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SEATTLE-OAH

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS

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December 1, 2018

**In re: Meridian School District**  
**Cause No. 2018-SE-0028**  
**Docket No. 03-2018-OSPI-00486**

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,

A handwritten signature in black ink, appearing to read "Matthew D. Wacker".

MATTHEW D. WACKER  
Administrative Law Judge

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

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STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION **SEATTLE-OAH**

IN THE MATTER OF:

OSPI CAUSE NO. 2018-SE-0028

MERIDIAN SCHOOL DISTRICT

OAH DOCKET NO. 03-2018-OSPI-00486

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

A due process hearing in the above matter was held before Administrative Law Judge (ALJ) Matthew D. Wacker in Bellingham, Washington, over three days on October 4, 5, and 26, 2018. The Parent<sup>1</sup> of the Adult Student whose education is at issue appeared and represented the Adult Student.<sup>2</sup> The Meridian School District ("the District") was represented by Donald Austin, attorney at law. Carolyn Jenkins, former District executive director of special services, also appeared for the District. A certified court reporter was also present at the due process hearing.

### STATEMENT OF THE CASE

#### *Procedural History*

The Parent filed a Due Process Hearing Request ("the Complaint") on March 2, 2018. A Scheduling Notice was entered on March 5, 2018. The Scheduling Notice, in part, assigned ALJ Matthew D. Wacker as the presiding ALJ, set a prehearing conference for April 3, 2018, and a due process hearing for April 20, 2018. The District filed its Response to the Complaint on March 12, 2018.

#### *District's Challenge to the Sufficiency of the Complaint*

On March 15, 2018, the District filed its Challenge to the Sufficiency of the Due Process Hearing Request. On March 29, 2018, the undersigned ALJ entered an Order on Challenge to Sufficiency, denying the District's challenge to the sufficiency of the Parent's Complaint.

On March 16, 2018, the parties filed notice that they had agreed to enter mediation in lieu of holding a resolution meeting. On April 10, 2018, the undersigned ALJ entered an Order of Continuance, granting the parties' request to continue the prehearing conference in order for the parties to have additional time to pursue mediation. The Order reset the prehearing conference for April 27, 2018. On April 27, 2018, the undersigned ALJ entered an Order Setting Prehearing

<sup>1</sup> In the interest of preserving the family's privacy, this decision does not use the actual names of the parent or the student. Instead, they are identified as the "Parent," and the "Adult Student."

<sup>2</sup> Although the Adult Student is 19 years old, the Parent is the legal guardian of the Adult Student (See Exhibit P17) and therefore may represent the Adult Student. Washington Administrative Code (WAC) 392-172A-05135(4).

Conference, setting a prehearing conference for May 3, 2018 upon the parties' agreement. On May 2, 2018, the Parent filed her Statement of [Parent].<sup>3</sup> The prehearing conference was held on May 3, 2018, after which an Order Setting Prehearing Conference was entered on May 7, 2018. That Order set another prehearing conference for June 8, 2018. On May 29, 2018, an Order Continuing Prehearing Conference was entered, continuing the prehearing conference to June 12, 2018.

#### *District's Motion for Summary Judgment*

Without prior notice, on April 26, 2018, the District filed a Motion for Summary Judgment ("the MSJ"). A briefing schedule was set at the May 3, 2018 prehearing conference to hear and decide the MSJ. On June 11, 2018, the undersigned ALJ entered an Order Granting in Part and Denying in Part District's Motion for Summary Judgment.

#### *First Prehearing Order*

On June 1, 2018, the undersigned ALJ entered the First Prehearing Order. The First Prehearing Order, in part, set out the statement of Issues and Remedies for the due process hearing.

On June 18, 2018, an Order Setting Prehearing Conference was entered, setting another prehearing conference for June 22, 2018.

#### *Second Prehearing Order*

On June 26, 2018, the undersigned ALJ entered the Second Prehearing Order. The Second Prehearing Order, in part, denied a motion by the District to continue the due process hearing. The due process hearing was set for July 24 – 25, 2018.

On July 18, 2018, an Order Setting Prehearing Conference was entered, which set a prehearing conference for July 27, 2018 to address scheduling of the due process hearing.

#### *Third Prehearing Order*

On July 23, 2018, the undersigned ALJ entered the Third Prehearing Order. The Third Prehearing Order denied in part and granted in part a motion filed by the District on July 5, 2018 to continue the due process hearing. The Third Prehearing Order then granted a motion filed by the Parent on July 17, 2018 to continue the due process hearing, and struck the hearing set for July 24 – 25, 2018.

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<sup>3</sup> The District subsequently agreed that the Statement of [Parent] is best characterized as an attempt by the Parent to *clarify* the issues she first raised in the Complaint, rather than as an amendment of the Complaint.

#### *Fourth Prehearing Order*

On August 1, 2018, the undersigned ALJ entered the Fourth Prehearing Order. By agreement of the parties, the Fourth Prehearing Order set the due process hearing for October 4-5, 2018.

The due process hearing was held on October 4 – 5, 2018, but could not be finished. On October 11, 2018, a Notice of Hearing was entered, which set a third day of hearing for October 26, 2018. The due process hearing was held and completed on October 26, 2018. The parties requested and were granted until 5:00 p.m. on November 2, 2018 to file written closing arguments. The parties timely filed their written closing arguments on November 2, 2018.

#### *Procedural Matters at the Due Process Hearing*

At the due process hearing, the Parent moved to exclude Carolyn Jenkins, the District's former Director of Special Services, from appearing with the District's counsel due to the Parent's concern for potential intimidation of witnesses and a conflict of interest. After consideration of the Parent's motion and the District's response, Ms. Jenkins was permitted to attend the due process hearing as the individual designated by the District to appear along with its counsel on its behalf.

District counsel then moved to exclude Dr. Jody Veltkemp, one of the Parent's proposed witnesses. After hearing from the parties, the District's motion was denied. Ultimately, Dr. Veltkemp was not called as a witness by the Parent.

After the testimony of Patrick Geracie, one of the Parent's witnesses, on October 5, 2018, the District moved on October 26, 2018 to strike all of Mr. Geracie's testimony. The District argued that Mr. Geracie's education, training and experience did not qualify him to offer expert opinion testimony on whether the District had provided the Adult Student with a free appropriate public education (FAPE), and that Mr. Geracie lacked the requisite personal knowledge of the Adult Student to form any such expert opinion. The Parent requested and was granted until November 2, 2018 to respond in writing to the District's motion to strike Mr. Geracie's testimony. The Parent timely her response on November 2, 2018.

After consideration of the District's motion to strike and the Parent's response, it is concluded that the District's motion to strike Mr. Geracie's testimony in its entirety should be denied. While the undersigned ALJ has significant concerns regarding Mr. Geracie's testimony, those concerns more properly go to what weight, if any, should be given to his testimony rather than the admissibility of his testimony. Accordingly, the District's motion to strike all of Mr. Geracie's testimony is denied.

After the testimony of Patricia Alderete, one of the Parent's witnesses, the District moved to strike all of Ms. Alderete's testimony. Ms. Alderete is a case resource manager with the Washington State Developmental Disabilities Administration (DDA). She has been the Adult Student's DDA case manager since 2013. (Testimony of Patricia Alderete).<sup>4</sup> She meets with the

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<sup>4</sup> This Final Order is written without the benefit of the court reporter's transcript. Accordingly, citation to the testimony of a witness by page number of the written transcript is not possible. Therefore, citation to the

Adult Student generally once a year. (Alderete). Her opinion about what the Adult Student would need in order to benefit from his education is based solely upon what the Parent has reported to her. (Alderete). Finally, Ms. Alderete's testimony is only tangentially related to the issues the Parent has raised in the Complaint. Accordingly, the District's motion is granted, and Ms. Alderete's testimony is stricken from the record.

#### Due Date for Written Decision

The due date for a written decision in the above matter is the close of record plus thirty (30) calendar days. See June 1, 2018 First Prehearing Order. The record in the above matter closed with the filing of written closing arguments on November 2, 2018. Therefore, the due date for a written decision in the above matter is thirty calendar days from November 2, 2018. Thirty calendar days from November 2, 2018 is December 2, 2018. Therefore, the due date for a written decision in the above matter is **December 2, 2018**.

#### **EVIDENCE RELIED UPON**

The following exhibits were admitted into evidence:

Parent's Exhibits: P4-P6, P9-P13, P15-P21, P23, P25-P30, P32-P33, P38.

District Exhibits: D1-D37.

The following witnesses testified under oath. They are listed in order of their appearance:

Steven Lawrence, District general education history teacher;  
Stephanie Rogers, District paraeducator;  
Don Mc Mains, District academic counselor;  
Kim "Rosie" Bryson-Chamley, District special education teacher;  
April Seville, District paraeducator;<sup>5</sup>  
Patrick Geracie, counselor;  
Yarrow Pospisil, speech-language pathologist;  
Joshua Bobb; the Parent's friend;  
Carolyn Jenkins, former District special services director;  
Rob Burkett, District special education teacher;  
Josh Winter, District paraeducator;  
Shannon Claeys, District paraeducator;  
Patricia Alderete, case resource manager, Washington State Developmental Disabilities Administration;  
Aaron Jacoby, District special services director; and,  
The Parent.

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testimony of a witness will first be identified as "Testimony of [Witness Name]," with each subsequent citation to the same witness' testimony as "(Witness Last Name)." For example, the first citation to the testimony of Patricia Alderete will be "Testimony of Patricia Alderete." All subsequent citations to her testimony will be simply (Alderete).

<sup>5</sup> Ms. Seville was accompanied at the due process hearing by her union representative, Daniel Peterson, Public School Employees of Washington.

## ISSUES AND REMEDIES

The statement of the issues and requested remedies for the due process hearing is:

- 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) for the Student between November 2017 and March 2018;
  - ii. Using uncertificated District staff to deliver the Student's special education and related services;
- b. And, whether the Parent is entitled to the requested remedies:
  - i. Development of an appropriate IEP for the Student that includes:
    - a. Services from the Student's prior IEPs;
    - b. Paraeducator support for the Student;
  - ii. Provision of special education and related services to the Student by qualified and certificated District staff;
  - iii. Compensatory education;
  - iv. Provision of therapy for the Student at District expense;
  - v. Or other equitable remedies, as appropriate.

See June 1, 2018 First Prehearing Order, ¶12.

## FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness and plausibility of the evidence has been considered and weighed. To the extent a Finding of Fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted has been determined more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue.

### General Background

1. The Adult Student began attending 11<sup>th</sup> grade at the District's Meridian High School when he transferred into the District during September 2015. D11p1,<sup>6</sup> Testimony of Mc Mains.

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<sup>6</sup> Citation to the exhibits of record will be to the exhibit and page number. For example, a citation to "D11p1" is a citation to the District's Exhibit D11 at page 1.

2. The Adult Student brought with him an Individualized Education Program (IEP) from his former school district. That IEP identified the Adult Student as eligible to receive special education and related services under the eligibility category of Other Health Impairment (OHI). The Adult Student's IEP provided him with specially designed instruction (SDI) in reading, writing, math, and behavior-adaptive skills, as well as related services for speech and occupational therapy services. D11p1.

3. The District reevaluated the Adult Student in November 2015, and determined he remained eligible for special education and related services under the OHI eligibility category. D11p8. The reevaluation recommended the Adult Student receive SDI in reading, writing, mathematics, and adaptive behavior. It recommended speech-language services as a related service. *Id.*

4. An IEP team meeting was held on November 16, 2016, and another new IEP was developed for the Adult Student based upon the District's 2015 reevaluation. The Parent and the Adult Student attended. D29p1. The new IEP provided the Adult Student with the following SDI:

Area	Minutes/Week	Location	Position Responsible for Providing SDI
Reading	280	SE Classroom	SE Teacher/Para
Written Language	280	SE Classroom	SE Teacher/Para
Math	280	SE Classroom	SE Teacher/Para
Adaptive	100	GE Classroom	GE Teacher/Para
Adaptive – T3	40	SE Classroom	SE Teacher/Para
Transition	100	SE Classroom	SE Teacher/Para

D29p19.

5. The new IEP provided the Adult Student with the following Program Instructional Supports and Modifications:

Program Instructional Supports and Mods	Minutes/Week	Location	Position Responsible for Providing SDI
In-Class Para Support-Academic	1120	SE Classrooms	SE teacher/Para
Para Support-Lunch/Breaks/Before School-Transition	270	Common Areas on Campus	SE Teacher/Para
In-Class Para Support-Adaptive Social	283	GE Classrooms-PE Gym/Locker Rm	GE Teacher/Para
In-Class Para Support-Adaptive Communication	80	GE Classrooms Art	GE Teacher/Para
Vocational Supervision-Transition	20	Common Areas on Campus	SE Teacher/Para

D29p19.

6. The Adult Student's new 2016-2017 IEP also provided him with 20 minutes per week of speech-language services from a speech-language pathologist in a special education classroom setting, and specialized transportation. D29p19. The Parent believes this IEP provided the Adult Student with a free appropriate public education (FAPE). Testimony of Parent.

#### 2017-2018 School Year

7. Kim "Rosie" Bryson-Chamley was a new teacher at the Meridian High School for the 2017-2018 school year. Testimony of Bryson-Chamley. Ms. Bryson-Chamley earned a Bachelor of Education degree in Special Education from the University of British Columbia, and a Master of Arts degree in Education Leadership from San Diego State University. She has held certification as a teacher in British Columbia and Ontario, Canada. She has experience as a special education resource-room teacher in Canada. D26, D27, D28, D31.

8. Ms. Bryson-Chamley's first day in the Adult Student's special education life-skills classroom was October 23, 2017. For three days, Ms. Bryson-Chamley had John Craig working with her in the classroom. Testimony of Aaron Jacoby, (Bryson-Chamley). Mr. Craig was a certificated District teacher who had taken over the Adult Student's life-skills classroom on a temporary basis when the teacher who began the school year in the life-skills classroom left the District. D4.

9. Although she was previously certificated to teach special education in Canada, at the time she began in the Adult Student's life-skills classroom, Ms. Bryson-Chamley was not certificated as a special education teacher in Washington State. (Bryson-Chamley). Ms. Bryson-Chamley applied for certification as a teacher in Washington State, and received her Professional Education Permit effective November 27, 2017. Her Washington State certification included an endorsement for special education. D6.

10. There were a total of 15 school days between when Ms. Bryson-Chamley began teaching without Mr. Craig in the life-skills classroom, and the effective date of her special education certification in Washington State. (Jacoby).

#### The November 15, 2017 IEP Meeting

11. The Adult Student's IEP developed at the November 16, 2016 IEP meeting was set to expire on November 16, 2017. D29p1.

12. On November 8, 2017, an Invitation to Attend a Meeting notice was sent to the Parent. The Invitation notified the Parent of a meeting set for November 15, 2017 to review and develop a new annual IEP for the Adult Student. D12p1. Ms. Bryson-Chamley was the Adult Student's IEP case manager, and was responsible for writing and implementing his new IEP. (Bryson-Chamley).

13. The Parent attended the IEP meeting on November 15, 2017, along with multiple other IEP team members from the District. The Adult Student did not attend the IEP meeting. Testimony of Stephanie Rogers, Testimony of Carolyn Jenkins, Testimony of Joshua Bobb, Testimony of Rob Burkett, (Parent), (Bryson-Chamley).

14. There was a very substantial amount of testimony from multiple witnesses at the due process hearing about who attended and what transpired at the IEP meeting. Ultimately, the vast



majority of that testimony is not necessary to resolve the issues in this case, and thus will not be set forth to any significant degree.

15. There was discussion regarding the Adult Student's new IEP at the meeting. At least some of the attendees provided input for the new IEP. (Parent). However, the record is manifest that whatever the outcome of the IEP team members' discussion and planning at the meeting, there is absolutely no evidence that Ms. Bryson-Chamley reduced the Adult Student's new IEP to writing until sometime before March 9, 2018, almost four months after the IEP team meeting in November 2017. (Parent), (Jenkins). There is also no evidence that, once reduced to writing, Ms. Bryson-Chamley ever shared the Adult Student's new IEP with any other District staff responsible for implementing the IEP or providing special education and related services to the Adult Student.

16. Following the IEP team meeting on November 15, 2017, the Parent made repeated attempts to obtain a copy of the Adult Student's new IEP. The Parent had long telephone conversations with Ms. Bryson-Chamley about getting the new IEP, and Ms. Bryson-Chamley kept asking for more time to complete it. (Parent). In December 2017, Ms. Bryson-Chamley called the Parent and apologized for the new IEP being late. (Bryson-Chamley). The Parent never received a copy of the new IEP from Ms. Bryson-Chamley. (Parent).

17. On March 2, 2018, the Parent filed a Due Process Hearing Request ("the Complaint") with the Office of Superintendent of Public Instruction ("OSPI"). P20/D37.

18. After learning the Parent had filed the Complaint against the District, on March 9, 2018 Carolyn Jenkins, then the District Special Services Director, sent a letter to the Parent. The letter stated in part that:

Enclosed is a copy of [the Adult Student's] current IEP. On behalf of the Meridian School District #505, I would like to extend an apology to you for the delay in providing you a printed copy of the IEP from the IEP team meeting on November 15, 2017.

D16/P16.

19. Enclosed with Ms. Jenkins' letter was a copy of an IEP for the Adult Student.<sup>7</sup>

20. There were a total of 65 District school days between November 16, 2017, the day the Adult Student's 2016-2017 IEP expired, and March 9, 2018, the day Ms. Jenkins mailed the Parent a copy of the new IEP finally reduced to writing by Ms. Bryson-Chamley.<sup>8</sup>

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<sup>7</sup> The Parent and the District each offered as exhibits multiple copies of IEPs for the Adult Student. See P12, P21, D14, D32. These exhibits are all materially identical, but for some handwritten notations by the Parent. Ms. Jenkins specifically identified, at different times during her testimony, P12 and P21 as the IEP she sent with her letter to the Parent on March 9, 2018. (Jenkins).

<sup>8</sup> The total number of District school days during this period was calculated using the Meridian School District 2017-2018 School Calendar, Board Adopted 2017-03-08. See: <http://www.meridian.wednet.edu/sites/default/files/School%20Calendar%202017->

## Testimony of Patrick Geracie

21. The Parent called Mr. Patrick Geracie as a witness at the due process hearing, in part to offer his opinion on the appropriateness of the IEP intended for the 2017-2018 school year that was finally reduced to writing by Ms. Bryson-Chamley sometime prior to March 9, 2018. See P12/P21.

22. No statement of Mr. Geracie's education, training, or professional experience, *i.e.* no curriculum vitae, was offered as an exhibit. Mr. Geracie testified to his education, training, and professional experience at the due process hearing, including multiple graduate degrees in theology, divinity, and counselling, and certification and licensing in Christian counselling, mental health counselling, and as a child mental health specialist in Washington State. Mr. Geracie also testified regarding his "extensive" employment experience in special education settings and with special education generally. Mr. Geracie maintains a psychotherapist practice in Bellingham, Washington. Testimony of Patrick Geracie.

23. Mr. Geracie opined that the Adult Student's IEP intended for the 2017-2018 school year was "inadequate," in that it did not seem to address the Adult Student's very complex needs. (Geracie). For the following reasons, Mr. Geracie's opinion regarding the appropriateness of that IEP is given no weight.

24. Mr. Geracie is not certificated in Washington State as a teacher. He has no education, training, or professional experience as a speech-language therapist. He has no specific training regarding dyslexia. He has never provided direct special education services to students. He has never written an IEP, although he has reviewed IEPs written by others. Mr. Geracie has never reviewed any evaluation of the Adult Student, and has never observed the Adult Student in a classroom environment. (Geracie). Mr. Geracie has never conducted any assessment or evaluation of the Adult Student or his disabilities. (Geracie).

25. The Parent is a personal friend as well as a patient of Mr. Geracie. The Adult Student has been present for at least some of the Parent's therapy sessions with Mr. Geracie. Mr. Geracie is not, nor has he ever been, the Adult Student's therapist. (Geracie). The extent of Mr. Geracie's contact with the Adult Student consists of approximately seven to ten hours over the course of the last several years when the Adult Student was present while Mr. Geracie was providing services to the Parent.

26. Setting aside the issue of whether Mr. Geracie possesses the requisite education, training, and professional experience to opine regarding the appropriateness of an IEP generally, regarding which the undersigned ALJ has quite significant reservations, it is concluded that Mr. Geracie has not demonstrated an adequate foundational knowledge of the Adult Student, his disabilities, or how his disabilities impact his receipt of an educational benefit to offer any opinion regarding the appropriateness of the 2017-2018 IEP for the Adult Student. The entirety of Mr. Geracie's knowledge of the Adult Student and his education in the District appears to consist of

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2018%20Board%20Adopted.pdf. If either party objects to use of the District's school year calendar for this purpose, the party may pursue their objection through judicial appeal of this Final Order.

whatever observations or brief interactions he may have had with the Student during those times he was providing services to the Parent, and a review of one IEP. An opinion based on no more than this is superficial and unsupported, despite whatever professional qualifications an individual might possess. Accordingly, as concluded above, Mr. Geracie's opinion regarding the 2017-2018 IEP for the Adult Student is not given any weight.<sup>9</sup>

## CONCLUSIONS OF LAW

### The IDEA and Jurisdiction

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

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief, in this case the Parent. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

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 *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. 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.

*Rowley*, 458 U.S. at 206-207 (footnotes omitted). For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Rowley*, 458 U.S. at 200 - 201.

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

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<sup>9</sup> It is also important to note that the Parent has raised only the issue of whether the District failed to develop an appropriate IEP for the Adult Student between November 2017 and March 2018, which necessarily includes the issue of whether *any* IEP was developed for the Adult Student during that period. See, statement of issues and requested remedies, above. Indeed, the issue of whether the District developed any IEP during this period was clearly the focus of the parties' presentation of evidence at the due process hearing. The record does not include any remotely reasonable amount of relevant evidence that would be required to determine whether the 2017-2018 IEP finally reduced to writing by Ms. Bryson-Chamley sometime before March 9, 2018 was or was not appropriate for the Adult Student.

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," 137 S. Ct. at 994 (citation omitted), 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 (9<sup>th</sup> Cir.), *cert. denied*, 583 U.S. \_\_\_\_, 138 S. Ct. 556 (2017).

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

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

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

Whether the District used uncertificated staff to deliver the Adult Student's special education and related services

6. WAC 392-172A-02090(1)(a) requires that all school district personnel providing special education services and/or related services must hold the credentials, licenses, certificates, endorsements, or permits required for the particular position of employment. See *also* 34 CFR §300.156.

7. Ms. Bryson-Chamley was not certificated to teach special education in Washington State when she began teaching on her own in the Adult Student's special education classroom. This continued until she received her Professional Education Permit effective November 27, 2017, fifteen school days later. It is concluded that Ms. Bryson-Chamley teaching during the 15 school days when she was not certificated as a special education teacher in Washington State constitutes a procedural violation of IDEA under WAC 392-172A-02090(1)(a). However, not all procedural violations warrant a remedy.

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

(l) impeded the child's right to a free appropriate public education;

- (II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

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

9. After careful review of the record, the undersigned concludes the evidence does not establish any of the three conditions necessary to award the Parent a remedy for the District's procedural violation. Importantly, it cannot be *presumed* that because Ms. Bryson-Chamley was not certificated, one of the three conditions to award the Parent a remedy has been proven. The Parent has offered no evidence to prove how the Adult Student's right to FAPE was actually impeded by Ms. Bryson-Chamley's fifteen days of instruction while she was not certificated. Nor has the Parent offered evidence proving how her opportunity to participate in making decisions regarding the Student's receipt of FAPE was significantly impeded during those fifteen days. Nor has the Parent offered evidence proving how Ms. Bryson-Chamley's lack of certification in Washington State for fifteen days caused a deprivation of educational benefits to the Adult Student. No remedy will be awarded for the District's procedural violation.

Whether the District failed to develop an appropriate IEP for the Adult Student between November 2017 and March 2018

10. As noted above, the parties' focus at the due process hearing was more directed to whether or not *any* IEP was developed for the Adult Student during this period of time, rather than the closely related issue of whether any IEP developed during that period of time was *appropriate* for the Student. Neither the Parent nor the District offered sufficient evidence to prove that the IEP finally reduced to writing by Ms. Bryson-Chamley sometime between November 15, 2017 and March 9, 2018 was or was not appropriate. As remarked above, much of the time at the due process hearing was taken up with testimony that is not relevant to resolving this issue. This included testimony about how the Adult Student's signature came to appear on the IEP meeting attendee sign-in sheet, and whether or to what extent there was any change in the level of paraeducator support for the Adult Student during the 2017-2018 school year.

11. However, what is clear is that whatever the result of the November 15, 2017 IEP team meeting may have been in terms of developing a new IEP for the Adult Student, there was no IEP for the Student between November 16, 2017, and sometime before March 9, 2018. Whatever was discussed and possibly agreed upon at the IEP team meeting was never reduced to writing by Ms. Bryson-Chamley until sometime before Ms. Jenkins sent a copy of the IEP to the Parent with her March 9, 2018 correspondence. It is axiomatic that for an IEP to exist, it must be reduced to writing. Arguing that the goals and services in an IEP can somehow be implemented with fidelity by multiple individuals, progress faithfully monitored and reported, and that parents can reasonably exercise their right to participate in making decisions regarding the provision of FAPE to their child without a written IEP is an argument without any merit. It is concluded that the District failed to develop any IEP for the Adult Student between November 16, 2017 and March 9, 2018.<sup>10</sup>

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<sup>10</sup> It will not be presumed that Ms. Bryson-Chamley reduced the IEP to writing any time before March 9, 2018, when Ms. Jenkins included a copy of an IEP with her correspondence to the Parent. The Parent bears the burden of proof as the party who requested the due process hearing. The Parent has easily

It is concluded that the District's failure to develop any IEP for the Adult Student during this period denied him FAPE, and constitutes a substantive violation of the IDEA.

### Remedies

12. The Parent requests the development of an appropriate IEP for the Student as a remedy for the District's failure to develop an IEP during the period at issue. This is a reasonable remedy to request, and it is a duty of every school district to every student who qualifies for special education under the IDEA. However, the Parent did not offer sufficient evidence at the due process hearing going to what an appropriate IEP must include for the Student *at the present time*. For example, the evidence is insufficient to allow the undersigned ALJ to write goals and objectives for a new IEP, or determine the quality and quantity of SDI and related services necessary to provide the Adult Student FAPE at this time. If the Parent believes the Adult Student's IEP that is in effect *at the present time* does not provide the Student with FAPE, the more appropriate remedy is to request another due process hearing to adjudicate that issue.

13. The Parent requests that the District use qualified and certificated District staff to provide the Adult Student's special education and related services as one remedy for the District's failure to develop an IEP during the period at issue. The undersigned ALJ agrees with the Parent. The District is ordered to provide the Adult Student's special education and related services using only properly qualified and/or certificated District Staff.

14. The Parent requests compensatory education as a remedy. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), *cited with approval in R.P. v. Prescott Unif'd Sch. Dist.*, 631 F.3d 1117, 1125 (9<sup>th</sup> Cir. 2011). Compensatory education is not a contractual remedy, but an equitable one. "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9<sup>th</sup> Cir. 1994). Flexibility rather than rigidity is called for. *Reid v. District of Columbia, supra*, 401 F.3d at 523-524. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Reid v. District of Columbia, supra*, 401 F.3d at 524.

15. The Adult Student was without an IEP from November 16, 2017, to March 9, 2018, a period of 65 school days. Counsel for the District attempted to develop evidence at the due process hearing going to prove the Adult Student continued to receive some of his SDI and related services while he was without an IEP. However, it is concluded that there can be no reasonable assurance any such services the Adult Student may have received while he was without an IEP offered him FAPE. It is an IEP that determines the appropriate services a disabled student should

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carried that burden and proven Ms. Bryson-Chamley did not reduce the deliberations of the IEP team to writing for a very substantial period of time. It is concluded that the District should bear the burden of affirmatively proving *when* the IEP was finally reduced to writing, and it has not done so. Accordingly, it is concluded that the period of time during which there was not IEP for the Adult Student runs from November 16, 2017, the day the prior IEP expired, until March 9, 2018, when Ms. Jenkins sent a copy of an IEP to the Parent.

receive. There was no such IEP during the period at issue. Therefore, for the purpose of determining an award of compensatory education, it is concluded that any services the Adult Student may have received during the period at issue should not be considered.

16. The Parent believes the SDI and related services called for in the Adult Student's 2016-2017 IEP provided him with FAPE. Therefore, that IEP (Exhibit D29) will be the basis for determining an award of compensatory education services for the Adult Student. The Adult Student will be awarded compensatory education based on the 65 school days during which he was without an IEP.

17. The IEP provided the Adult Student SDI in math, written language, math and adaptive and transition skills on a minutes per week basis. (D29p19). As an initial calculation of compensatory education, each type of SDI will be calculated on an hours per week basis, then multiplied by 13 weeks (the equivalent of 65 school days) to determine the total amount of each type of SDI the Adult Student should have received during the period he was without an IEP. The calculations are as follows:

SDI	Minutes/wk	Hours/wk	Total Hrs
Reading	280	4.6	59.8
Written Language	280	4.6	59.8
Math	280	4.6	59.8
Adaptive	100	1.6	21.6
Adaptive-T3	40	0.6	8.6
Transition	100	1.6	21.6
Total Compensatory Education Hours			<b>231.2</b>

18. The 2016-2017 IEP also provided 20 minutes per week of SLP services for the Adult Student. However, the Parent elected not to use those minutes, preferring instead to have the Adult Student receive SLP services at Western Washington University. Accordingly, no compensatory education will be awarded for the SLP services provided for in the Adult Student's 2016-2017 IEP.

19. The 2016-2017 IEP also provided for significant paraeducator support for the Adult Student. For reasons described below regarding how the District will be ordered to provide the award of compensatory education, no additional remedy will be ordered with respect to paraeducator support.

20. The award of compensatory education will be provided to the Adult Student in a 1:1 setting by either a certificated special education teacher, or a paraeducator qualified by education, training, and experience to provide the SDI under the supervision of a certificated special education teacher. Because the compensatory education SDI will be provided in a 1:1 setting, the total amount of compensatory education hours will be reduced from 231.2 hours to **175 hours**

to account for the fact that SDI provided in a 1:1 setting is more efficient and effective than SDI provided in a small group setting or full classroom setting.<sup>11</sup>

21. Because it is impossible to determine the Adult Student's present educational needs in this Final Order, the Parent shall have the discretion to use the 175 hours of compensatory education to address those area(s) she determines are of greatest need for the Adult Student. For example, the Parent may elect to use all of the 175 hours of compensatory education to provide SDI to address the Adult Student's reading deficits. Alternatively, the Parent may elect to use 50 hours of compensatory education for reading, 70 hours for math, and 55 hours for written language.

22. The compensatory education award shall be used either to provide additional SDI for the goals in the Adult Student's current IEP, *i.e.* the IEP in effect when the compensatory education is being provided, or in the alternative, the Parent and the District may elect to develop new goals and use the compensatory education award to implement those new goals.

23. The District shall provide the 175 hours of compensatory education to the Adult Student either before or after the regular school day in a 1:1 setting. The Parent will determine whether the compensatory education hours will be provided before or after the school day. The Parent and the District shall work together to establish a regular schedule such that the total of 175 hours of compensatory education is provided to the Adult Student within one year (365 calendar days) of entry of this Final Order.

24. The Parent or Adult Student shall inform the District at least 24 hours in advance when the Adult Student will be unable to attend a regularly scheduled appointment to receive his compensatory education services. Absent emergency circumstances, if the Parent or Adult Student do not provide at least 24 hours' notice and the Adult Student misses a regularly scheduled appointment, that missed appointment will be counted towards the total of 175 hours of compensatory education required of the District.

25. The Parent also requested as a remedy an award of therapy for the Adult Student at the District's expense. The undersigned ALJ declines to make such an award. The Parent has not proven it is more probable than not that the Adult Student's lack of an IEP from November 16, 2017 to March 9, 2018 resulted in any deprivation or impact that supports an award of therapy for the Adult Student.

26. All arguments made by the parties have been considered. Arguments not specifically addressed herein have been considered, but are found not to be persuasive or not to substantially affect a party's rights.

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<sup>11</sup> Some of the SDI provided in the 2016-2017 IEP was to be provided in a small group setting. See P29pp9-10, 12-14.



**ORDER**

The Meridian School District has violated the Individuals with Disabilities Education Act and denied the Adult Student a free appropriate public education from November 16, 2017 to March 9, 2018. The Adult Student is awarded **175 hours of compensatory education** for the violation. The award of compensatory education will be provided in accordance with Conclusions of Law Paragraphs 20-24. The Meridian School District shall use only properly certificated and/or qualified staff to provide the Adult Student's specially designed instruction and related services.

Signed at Seattle, Washington on December 1, 2018.



Matthew D. Wacker  
Administrative Law Judge  
Office of Administrative Hearings

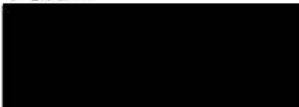
**Right To Bring A Civil Action Under The IDEA**

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 this 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. *msw*

Parent



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