efforts to talk to the the two doctors, she testified that she talked to one of them but not to the other because he said he did not have any information to provide. *Id.* at 3987. Thus she had the information she needed to make a decision but took no action to schedule a meeting or notify the Parents their request was denied.

She observed the Mother implementing the plan with fidelity when the Student got off the bus. *Id.* Ms. Holley met with the Student's Mother, grandparents, and uncle at the Student's home and learned that the behavior plan had been implemented on a daily basis and the Student had not engaged in elopement after getting off the bus since the implementation of the plan. *Id.* Because the behavior plan was effective, Ms. Holley recommended that the Student's Parents and other caretakers continue to implement it on a daily basis. *Id.* The Mother reported to Ms. Holley that she still had problems with the Student eloping in the community. *Id.* Ms. Holley recommended that the Mother create materials similar to those used in the bus plan to use in the community and referred her to a specific online program and iPad application for that purpose. *Id.*

108. Sometime after the Parents filed their Complaint in this case on December 4, 2017, a resolution meeting was held. Dr. Hawkins, Assistant Principal Goble, and Principal Paul Dean were present for the District. Hawkins, Tr. 1050. When the Mother asked at the beginning of the meeting whether the parties would reach a resolution, Dr. Hawkins said it was possible and would depend on the Parents' ability to answer the District's questions so it could better understand the issues. Hawkins, Tr. 1050. The District representatives asked the Parents many questions about their claims but did not offer a resolution. Mother, Tr. 2032-33.

109. At the time of first quarterly progress report in November 2017, the Student had made sufficient progress on all of his annual IEP goals to achieve them within the duration of the IEP except for one. Exhibit D28, pp. 39 - 51; Short, Tr. 2888-94. The goal for showing ID was identified as an emerging skill, meaning the skill was emerging but may not be achieved within the duration of the IEP, since the concept was still being introduced in the fall. *Id.* His second-quarter progress report in February 2018 reflected progress on all IEP goals except two. Exhibit P83, pp. 1 - 15. The social interaction goal was rated as an emerging skill because his performance remained variable. *Id.* at 4. The time-telling goal was also rated as an emerging skill. *Id.* at 5 - 6.

110. The Student still experienced some withdrawal, elopement, and attempted elopement behavior during the school year after the September 2017 BIP was implemented. He had to miss a field trip to the farmers' market in October because he had six elopements or attempts the day prior, which was the highest number so far that school year, and District staff was uncomfortable taking him into the open the next day. Sharp, Tr. 593-94. Generally, however, the Student's elopements have decreased during the year and he was able to participate in all other field trips. Hannig, Tr. 3124; Sharp, Tr. 2976. Although there has been some variability, the frequency and duration of his withdrawals have gone down as well. Hannig, Tr. 3126 - 27. The Student has done well disembarking from the bus, although there were some delays after he had a new bus driver and after long weekends, but less than the prior year. *Id.* at 2897. There were at least three occasions during the year when he did not disembark and the paraeducator had to get on the bus with him while it finished its route and then return him to Timberline. One of these events was at the very beginning of the school year.

111. The Student did not elope off the campus or during school outings in the community during the 2017-2018 school year prior to the Parents filing their Complaint. Sharp, Tr. 2902. The Student did run from campus once afterwards, in March 2018. Mother, Tr. 2091. This happened after the Student left Ms. Sharp's class at the end of the school day and was waiting in a different classroom for his after-school basketball program to start. The Mother arrived at the classroom and the Student eloped from the class and off the school grounds shortly afterwards. Mother, Tr. 2091.

112. The Student ran from the family after getting off the school bus at home at least three times since January 2018. Williams, Tr. 679, 689-90. The record does not reflect whether the Parents are still implementing the BIP created by Ms. Holley.

113. The Student participates in Unified basketball, which is an afterschool program in which life skills students are paired with general education student partners to learn social skills and sportsmanship, as well as athletic skills. Kilcup, Tr. 1416. The District provides a one-on-one paraeducator for this activity.

114. The Student has also worked with a private tutor provided by the Parents, Cleo Thompson,¹¹ since June 2017. Thompson, Tr. 885. Ms. Thompson works with the Student on handwriting, language, and math. Exhibit P59, pp 4-5. For reading and language, she uses methods from a Lindamood-Bell program. *Id.* at 4. In September 2017, she reported that she was using a phonics program that helps the Student determine what sounds are made by where they are located in the mouth. *Id.* She also worked with him on a program that begins by identifying the 1000 most common sight words. *Id.* At the time of the hearing, she was working with him on fluency, comprehension, sight words, phonics, and “real-life” skills in reading. Thompson, Tr. 849. She described the program as being “helpful” for him, but did not more specifically describe his progress or offer an opinion about whether such a program is more appropriate for him at this time than a functional reading program. *Id.* at 868. She did opine that the Student should have a goal of writing his name, although she did not explain why she believed this was necessary for him. *Id.* at 880.

115. The relationship between the Parents, particularly the Mother, and District staff, especially Ms. Sharp, Dr. Hawkins, and Mr. Goble, is unfortunately strained. The Mother, who understandably wants the very best for the Student, feels that the District does not listen to or respect her. The District, in turn, has been faced with the Mother’s many complaints, derogatory comments towards staff, and seeming unwillingness to be satisfied with any of the District’s efforts. It is evident, however, that both the Parents and the District are committed to addressing the Student’s educational needs.

116. At the time of the hearing, the communication protocol was still in place for the Parents. Mr. Goble testified that he has tried to address every request made by the Parents and believes he has responded to every email they sent. Goble, Tr. 3898. Yet when presented some specific emails, he did not remember whether or how he responded. Goble testimony.

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

¹¹ Ms. Thompson is a certificated teacher, but not in Washington. Thompson testimony. She has not been a special education teacher but has developed IEP goals for children in a “birth to six” program as an early intervention specialist. *Id.* at 878.

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 206-07 (footnotes omitted).

4. A "free appropriate public education" (FAPE) consists of both the procedural and substantive requirements of the IDEA. 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" as defined by the Act.

Id. at 188-189.

5. 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., 858 F.3d 1189, 1201 (9th Cir. 2017)(citation omitted), *cert. denied*, 583 U.S. ___, 138 S. Ct. 556 (2017).

6. 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. *Rowley*, 486 U.S. at 200-01.

7. When determining whether an IEP is appropriate, the "question is whether the IEP is reasonable, not whether the court regards it as ideal." *Rowley*, U.S. at 206-07. The determination of reasonableness is made as of the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is "a snapshot, not a retrospective." *Id.*

8. Procedural violations of the IDEA amount to a denial of FAPE only if they 1) impeded the child's right to a free appropriate public education, 2) 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 3) caused a deprivation of educational benefits. WAC 392-172A-05105(2); 20 USC §1415(f)(3)(E)(ii).

Motions Related to Post-Hearing Briefs

9. Following the submission of the parties' post-hearing briefs, the District filed a motion requesting that the declaration of the Father, submitted with the Parents' brief, be stricken as well as any portions of the Parents' post-hearing brief that references or relies on the factual allegations in the declaration. The motion also requests that portions of the Parents' post-hearing submissions that raise issues and arguments beyond the scope of the issues for hearing be stricken or disregarded. The Parents, in turn, submitted a request to dismiss the District's motion because they had been asked to address the motions to dismiss made by the District at the hearing in their post-hearing brief and had been instructed that there was no opportunity to respond to post-hearing briefs.

10. The District's brief is not stricken. Nothing will be stricken from the Parents' post-hearing submissions, but the ALJ will not rely on any evidence that was not admitted at the hearing regardless of whether it is in the Father's declaration or elsewhere in the Parents' post-hearing submissions.¹² Nor will the ALJ address issues that are outside the Parents' Complaint and/or

¹² Several times during the hearing, the Parents questioned witnesses about complaints or discipline against Dr. Hawkins. These questions were not allowed and the ALJ repeatedly stated that this hearing

the statement of the issues, as discussed further below. Despite repeated reminders during the hearing that only the issues set forth in the statement of the issues would be addressed, the Parents have devoted substantial briefing to other issues.

The District's Motions Made at the Conclusion of the Parents' Case

11. At the conclusion of the Parents' case, the District made an oral motion for a "directed verdict" on the following issues because the Parents failed to present evidence to support their claims:

- Issue a(i) regarding the IEP of September 2017
- Issue a(iii) regarding the BIP of September 2017
- Issue (v) regarding convening an eligibility meeting

Tr. 2775 - 78. Similarly, the District moved to dismiss the following requested remedies because the Parents failed to produce any evidence they were necessary: daily and weekly communication, assistive technology to be written into the IEP, reading goals in the areas requested by the Parents, a reading specialist, Reach for Reading and AR Reader, provision of curriculum to the Parents as an accommodation, a written plan for addressing the Student's involvement with typically-developing peers, weekly progress reports, and contracting with the University of Washington to present the IEE results to the Student's new case manager and service providers. Tr. 2780 - 82.

12. The ALJ declined to rule on the motion at the hearing. Instead, the ALJ determined that she would hold the remainder of the hearing and address the motion in her written decision. The motion for a "directed verdict," which presumably is requesting judgment as a matter of law, requires addressing those issues considering only the evidence presented at the time the Parents rested their case to determine whether they have met their burden of proof. Rather than complicating the Order by writing two sets of findings of fact and addressing the issues twice, the ALJ has prepared just one set of findings of fact, which includes evidence presented in both the District's and Parents' cases. And each issue is addressed only once. This is an appropriate format because, as concluded below, the District has not denied the Student FAPE with respect to any of the issues encompassed by the District's motion for judgement as a matter of law.

13. The District moved to dismiss all claims related to issue (a)vii regarding the resolution meeting on the grounds the Parents failed to properly serve the District with the amended Complaint that included this claim. Tr. 2779. The ALJ denied this motion at the beginning of the hearing and declines to reconsider the ruling. At the prehearing conference during which the Parents' requested amendment was discussed, the District had received the Parents' amended

was about the facts of this case only. The Parents were also instructed that their briefing should not include new evidence that was not introduced at the hearing. Nonetheless, the Parents included in their briefing what they purport to be an excerpt from a human resources complaint by a District staff person unrelated to this case against Dr. Hawkins. Similarly, the Parents proposed at the hearing an exhibit related to aversive interventions reported by the District to OSPI and this information was excluded for the same reason. Despite this, the Parents included in their briefing information about District isolations purportedly found at an OSPI website. Including this information that was expressly not admitted at the hearing is wholly inappropriate and it will not be considered in any way.

Complaint by email, declined the opportunity to continue the prehearing conference to provide the Parents the opportunity to properly serve it on the District, and did not object to the amendment at the time but “reserved the right” to object later based on improper service. See Prehearing Order dated January 8, 2018, and audio of prehearing conference on January 3, 2018. The District did not then object until the hearing. Where there is no prejudice to the District because it had actually received the amended Complaint and it declined the opportunity for additional time to address the proposed amendment, dismissing the issue raised in the amended Complaint is not warranted. See WAC 10-08-200 (presiding officer in adjudicative proceedings may waive any requirement of procedural rules unless a party shows it would be prejudiced by such a waiver).

14. The District also sought dismissal of any remedies not reflected in the prehearing order because it had not agreed to the Parents adding any remedies during the hearing. Tr. 2779 - 80. The statement of the issues and remedies specifically includes whether the Parents are entitled to the remedies requested at that point and also to “other equitable remedies, as appropriate.” For that reason, the ALJ will consider remedies requested by the Parents at the hearing and in their post-hearing briefs to the extent appropriate.

Addressing the Issues Identified for Hearing

15. The Parents submitted a 155-page post-hearing brief with an 82-page attachment addressing the evidence presented at the hearing. Despite the volume of argument presented by the Parents, the organization does not make clear which information and arguments the Parents believe go to each of the issues identified for hearing. The ALJ has attempted to address the Parents’ arguments with respect to each of the issues despite where the arguments appeared in the briefing.

16. The Parents also raise a number of other issues and allegations, including violation of the parties’ settlement agreement of May 2017, claims related to the time period before that settlement agreement, claims arising after the Parents filed their Complaint in this case, implementation of the September 2017 IEP, complaints about the District’s evaluation and the UW IEE, alleged violations of District policies unrelated to special education, the scheduling and length of time provided for fall parent-teacher conferences, extended school year (ESY) services, discrimination against the Student and the Parents, alleged FERPA violations, and whether “blocking” is a form of restraint requiring parent consent. Because these issues were not included in the Parents’ Complaint and/or the statement of the issues and because, in some cases, they are barred by the parties’ settlement agreement and/or outside the jurisdiction of the ALJ, they are not considered.¹³ See WAC 392-172A-05100(3).

September 2017 Individualized Education Program (IEP)

17. As noted above, an IEP is appropriate if it is developed through the IDEA’s procedures and is reasonably calculated to enable the child to receive an educational benefit, meaning the IEP is reasonably calculated to enable a student to make progress appropriate in light of his circumstances. *Rowley*, 458 U.S. 176; *Endrew F.*, 137 S. Ct. at 999-1000.

¹³ Although testimony was allowed on some of these subjects for background and context, the District made clear that it was not consenting to the trial of any issues outside the statement of the issues.

Present levels of performance

18. An IEP must contain a statement of a student's present levels of academic and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. WAC 392-172A-03090(1)(a); 34 § CFR 300.320(a)(1). Present levels must include baseline measurements for goals. *Northshore Sch. Dist.*, 114 LRP 2927 (SEA WA 2013).

19. The Parents argue that the present levels in the Student's September 2017 IEP were not appropriate because they did not include enough information about his medical and physical issues, including his anxiety, his horseshoe kidney, his need for ear plugs, his visual tracking problems, and his need for chewable toys because of his sensory needs. The Parents also argue the present levels should have included information comparing the Student to typically developing peers or addressing common core standards. Additionally, they argue the present levels should include information about his strengths and information about social skills, gross motor skills, reading fluency, interests, and behavior, including elopement and withdrawal. The Parents also argue that the IEP does not include present levels for specific activities like writing checks, handwriting, typing on an iPad, getting off a bus, dribbling a basketball, grating cheese, using a can opener, and opening a locker.

20. The IEP provides information about the Student's present levels of performance with respect to each of his goal areas, both academic and functional, comparing his performance to that of typically developing peers, and provides baseline measurements for each of his IEP goals. The present levels section contains only limited information about the Student's strengths and behavior but both are addressed elsewhere in the IEP and BIP so need not be repeated in the present levels. See WAC 392-172A-03090(2)(b) (an IEP team is not required to include information under one component of an IEP that is already contained in another component of the IEP). There is no requirement that the present levels include medical diagnoses, and additional information on this subject was available to the IEP team through the District's prior evaluation, the UW IEE, and information submitted by the Parents before the IEP team meeting. Where the Student is not receiving gross motor services, it is not necessarily required that present levels be addressed. Nor is it required that the present levels address every conceivable functional task a student might perform even when they are not current goal areas. Accordingly, the Parents have not proven a violation of the IDEA with respect to the present levels of performance.

Annual goals

21. An IEP must also contain a statement of annual goals, including academic and functional goals designed to meet the student's needs that result from his disability to enable him to be involved in and make progress in the general education curriculum and meet each of a student's other educational needs that result from the student's disability. WAC 392-172A-03090(1)(b)(i); 34 § CFR 300.320(a)(2). For students who take alternate assessments aligned to alternate achievement standards, the IEP must include a description of benchmarks or short-term objectives. *Id.* There must be a relationship between the present levels of performance and the goals and objectives. *Seattle Sch. Dist.*, 34 IDELR 196, 34 LRP 226 (SEA WA 2001). Goals must be stated with enough specificity that they are understandable and must be measurable in order to determine whether a student is making progress toward the goals.

22. The IDEA does not specify the number of goals that must be included in an IEP, but there should typically be at least one goal for each area of need. See, e.g., *Bellflower Unified Sch. Dist.*, 54 IDELR 66 (SEA CA 2010) (IEP deficient because it did not contain goals to address student's deficits in attending to group instruction); *Flagstaff Arts and Leadership Academy*, 113 LRP 27180 (SEA AZ 2013) (IEP deficient because it failed to provide goals to properly address basic reading, reading fluency, life skills, and other areas of need). An IEP need not contain every goal requested by a parent or recommended by the parent's experts. See *G.D. v. Torrance Unified Sch. Dist.*, 112 LRP 12078 (C.D. Cal. 2012) (IEP goals not inappropriate where the district included goals addressing the student's significant needs while excluding those it deemed unnecessary or not age appropriate).

23. The Student's IEP provides goals in each of the areas for which his evaluation recommends SDI. The goals are measurable and were developed considering the Student's present levels and progress on prior goals.

24. One of the Parents' primary concerns about the goals is that the reading goals do not address phonics, fluency, vocabulary, spelling, comprehension, and other typical "learning-to-read" skills. But given his cognitive ability, his reading assessment scores from the UW IEE, his earlier failure to progress on other typical reading goals, and his age and need to navigate and be safe in the community, the Parents have not demonstrated that a focus on functional reading is inappropriate at this point in his education. It is also consistent with the recommendations for functional reading, including identifying safety signs, in the UW IEE.¹⁴

25. The Parents are also concerned about the transitioning goal under which the Student would reduce his reliance on holding an adult's arm. But the District had legitimate reasons for this goal, addressed the Parents' safety concerns by clarifying that it did not apply off campus, and created other, more appropriate, opportunities for the Student to have physical contact with others.

26. The Parents also argue that the Student should have goals related to keeping his face exposed, asking for permission before leaving an area, remaining in the same room with a group, walking alongside someone rather than running ahead, safety awareness, and participating in an activity for a certain amount of time before taking a break. While these are relevant concerns for the Student, they are addressed in his BIP and do not necessarily need to be goal areas as well.

27. The Parents also argue the Student should have goals about learning the days of the week and telling time in relation to the start and stop times of activities on a schedule, handwriting, including writing his name, developing friendships with typically developing peers, checking his email and preventing fines for lost items, classroom participation, learning assistive technology,

¹⁴ Similarly, the Parents argue that the District is not using appropriate reading curriculum with the Student. School districts are generally entitled to deference in deciding what programming is appropriate for a student. *J.L. v. Mercer Island School Dist.*, 575 F.3d 1025, 1031 n.5 (9th Cir. 2010). For that reason, IEPs need not address the instructional method to be used unless a specific methodology is necessary for a student to receive an appropriate education. See *id.* at 1039; see also *Department of Education, Analysis of Comments and Changes to IDEA Regulations*, 71 Fed. Reg. 46665 (2006) (specific methodology may only be incorporated in an IEP if it is "necessary for the child to receive FAPE"). The Parents have not demonstrated that a specific curriculum is required for the Student, and therefore have not proven that the IEP violates the IDEA for failure to identify a specific curriculum.

cooking skills such as measuring and cutting food, leisure activities, photography, developing skills necessary for a workplace, reading medication names, memorizing body parts, seeking help, safe handling of weights in a weight room, becoming aware of his surroundings by taking pictures and then describing what he did looking at the pictures, bouncing a basketball, making phone calls to his parents, and keeping a list of library books and when they are due. It is only possible to implement so many goals at one time and providing FAPE does not require addressing all possible goals at once. And as set forth above, an IEP need not include all goals requested by parents. Moreover, the present levels of performance reflect that the Student can perform two of these tasks – tying his shoes and writing his name.

Accommodations and modifications

28. An IEP must include a statement of the program modifications and supports that will be provided to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, and 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)(c)-(d); 34 CFR 300.320(a)(4)(ii).

29. Here, the IEP includes useful accommodations, including accommodations recommended in the UW IEE, and modification of curriculum when the Student is in a general education setting. The Parents do not appear to argue that any of the accommodations and modifications provided are inappropriate.

30. The Parents argue that the IEP did not provide any accommodations for the WA-AIM assessment. For the 2017-2018 school year, the IEP did not reflect the WA-AIM assessment at all so there would be no need for accommodations. The Parents have not identified what accommodations the Student would need for the assessment, although it is likely, given his overall needs, that some accommodation would be required. Thus, the failure to note accommodations for the WA-AIM assessment for the tests in the Student's eleventh-grade year is a procedural violation of the IDEA. However, because a new annual IEP will be required for the 2018-2019 school year, prior to the Student taking the WA-AIM test, this procedural violation did not impede the Student's right to a FAPE, significantly impede the Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the Student, or cause a deprivation of educational benefits. Accordingly, it was not a denial of FAPE.

31. The Parents also argue that the Student should receive as accommodations the following recommendations from a checklist recommended by an outside OT provided to the District after the IEP meeting: weight lifting, running, or aerobic exercise, exercise bike or treadmill, use of a timer, scripts or stories, firm hugs, hand exercise balls, and having responsibility for problem-solving. Additionally, the Parents argue the District should provide as accommodations copies of the Student's curriculum and lesson plans for use at home. The Student receives a supervised exercise program through his participation in general education PE and the Parents have not demonstrated why additional physical activity as accommodations would be necessary. Likewise, the use of a timer and visual supports are already included in his BIP and IEP. It is understandable that the Parents would like to provide opportunities for the Student to work at home on the same things he is learning at school, but they have not proven that this is necessary for him to make progress towards attaining his annual goals. Nor have they demonstrated that the other items are necessary for that purpose simply because they were included as recommendations on a list

not provided to the District before the IEP meeting and prepared by a professional who did not testify at the hearing. Accordingly, the Parents have not proven a violation of the IDEA with respect to accommodations and modifications.

Assistive technology

32. An assistive technology (AT) device is any item, piece of equipment, or product system used to increase, maintain, or improve the functional capabilities of a student eligible for special education. WAC 391-172A-01025.

33. The Student's IEP provides for the Student to have low-tech AT in the form of picture supports, consistent with what was recommended as a result of the UW IEE, and to have access to a word-processing device. The Parents wish for him to have a schedule and other applications, including text-to-speech, on an iPad and to be able to take pictures with an iPad. While the Student had success with an iPad and similar applications in the past, the UW IEE did not make that recommendation and the Parents have not demonstrated that his lower-tech AT is not currently appropriate to increase, maintain, or improve his functional capacities and, therefore, have not proven that the District violated the IDEA by not providing it.

Special education and related service minutes

34. An IEP must include a statement of the special education and related services to be provided to the student to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students. WAC 392-172A-03090(1)(d); 34 CFR §300.320.

35. Specially designed instruction (SDI) means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the student's unique needs that result from the student's disability and to ensure access of the student to the general education curriculum. WAC 392-172A-01175; 34 CFR §300.39(b)(3).

36. Related services are 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, including SLP and OT services and parent counseling and training. WAC 392-172A-01155(1).

37. The Student receives daily SDI in each of the subject areas recommended by his evaluation. It is not clear what complaint the Parents have about the special education minutes, as their larger complaint appears to be that the Student should have a greater amount of time in the general education setting. The Student receives 60 minutes each of SLP and OT services per week. The Parents argue the Student should instead receive a greater amount (alternately described in their briefing as three times and four times) of OT per week. This was not recommended by the Seattle Children's OT IEE, and the Parents have not proven that additional time is necessary for the Student to benefit from special education.

38. The Parents also argue that the Student should be served by a reading specialist. This was not recommended by the UW IEE and the Parents have not provided any support for this need other than their desire that the Student learn to read in the traditional sense, which does not

appear to be realistic given his cognitive ability and test scores, his prior performance, and the UW IEE recommendations that he receive functional reading instruction. The Parents have not proven that the Student or his paraeducator require services from a reading specialist in order to benefit from special education.

39. Additionally, the Parents argue that the Student should be served by an autism specialist and/or a behavior specialist or behavioral associate. The Student's IEP and BIP were developed with the assistance of a BCBA, and the IEP calls for ABA training for the Student's special education service providers, weekly consultation between a BCBA and the Student's case manager, and monthly consultation between the BCBA and the Student's private service providers, consistent with the parties' settlement agreement of May 2017 and the recommendations of the UW IEE. The Parents have not proven that the Student also requires the services of a different type of autism or behavior specialist in order to benefit from special education.

40. The Parents also argue that the Student should have access to a counselor to address his anxiety and emotions and that the Parents should have direct access to a BCBA. The District BCBA communicates monthly with the private service providers, with the Parent on the conference call, to provide some continuity between the Student's programs at and away from school. The UW IEE report did not recommend counseling for the Student or the need for a BCBA to work directly with the Parents, and the Parents have not otherwise proven that either service is necessary for the Student to benefit from special education.

41. The Parents argue the Student should receive physical therapy services but neither the District's most recent evaluation nor the Children's Hospital PT IEE recommended that he receive physical therapy services.

42. The Parents have not demonstrated a violation of the IDEA with respect to the number of minutes for special education and related services.

Supports for school personnel

43. The IEP provides for six hours of ABA training for the Student's special education service providers, 20 minutes of weekly consultation between the District BCBA and the case manager, and collaboration 15 minutes twice per month between the OT and the classroom staff.

44. These school supports are consistent with the parties' May 2017 settlement agreement with respect to BCBA involvement and the recommendations of the UW IEE. The Parents have not proven that additional supports for school personnel are necessary for the Student to benefit from special education.

Related services, supplementary aids, or services

45. Related services are defined above. Supplementary aids and services are aids, services, and other supports that are provided in general education or other education-related settings to enable students eligible for special education to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment requirements. WAC 392-172A-01185.

46. As set forth above, the Student's IEP provides for OT and SLP services. The IEP also provides for a one-on-one paraeducator throughout his school day and for extracurricular activities.

47. The Parents' arguments about additional related services were addressed above with respect to the service minutes.

48. With respect to supplementary aids and services, the Parents argue the Student should have access to something called Learning Link, but it was not established at the hearing what this is or whether it would be appropriate for the Student. The Parents argue the Student should have access to after-school tutoring and peer tutoring, which the Parents allege is available to general education students. It was not established whether these services were available to the Student or that they are necessary for the Student, who already has access at all times to a one-on-one paraeducator, to benefit from special education services. Therefore, the Parents have not proven a violation of the IDEA with respect to related services or supplementary aids and services.

Least restrictive environment

49. School districts must ensure that special education students are served in the "least restrictive environment." WAC 392-172A-02050. This means they should be served "[t]o the maximum extent appropriate in the general education environment with students who are nondisabled" and that "special classes . . . or other removal of students eligible for special education from the general education environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. *Id.*

50. To determine whether a district's placement is a student's least-restrictive environment (LRE), the following factors must be weighed: (1) the educational benefits of the placement; (2) the non-academic benefits of the placement; (3) the effect the Student has on the teacher and children in the general education class; and (4) the costs of mainstreaming in the general education environment. See *Sacramento City Unif'd Sch. Dist. v. Rachel H.*, 14 F.3d 1398, 1404 (9th Cir.), *cert. denied*, 512 U.S. 1207, 114 S. Ct. 2679 (1994).

51. Here, the Student requires a very significant amount of SDI in academics, social skills, and adaptive skills, as well as time for OT and SLP services. At the time of the UW IEE, he was having difficulty maintaining attendance in his general education PE class, and the IEE recommended working with him to build tolerance for that general education class. Although the IEE recommended that the Student have the opportunity to interact with general education peers, it did not expressly recommend more than one general education class while tolerance of the general education PE class was an issue. In this case, academically, the Student is more appropriately served in the life skills class but there is a non-academic benefit to him interacting with general education peers. The Parents have not proven that, at the time the IEP was developed, it was not appropriate for the Student to receive most of his education in the life skills class with access to general education peers in his PE class, at lunch, when general education peers served as teacher assistants in his class, and through extracurricular activities.

52. The Parents also argue that the Student should have received his math and reading instruction in a resource room, rather than the life skills class, but they did not provide any evidence for this position.

53. The Parents have not demonstrated any IDEA violation with respect to the Student's least restrictive environment.

Provision and monitoring of special education services

54. Special education must be provided by appropriately qualified staff. WAC 392-172A-02090. Other staff, including general education teachers and paraprofessionals, may assist in the provision of special education if the instruction is designed and supervised by special education certificated staff and the Student's progress is monitored and evaluated by special education certificated staff. WAC 392-172A-02090(1)(i). Because the Student's IEP provides that the Student's special education will be monitored by a special education teacher, it is not a violation of the IDEA that it will be provided by a paraeducator.

Appropriateness of the IEP

55. The Parents have not proven that the IEP was not reasonably calculated to enable the Student to make progress appropriate in light of his circumstances. Therefore, they have not proven any violation of the IDEA.

September 2017 Behavioral Intervention Plan (BIP)

56. A BIP is a plan incorporated into a student's IEP if determined necessary by the IEP team 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.

Id.

Addressing elopement and withdrawal

57. The BIP identifies elopement and withdrawal as the two behaviors targeted and includes all of the requirements for a BIP outlined in the WAC above for each of the two target behaviors: instructional and environmental conditions or circumstances that contribute to the behaviors, positive behavioral interventions and supports, and skills to be taught as alternatives to the behaviors.

58. The Parents do not argue in this section of their brief how they believe these behaviors are not adequately addressed by the BIP. However, from their requests at the IEP meeting, questioning of witnesses, and statements elsewhere in their brief, it appears the Parents' primary concerns are about the use of positive practice as an intervention for elopements, the lack of a "safety plan," encouraging the Student to transition more independently without holding hands or linking arms with an adult, encouraging the Student to take breaks, and the failure to include a list of reinforcements in the BIP.

59. The Parents believe that the District's use of positive practice was causing him to elope at home when he got off the bus and at other times in the home or community with the Parents or private service providers. The District determined that the use of positive practice had been successful at school. Additionally, it offered BCBA support to the Parents at home regarding their concerns that the Student was eloping from the bus and discussed community resources potentially available to further assist the Parents at home. It was not inappropriate to include positive practice in the BIP at the time the BIP was developed as it had been successful to date and the District provided services for the Parents to address their concerns related to the bus. Those services successfully addressed the Student's eloping after arriving home during the period before the Parents filed their Complaint.

60. The Parents were concerned about the lack of a "safety plan" for the Student when he was in the community with his class, but the BIP incorporates safety features, including allowing the Student to hold hands or link arms with an adult when out in the community, an adult staying close enough to him to respond block any elopement attempts, and radioing another staff person if necessary.

61. The Parents expressed concern about the BIP's efforts to reduce the Student's reliance on holding hands or linking arms with an adult. The move toward independence is appropriate and endorsed by the UW IEE, and the Parents' concerns about safety in the community were addressed by allowing him to continue the behavior when out in the community. The Parents' other stated concerns about the Student's need for touch were addressed by teaching him other age-appropriate forms of touch, such as fist-bumps and side-hugs.

62. The Parents appear to argue that encouraging the Student to take breaks is not an appropriate way to deal with his withdrawal because taking a break does not cause him to be engaged in a task or with his peers. The District explained, however that breaks, which were recommended by the UW IEE as well, served a useful function in addressing the Student's withdrawal behavior.

63. The Parents proved that the District failed to include a reinforcement list as part of the BIP after agreeing to do so and stating in a PWN that it would be included. The failure to include the list after agreeing to do so was a procedural violation of the IDEA. However, the Parents have not demonstrated that the failure to include this list of specific items the Student found reinforcing into the BIP resulted in the BIP itself being inappropriate. Accordingly, it is found that the procedural violation was not a denial of FAPE because it didn't impede the Student's right to FAPE, didn't significantly impede the Parents' opportunity to participate in the decision making process, or cause a deprivation of educational benefits.

Least restrictive environment

64. As explained above, the Parents did not prove that the IEP failed to provide for the Student to be served in his LRE. LRE is not a required component of a BIP, and the Parents do not explain how they believe the BIP failed to allow the Student to be educated in his LRE. Accordingly, they have not proven a violation of the IDEA in this regard.

Addressing instructional or environmental conditions or circumstances contributing to the pattern of behaviors

65. The BIP identifies, for each of the target behaviors, the contributing factors, settings, and antecedents, and includes setting event and antecedent strategies. The Parents do not explain in what way they think this portion of the BIP is inappropriate and have not proven that it is.

66. The Parents appear to argue that Ms. Sharp's class or Timberline generally are inappropriate environments for the Student, contributing to his elopement and withdrawal, but they did not challenge the contributing factors, setting, and antecedents listed in the UW IEE or the District's FBA upon which the BIP was based, and have only presented speculation as to how the classroom or school environments contribute to his behavior. Accordingly, they have not proven a violation of the IDEA in this regard.

Behavioral interventions and supports to reduce the pattern of behaviors that impede the Student's learning and increase the desired pro-social behaviors

67. For each of the target behaviors, the BIP includes replacement behaviors, setting event strategies for decreasing the likelihood of the target behavior and increasing the replacement behavior, antecedent strategies to minimize or prevent the behavior, strategies for teaching positive behavior skills, and consequence strategies to be used when the replacement behavior or target behavior occurs, and a reinforcement plan to increase the positive replacement behavior.

68. The Parents do not explain how any of these interventions are inappropriate other than to note that the Student's targeted behaviors were not extinguished under the BIP. But the appropriateness of the BIP, as part of the IEP, must be considered at the time it was developed. At that point, the District had experienced some success reducing the Student's behaviors through its previous efforts and then also had the benefits of the UW IEE's recommendations and data from the prior year to improve upon the plan. And the Student's behavior continued to improve under the BIP. The Parents have not proven that the behavioral interventions and supports were not appropriate at the time the BIP was developed.

Ensuring consistency of implementation of positive behavior interventions across the Student's school, home, and community

69. The BIP includes, for each of the target behaviors, replacement behaviors, setting event strategies for decreasing the likelihood of the target behavior and increasing the replacement behavior, antecedent strategies to minimize or prevent the behavior, strategies for teaching positive behavior skills, and consequence strategies to be used when the replacement behavior or target behavior occurs, and a reinforcement plan to increase the positive replacement behavior to apply in all educational settings, including on community outings.

70. Notably, the regulations for ensuring consistency only apply to “implementation across the student’s *school-sponsored* instruction or activities.” WAC 392-172A-01031 (emphasis added). Thus, the BIP is not necessarily required to address consistency at the Student’s home and in the community as identified by the Parents in the issue statement. Moreover, the Parents do not provide argument as to how the BIP fails to provide appropriate interventions and supports to ensure implementation regardless of the setting. Accordingly, they have not proven a violation in this regard.

Providing for skills to be taught and monitored as alternatives to challenging behaviors for a specific pattern of behavior

71. The BIP includes, for each of the target areas, replacement behaviors and teaching strategies for positive behavior skills. The Parents have not proven a violation in this regard.

Consideration of positive behavioral interventions to include the consideration of environmental factors that may trigger challenging behaviors and teaching the Student the skills to manage his own behavior

72. This appears to be a restatement of other issues already addressed above, unrelated to a specific portion of the regulation for BIPs. As set forth above, the BIP, for both target behaviors, provides positive behavioral interventions, considers environmental factors that trigger the Student’s behavior, and provides for teaching the Student self-management skills. The Parents have not proven a violation of the IDEA in this regard.

Appropriateness of the BIP

73. Overall, the Parents have not proven that the BIP was not reasonably calculated to enable the Student to make progress appropriate in light of his circumstances at the time it was developed. Accordingly, they have not proven a violation of the IDEA with respect to the BIP.

Failing to meet with the Parents when the Student’s behavior continued

74. This issue will be addressed below in combination with the other issues about parent participation.

Convening of September 2017 “Eligibility Meeting”

Parents’ consent for FBA

75. The Parents argue that the District did not obtain their consent before conducting the FBA discussed at the September 2017 meeting. The Parents are correct that FBAs are evaluations and, therefore, require parent consent. See WAC 392-172A-03000(3); *Letter to Christiansen*, 48 IDELR 161 (OSEP 2007); *Questions and Answers on Discipline Procedures*, 52 IDELR 231 (OSERS 2009). However, the FBA discussed at the meeting was an update to the District’s prior FBA to incorporate the UW IEE FBA and data collected during the 2016-2017 school year. The Parents do not argue that they did not give consent for the UW evaluation. And consent is not required before a district reviews existing data. *Letter to Gallo*, 61 IDELR 173 (OSEP 2013).

Thus, because the District did not itself conduct any evaluations of the Student, the Parents' consent was not required for the updated FBA.

Late invitation

76. The allegation presented in the issue statement is that the District sent an invitation on September 22, 2017, for an eligibility meeting held on September 15, 2017. However, the invitation for the meeting regarding the FBA was dated June 16, 2017, and there was no testimony from the Parents that they did not receive it in June. Instead, the Parents argue in their brief that they did not receive a *consent form* for the FBA until after the meeting on September 22, 2017. That allegation is unrelated to the allegation about the invitation and, as discussed above, consent was not required for the District to revise its FBA to incorporate information from the IEE and a review of data. Thus, the Parents have not demonstrated they did not timely receive an invitation for the meeting about the FBA.

Incorrectly listing meeting participants

77. The September 2017 FBA erroneously identified Ms. McGroarty, the former assistant principal, as the District administrator participating in the FBA rather than Mr. Goble, the new assistant principal, who actually attended. And the FBA failed to list the Sound Options mediator and Ms. Holley, as well as others who were present for the meeting. The Parents have not explained how those mistakes impeded the Student's right to a FAPE, significantly impeded their opportunity to participate in the decision-making process, or caused a deprivation of educational benefits. Accordingly, this procedural error does not constitute a denial of FAPE. See WAC 392-172A-05105(2); 20 USC §1415(f)(3)(E)(ii).

Excusal forms

78. Where a student may be participating in the general education environment, the required members of the student's IEP team are a general education teacher, a special education teacher or provider, a district administrative representative, the parents, and if appropriate, the student. WAC 392-172A-03095; 34 CFR §300.321. The district members of the team must include someone able to interpret the instructional implications of evaluation results. *Id.*

79. A required district member of the IEP team is not required to attend if the parent and the district agree in writing that the member's attendance is not necessary because the member's area of curriculum or related services is not at issue. WAC 392-172A-03095(5)(a); 34 CFR §300.321. For an IEP team member whose area of curriculum will be discussed to be excused from all or part of that meeting, the district must obtain written consent to the excusal from the parents and the member must submit written input into the development of the IEP prior to the meeting and provide that input to the parent and other IEP team members. *Id.*

80. The Parents argue that Ms. McGroarty, the assistant principal from the prior school year did not attend the meeting and did not ask to be excused or provide input to the IEP. Mr. Goble, the new assistant principal, attended that meeting as the district administrative representative. Because a district representative was present, the attendance requirement was met and there was no need for the Parents to agree to an excusal.

Parent participation

81. Procedural safeguards are essential under the IDEA:

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).

82. 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).

83. 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). And 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.

*Indicating only certain courses of action available for Student/Prohibiting certain services or placements/Not listening to Parents' concerns*¹⁵

84. The District conducted a lengthy facilitated IEP meeting at which the Parents were provided the opportunity to give input, and changes were made to the IEP and BIP based on that input. As set forth above, it is not a violation for the District to prepare draft documents before the meeting without the Parents' participation, and the Parents do not have veto power over team decisions.

85. The Parents' primary concern appears to be that the District has not granted their request for a different teacher and case manager for the Student, which the Parents sometimes refer to as a different "environment" for the Student. Staff and classroom assignments are typically decisions for the District, rather than an IEP team. And the Parents have not proven that his class and services are somehow inappropriate for him under the IDEA.

¹⁵ These three issues are combined because they are so similar.

86. Another of the Parents' concerns is that the District invited its attorney to the IEP meeting over the Parents' objection. This is not a violation of the IDEA as the Parents have already learned through the response to their OSPI citizen complaint. See *Letter to Clinton*, 37 IDELR 70 (OSEP 2001); *Letter to Anonymous*, 50 IDELR 259 (OSEP 2008).

87. The Parents also complain that Mr. Goble should not be their point of contact for communications. The District's communication protocol with the Parents is not inappropriate given the history of communications in this case and because it does not prevent the Parents from communicating with the District. The Parents argue he is the wrong person for the job because he is not a special education teacher, but that credential is not necessary for facilitating communication between the Parents and District staff.

88. The Parents also argue the District has not listened to their concerns that the Student have opportunities for general education classes other than PE, that positive practice be removed from the BIP, they be allowed to communicate directly with Mr. Hannig, that the Student have a reading specialist, and other requests such as allowing the Student to ride an exercise bike in the morning, conducting a safety assessment, and providing documentation supporting the use of positive practice. The District is not required to grant every Parent request. The District convened a lengthy, facilitated meeting, reviewed the Parents' submissions, listened to the Parents' requests, and then, when no team consensus could be reached, made the decisions it deemed appropriate for the Student given his unique circumstances. More is not required.

Refusing to schedule an IEP meeting at Parent request/Failing to meet with the Parents when his behaviors continued

89. While the District argues that the Parents filed their Complaint before the District had the opportunity to decide whether to grant the Parent's request for an IEP meeting, the evidence does not support this. To the contrary, the evidence supports the conclusion the District had decided not to grant the request and neglected to convey its decision to the Parents, or had gathered the needed information and then failed to take any action. Either way, this procedural violation significantly impeded the Parents' opportunity to participate in the decision-making process and, without that opportunity to address their concerns, may have led to them file their Complaint in order to be heard by the District. Accordingly, this constitutes a denial of FAPE.

90. The Parents also argue the District should have convened a meeting because the Student continued to engage in withdrawal and elopement behaviors after the September 2017 BIP was put in place. The success of a BIP does not hinge on it immediately extinguishing a student's maladaptive behaviors. That the Student's behaviors continued, without notably increasing and while somewhat decreasing, during the period of less than three months between the BIP's implementation and the Parents' filing a Complaint is not alone a reason for the District to schedule a meeting. And because only the District's actions prior to the filing of the Complaint are at issue, the failure to schedule a meeting based on behaviors continuing after that time is not considered.

Making decisions outside of IEP meetings

91. Decisions about a student's IEP and placement must be made *during* an IEP meeting in the presence of a properly constituted IEP team. WAC 392-172A-03090(1) (defining IEP as "a written statement . . . that is developed, reviewed, and revised *in a meeting* in accordance with" the regulations that follow); WAC 392-172A-03110(2)(d) (changes to an IEP must be made "*by the entire IEP team at an IEP team meeting*" unless the parents and district agree to amend the IEP without a meeting under specified circumstances not applicable here). A BIP is a plan incorporated into a student's IEP when determined to be necessary by the IEP team for a student to receive FAPE. WAC 392-172A-01031. Because it is a part of the IEP, it must be developed by the IEP team as well.

92. The Parents argue that decisions about the IEP were made outside the IEP team meeting because District staff prepared draft documents before the meeting without the Parents' participation. As set forth above, districts may develop drafts before IEP meetings without violating the IDEA. The Parents also argue that communications between District staff after the IEP meeting in order to draft the final IEP and BIP documents to add changes discussed at the meeting were inappropriate because they did not involve the full IEP team, including the Parents. Because those discussions only involved incorporating decisions that had already been made by the team, this was not a violation.

93. The Parents argue that decisions were improperly made outside an IEP team meeting because Dr. Hawkins and Ms. Sharp drafted the PWN refusing specific Parent requests made at the meeting. It is unclear whether the Parents are arguing that the fact Dr. Hawkins and Ms. Sharp drafted the PWNH without the whole team present is the violation, or if they are alleging the decisions were made after, rather than at, the meeting. Documentation after the meeting is not a violation so long as the decisions were made at the meeting. If the Parents are arguing that the decisions about their requests were not made until after the meeting, this was not proven. The minutes do not reflect specific decisions for some of these requests, but they do reflect that the Parent requested PWN for them, suggesting the Parents understood the requests were being denied. The ALJ cannot conclude it is more likely than not that the decisions were not made by the team at the meeting, so the Parents have not met their burden of proof on this issue.

94. There is a series of decisions, however, that were inappropriately made outside the IEP team meeting. According to the IEP team minutes, the team had committed to having Mr. Hannig provide an hour of training to the Parents related to meeting the bus at home. After the meeting and after observation by District staff of the Student getting off the bus at home, the District stated for the first time in a PWN that it would provide in-home bus transition training to the family of up to three hours by Ms. Holley and up to four one-hour follow-up meetings. This decision was made outside an IEP team meeting and without the Parents' participation. Ms. Holley then developed a BIP in coordination with Mr. Hannig, which was implemented without an IEP team meeting. Both the decision to provide the services and the development of the BIP should have been IEP team decisions. Accordingly, their development outside the team meeting process was a procedural violation of the IDEA. However, the provision of services was based in part on the Parents' request for assistance and description of the Student's behavior. The Parents have not argued that either the services or the BIP were inappropriate, and they were largely successful in correcting the Student's behavior. Accordingly, it is found that the procedural violation was not a denial of FAPE because it didn't impede the Student's right to FAPE, didn't significantly impede

the Parents' opportunity to participate in the decision making process, or cause a deprivation of educational benefits.

Resolution meeting

95. After a parent files a due process hearing request, a district must timely convene a resolution meeting with the parent unless the parties agree otherwise. WAC 392-172A-05090(1).

District's intent to discuss a resolution

96. The purpose of the meeting "is for the parent of the child to discuss the due process hearing request, and the facts that form the basis of the request, so that the district has the opportunity to resolve the dispute that is the basis for the due process hearing request." WAC 392-172A-05090(1)(b). It is not required that a district actually resolve or make an offer to resolve the dispute. *Id.* Thus, the District's questioning of the Mother at the resolution meeting to understand the basis of her claims without making an offer to resolve the matter was not a violation of the IDEA.

Members of IEP team present

97. The resolution meeting is to include the parent and "the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request and must include a representative of the district who has decision making authority on behalf of the district. WAC 392-172A-05090(1)(a). The parent and the district determine the relevant members of the IEP team to attend the meeting. WAC 392-172A-05090(1)(d). Dr. Hawkins and Mr. Goble were both members of the IEP team with knowledge about the development of the Student's IEP and other matters at issue in the due process hearing request. There is no evidence that they did not have decision-making authority for the District or that the Parents requested the presence of any other IEP team members. Accordingly, the Parents have not proven a violation of the IDEA related to the IEP team members attending the resolution meeting.

Prior Written Notices of September 21 and 22, 2017

98. A district must provide prior written notice (PWN) to the parents of a child eligible or referred for special education a reasonable time before it proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. WAC 392-172A-05010; 34 CFR 300.503(a).

99. PWNs must contain: (a) a description of the action proposed or refused; (b) an explanation of why the district proposes or refuses to take the action; (c) a description of each evaluation or other record used as a basis for the action; (d) a statement about the parents' procedural safeguards; (e) sources for parents to obtain assistance in understanding the PWN or the procedural safeguards; (f) a description of other options considered and the reasons why they were rejected; and (g) a description of other factors relevant to the proposal. See 20 USC §1414(c)(1); WAC 392-172A-05010(2); 34 CFR §300.503.

Addressing Parents' requests

100. The Parents appear to object to the District's failure to address specifically every item of Parent input or request, provided verbally or in writing to the IEP team, that was not incorporated into the IEP. The Parents have not provided and the ALJ has not located authority requiring this level of detail in PWNs. See *Orting Sch. Dist.*, 115 LRP 54867 (WA SEA 2015) (declining to rule that PWN must list all the program content and service discussions raised by the parent absent legal authority). Accordingly, the Parents have not demonstrated a violation regarding this issue.

Providing appropriate reasons

101. Presumably the Parents are objecting to the lack of specificity of some of the reasons provided by the District such as "not necessary to provide FAPE" or "is not a required component of an IEP." While these answers may seem circular or not helpful to the Parents, the level of detail they would prefer is not required by the IDEA. See *Smith v. Squillacote*, 800 F. Supp. 993 (D.D.C. 1992) (statement in PWN that parent's requested placements were rejected because "an appropriate placement was available" was sufficient).

Time for Parents to respond or seek a dispute resolution option for implementation

102. The IDEA requires school districts to provide written notice to parents *prior* to the effective date of an action, not after the fact. See 20 USC §1415(b)(3) and (c)(1); WAC 392-172A-05010; 34 CFR §300.503. Moreover, written notice must be provided "a reasonable time" prior to the effective date. WAC 392-172A-05010(1); 34 CFR §300.503(a); *Letter to Chandler*, 59 IDELR 110 (OSEP 2012).

103. The Office of Special Education Programs (OSEP) interprets "a reasonable time" to be at least ten calendar days:

[T]he district must provide parents with a written notice of the proposed changes a reasonable time prior to implementing the proposed changes and must maintain the child in the current program and placement during this reasonable period of time.

...
We have interpreted a "reasonable time" to be at least 10 calendar days, although some fact situations would justify a more extended period of time. Whether a shorter period of time would be acceptable in the presence of parental consent is an issue not presented by your letter and remains to be addressed by this office.

Letter to Winston, 213 IDELR 102 (OSEP 1987). "The purpose of the notice is to provide sufficient information to protect the parents' rights under the Act." *Kroot v. District of Columbia*, 800 F. Supp. 976, 982 (D.D.C. 1992).

104. Here, one of the PWNs provided five days' notice and two of the PWNs provided four days' notice before the effective date of the District's actions. As this is less than the ten-day reasonable amount of time identified by OSEP, it is a procedural violation. However, the Parents did not exercise their rights to request due process regarding the actions in the PWNs until December 4, 2017, more than two months after the effective date. The Parents have not proven how the delay

impacted their participation rights. Accordingly, they have not shown that the District's failure to provide them several days' additional notice of the District's proposed actions impeded the Student's right to a FAPE, significantly impeded their opportunity to participate in the decision-making process, or caused a deprivation of educational benefits. Accordingly, this procedural error does not constitute a denial of FAPE. See WAC 392-172A-05105(2); 20 USC §1415(f)(3)(E)(ii).

Summary

105. The District violated the IDEA and denied the Student FAPE by failing to hold an IEP meeting or to notify the Parents of the decision after the Parents requested a meeting in November 2017. The Parents have not otherwise proven a denial of FAPE.

Remedies

106. The District shall convene an IEP meeting within one month of the date of this decision. Because of the challenging relationship between the parties, the meeting shall be facilitated by a Sound Options facilitator, which shall be arranged by the District. This meeting may be the Student's annual IEP meeting at the District's discretion. All the Parents' other remedies are denied as unnecessary to remedy the violation found in this case.

ORDER

1. The District violated the IDEA and denied the Student FAPE by failing to hold an IEP meeting or to notify the Parents of the decision when the Parents requested a meeting in November 2017. The Parents have not otherwise proven a denial of FAPE.
2. The District shall convene an IEP meeting within one month of the date of this decision as set forth above. All the Parents' other remedies are denied.

Signed at Seattle, Washington on October 15, 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.

AS

Mother



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