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OFFICE OF ADMINISTRATIVE HEARINGS
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MAILED
MAR 29 2019
SEATTLE-OAH

March 29, 2019

Parents
[REDACTED]
[REDACTED]

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In re: Granite Falls School District
OSPI Cause No. 2018-SE-0119
OAH Docket No. 11-2018-OSPI-00631

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,

DANA DIEDERICH
Administrative Law Judge

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

STATE OF WASHINGTON
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FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION

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IN THE MATTER OF:

OSPI CAUSE NO. 2018-SE-0119

GRANITE FALLS SCHOOL DISTRICT

OAH DOCKET NO. 11-2018-OSPI-00631

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

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Dana Diederich in Granite Falls, Washington, on January 14, 15, 16, and 17, 2019. The Parents of the Student whose education is at issue¹ appeared and were represented by Lara Hruska, attorney at law. The Granite Falls School District (District) was represented by Carlos Chavez, attorney at law. Also appearing for the District was Sara Woolverton, Director of Special Education, Equity, and Civil Rights. A certified court reporter was also present at the due process hearing. The following is hereby entered:

STATEMENT OF THE CASE

Procedural History

The Parents filed a Due Process Hearing Request (Complaint) on November 2, 2018. On November 6, 2018, a Scheduling Notice was entered, setting a prehearing conference for December 4, 2018, and a due process hearing for December 20, 2018. On November 21, 2018, the District filed its Response to the Parents' Complaint.

The prehearing conference was held as scheduled on December 4, 2018. During that meeting, a schedule was set to hear the Parents' motion for summary judgment. Also, a second prehearing conference was set for December 11, 2018; the due process hearing set for December 20, 2018, was continued to January 14 through 18, 2019; and the District's motion to extend the due date for a written decision was granted. At this meeting, parties also agreed to waive a resolution meeting. Written documentation was later provided showing the resolution meeting was waived by email on November 8, 2018. The First Prehearing Order was entered on December 6, 2018.

A second prehearing conference was held on December 11, 2018, to discuss the statement of the issues and requested remedies. During this meeting, the last date set for hearing, January 18, 2019, was stricken due to a conflict with the undersigned's schedule. By agreement of parties, that date for hearing was not rescheduled. The Second Prehearing Order was entered on December 19, 2018.

¹In the interests of preserving the family's privacy, this decision does not name the parents or student. Instead, they are each identified as "Parents," "Mother," "Father," and "Student."

On December 7, 2018, pursuant to the briefing schedule, the Parents filed their Motion for Summary Judgment. The District filed an Opposition to Parents' Motion for Summary Judgment on December 14, 2018. The Parents filed a Reply to District Response to Summary Judgment on December 19, 2018. Upon review of all the pleadings filed, an Order Denying Summary Judgment was entered on December 24, 2018.

Decision Due Date

The due date for a written decision in the above matter is the close of record plus thirty (30) calendar days. See First Prehearing Order dated December 6, 2018. The record of the hearing closed with the filing of post-hearing briefs on March 1, 2019. Thirty calendar days from March 1, 2019, is March 31, 2019. Therefore, the due date for a written decision in the above matter is **March 31, 2019**.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Parents Exhibits: P1 – P18; P21 – P26;

District Exhibits: D1 – D17.

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

Sara Woolverton, Director of Special Education, Equity, and Civil Rights;
The Mother of the Student;
Rebecca A. Matalomani, Director of In His Steps Daycare and Preschool;
The Father of the Student;
Stacy Cecchet, Ph.D.;
William Root, M.S., BCBA, LBA;
Cheryl Larsen, Principal, Mountain Way Elementary School;
Stephanie Galbraith, District School Psychologist;
Jane Thom, District Special Education Teacher;
Brittany McGinnis, ECEAP Program Manager;
Kelly Cornett, PsyD.

ISSUES

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 find the Student eligible for special education and related services as of January 5, 2018;
 - ii. Failing to provide the Student with an appropriate educational placement since January 5, 2018, including failing to place the Student in kindergarten with appropriate supports for the 2018-2019 school year;

- iii. Failing to allow Parents meaningful participation in the IEP process during meetings held on February 13, 2018, March 15, 2018, May 29, 2018, and September 4, 2018²;
 - iv. Denying the Student early entrance to kindergarten on August 16, 2018, based on general education procedures without involving the Student's IEP team in the decision;
 - v. Failing to provide special education and related services to the Student from January 5, 2018, until the end of the 2017-2018 school year.
- B. And, whether the Parents are entitled to their requested remedies:
- i. Declaratory relief finding that the District violated the IDEA;
 - ii. An order directing the District to:
 - a. Place the Student in kindergarten or an appropriate all-day educational placement for the remainder of the 2018-2019 school year;
 - b. Change the service delivery of social-emotional specially designed instruction to a masters-level certified counselor rather than by a speech language pathology assistant which is currently being delivered in conjunction with the Student's Early Childhood Education and Assistance Program (ECEAP) placement;
 - c. Provide compensatory education services for the denial of FAPE;
 - d. Reimburse the Parents for the expenses of:
 - (i). Identifying and obtaining the diagnoses ultimately establishing his eligibility for special education services in 2018;
 - (ii). Counseling services during the Summer of 2017 and 2018;
 - (iii). Fees and expenses incurred as a result of assessments outside of the IEP process for entrance into early kindergarten

See Second Prehearing Order dated December 19, 2018.

² The Complaint also alleged a violation on December 6, 2018, after the date the Complaint was filed. This date is outside the relevant time period and no amendment was filed by the Parents. Therefore, this date will not be addressed.

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 Student began exhibiting behavioral difficulties and speech delays when he was approximately eighteen months old. Mother T55³; Father T170. These behaviors led to the Student being expelled from his daycare. *Id.* To address these behaviors, the Student began behavioral therapy with Stacy Cecchet, Ph.D. *Id.*; Cecchet T205. Dr. Cecchet initially treated the Student weekly; however, treatment waned for a period of time while the Student underwent speech therapy. *Id.* Starting in the fall of 2017, Dr. Cecchet began treating the Student twice a week. This frequency continued until the date of the hearing. *Id.*
2. Dr. Cecchet is a clinical and forensic psychologist and is board-certified in couple and family psychology. Cecchet T202-04; P18⁴. Dr. Cecchet is not a certificated teacher and does not have experience delivering specially designed instruction (SDI) in a public school setting. Cecchet T257.
3. Students with disabilities who are age three or under are entitled to special education services similar to older students. The program that provides these services is often referred to as a birth-to-three program. The Student at issue was not receiving special education services through any birth-to-three program. Mother T101; Woolverton T611.
4. On April 11, 2017, the Student underwent a psychiatric evaluation with Carola Bosenberg, M.D. D4. The Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and he was prescribed the medication Guanfacine. *Id.* at 2-3.
5. Witnesses gave conflicting testimony regarding when the Student began attending daycare at In His Steps Daycare & Preschool (In His Steps). The Mother testified that she thought the Student started in February or March of 2018. Mother T110. The director of In His Steps, Rebecca Matalomani,⁵ however, testified that the Student began attending the daycare in January 2018. Matalomani T127. Because Ms. Matalomani had access to the Students enrollment

³ Citation to the testimony of a witness is by the witness's last name or the term Mother and Father followed by the hearing transcript page number. For example, Mother T55 is a citation to the testimony of the Student's Mother at page 55 of the transcript.

⁴ Citation to the exhibits of record is by exhibit and page number, e.g. P18p2 is a citation to Parents Exhibit P18 at page 2.

⁵ Ms. Matalomani has served as the Director of In His Steps for twelve years. Matalomani T127. She has a bachelor's degree in religious education with a Christian education minor. *Id.* at T136. She does not hold any state certifications for teaching. *Id.*

records and appeared more certain on the Student's start date, her testimony is accorded more weight. As such, I find that the Student started daycare at In His Steps in January 2018. The Student had previously been attending daycare at Granite Falls Daycare, but was expelled due to behavioral issues. Mother T101, T110-11.

Student's First Evaluation – February 2018

6. At some point in 2017, due to the Student's continuing behavioral difficulties and because the Student had been expelled from another daycare, Dr. Cecchet encouraged the Parents to contact the District and request the Student be evaluated for special education. Cecchet T207; Father T171.

7. On or about January 5, 2018, the Parents contacted the District and requested a special education evaluation of the Student be done. Thom T534. The Parents were provided a packet of information, including the Child Development Inventory (CDI), to complete and return. *Id.*

8. On January 5, 2018, when the Student was four (4) years old, the Parents submitted a completed CDI questionnaire to the District and requested the Student be evaluated to determine if he was eligible for special education services. D1; Thom T534. Along with the CDI, the Parents submitted a letter from Dr. Cecchet that included the Student's diagnoses. Thom T539, T556; Mother T57; Cecchet T300.

9. On January 19, 2018, a prior written notice (PWN) was sent to the Parents proposing to initiate an evaluation of the Student. D1p2. The PWN stated that the CDI completed by the Parents indicated a "need for further evaluation in the area of social." *Id.*

10. Dr. Sara Woolverton⁶, the Director of Special Education, Equity, and Civil Rights for the District, testified about the process the District uses when evaluating students for special education services. First, the District looks at whether the student meets one of the "13 categories." Woolverton T618. Then, if the Student meets a category, the District looks at whether the student's disability causes a "significant adverse educational impact" which would affect their ability to benefit from schooling. *Id.* Finally, the District looks at whether the student requires SDI. *Id.* at T619.

11. When the District evaluates preschool students, it generally looks at whether the student qualifies under the Developmental Delay category first before looking at other eligibility categories. Thom T558; Galbraith T526-27; Woolverton T618.

12. The District completed an evaluation of the Student on February 13, 2018. D2. Stephanie Galbraith⁷, the District's school psychologist, was the evaluation case manager. *Id.* The

⁶ Dr. Woolverton has a joint general education and special education bachelor's degree as well as a bachelor's degree in anthropology. Woolverton T609. She has a master's degree in special education with an emphasis in behavior and a Ph.D. in educational leadership and policy. *Id.*

⁷ Ms. Galbraith has a bachelor's degree from the University of Washington, a master's degree from Seattle Pacific University, and a post-master's education specialist degree from Eastern Washington University.

evaluation noted that the Student was referred by the Parents and Dr. Cecchet due to concerns in social development. *Id.* at 1. It also noted that the CDI completed by the Parents warranted further testing in the areas of social and communication. *Id.* It was noted that the Student was diagnosed with ADHD and Disruptive Behavior Disorder (DBD) and that the Student was currently prescribed Guanfacine and Risperidone. *Id.* These medications are not frequently prescribed to young children. Galbraith T494. The evaluation also noted the Parents reported the Student was experiencing sleep deprivation as well as “delayed social skill development, poor pragmatic speech, poor emotional regulation and frustration tolerance, social-emotional delays, impulsivity, hyperactivity, noncompliance, aggression, tantrums and negative vocalizations.” D2p4.

13. The District evaluated the Student in the areas of “Social/Emotional/Behavior” and “Communication.” To assess Student’s social skills, the District administered the Developmental Assessment of Young Children, Second Edition (DAYC-2). *Id.* at 5. The DAYC-2 is a norm-referenced measure that compares the Student’s social development to that of his same age peers. *Id.*; Galbraith T494. The Student’s score on this test was 83, which was below average and 1.13 standard deviations below the mean. *Id.* Students who have a test score below 90, like the Student, “have not attained social competence developmental levels that are expected for children their age.” *Id.* These students are “among the bottom 25% of children in the test’s norms.” *Id.*

14. To assess the Student in the area of communication, the District administered the Listening Comprehension subtest of the Oral and Written Language Scales, Second Edition (OWLS-2). *Id.* at 6. The Student’s score on this test indicated his receptive language was in the average range. *Id.*

15. As part of the evaluation, the District conducted an observation of the Student in the preschool setting. D2p7. The evaluation took place in the District’s preschool classroom after school hours when other students were not present. Galbraith T496. The Student’s twin sibling and four adults were present during the observation. *Id.*

16. On February 13, 2018, an evaluation team meeting was held and the Parents were informed that the Student did not qualify for special education services. D2p1. The evaluation team included Ms. Galbraith, Elaine Maki⁸, and Jane Thom⁹, although the only individuals who signed the evaluation summary were Ms. Galbraith and Ms. Maki. D2p3; Galbraith T519; Thom T540. The evaluation team determined that the Student did not qualify under the category of Developmental Delays noting, “[h]e does not demonstrate a significant delay in the areas of Social and Communication (more than -2.0 standard deviations in one area or -1.5 standard deviations in two areas).” *Id.*

Galbraith T450. She worked as a school counselor for twelve years before becoming a certificated school psychologist in 2015. *Id.*

⁸ Ms. Maki is a District speech language pathologist. D2p6.

⁹ Ms. Thom is a special education teacher in the District who teaches in the developmental preschool. Thom T532. Ms. Thom has a bachelor’s degree in special education and elementary education and a master’s degree in education. *Id.* Ms. Thom is a certificated teacher and has a special education endorsement. *Id.* at T549

17. On February 13, 2018, a PWN was issued indicating the District was refusing to initiate special education services for the Student. D2p8. It stated that “[b]ased on the results of the evaluation, [Student] does not qualify for special education in the areas of social and communication.” *Id.*

18. Ms. Thom testified that the evaluation team discussed whether the Student was eligible under the Other Health Impairment (OHI) category but decided he did not qualify because testing did not show that he needed specially designed instruction (SDI). Thom T540. Ms. Galbraith testified that she thinks Ms. Thom “brought up” OHI and that there was “some discussion around that.” Galbraith T519. However, neither the evaluation summary nor the prior written notice mention OHI or provide any indication that a discussion was had regarding whether Student qualified under the OHI category. Because the testimony is not supported by any of the written documentation, I find that the evaluation team did not consider whether the Student qualified under the OHI category.

Student's Second Evaluation – May 2018

19. On March 15, 2018, the Parents requested the District reevaluate the Student. D5. Along with this request, the Parents provided the District with a copy of the psychiatric evaluation completed by Dr. Bosenberg. D4; Mother T61; Father T108. This evaluation had not been provided to the District prior to March 15, 2018. The evaluation team determined a new evaluation was appropriate. D5p1.

20. On March 23 and March 30, 2018, as part of a reevaluation, Ms. Thom observed the Student at his daycare, In His Steps. D5p8. Ms. Thom concluded from these observations that the Student demonstrated “a desire to play with other children, yet he lacked the social skills to play with age appropriate manners.” D5p9. She also determined that due to Student’s “low social skills in the area of peer relations” he should “have specially designed instruction in the area of social/emotional.” *Id.*

21. On April 25, 2018, Ms. Galbraith interviewed the Student’s daycare provider, Ms. Matalomani. D5p9. Ms. Matalomani reported the Student had “major explosions” approximately once per week and smaller tantrums approximately two times per day. *Id.* Ms. Matalomani also reported that the Student needed close supervision and often engaged in disruptive behavior. *Id.*

22. As part of the evaluation, the District administered the Behavior Assessment System for Children, Third Edition (BASC-III). *Id.* at 6. This assessment looked at ratings of the Student’s abilities completed by the Student’s Mother; Ms. Matalomani; and the Student’s previous daycare provider, Heather Buchotz¹⁰. *Id.* Results from the assessment showed that all three raters reported the Student being in the At-Risk or Clinically Significant range for aggression. The Student was also rated in the At-Risk or Clinically Significant range by at least one of the raters in the areas of hyperactivity, anxiety, depression, attention problems, atypicality, withdrawal, adaptability, social skills, and functional communication. *Id.* It was noted that the Student

¹⁰ Ms. Buchotz is the director of Granite Falls Daycare.

appeared to perform differently across environments and presented as more challenging at home than at school. *Id.* at 8.

23. The District completed the reevaluation of the Student and held a reevaluation team meeting on May 9, 2018. D5p1. The Student was found eligible for special education services under the category of Other Health Impairments and it was noted that his diagnoses of DBD and ADHD would cause “difficulties maintaining attention, regulating emotions, following classroom routines and directions and engaging in age appropriate social skills.” *Id.* SDI was recommended in the areas of problem solving strategies, self-regulation, and social skills. *Id.* at 3.

24. A PWN was sent to the Parents on May 10, 2018, stating the District was proposing to initiate special education services in the area of “social/emotional.” D5p11.

25. In finding the Student eligible during the reevaluation, the District evaluation team members relied on the assessment from Dr. Bosenberg, observations of the Student in his daycare, and the reports from Ms. Matalomani. Galbraith T487, T489; Thom T557.

Dr. Cornett – Neuropsychological Evaluation

26. Upon recommendation from Dr. Cecchet, the Parents sought a neuropsychological evaluation of the Student. Cecchet T266. On May 16, 2018, Kelly Cornett, Psy.D., completed a comprehensive neuropsychological evaluation of the Student. D6. Dr. Cornett diagnosed the Student with ADHD, Social (Pragmatic) Communication Disorder, and Other Specified Disruptive Impulse-Control and Conduct Disorder. *Id.* at 7. Dr. Cornett administered multiple assessments including the Wechsler Preschool and Primary Scale of Intelligence, Fourth Edition (WPPSI-IV). *Id.* at 13. The Student’s scores on the subtests of the WPPSI-IV ranged from 93 to 118, with his full scale IQ listed as 151. *Id.* A full scale IQ of 151 would put the Student in the Very Superior range; however, because the span of subtest scores is greater than twenty-three points, the full scale IQ is not considered a valid representation of the Student’s generalized intellectual functioning. Cornett T709. Dr. Cornett does not hold any teacher certifications. Cornett T717.

May 2018 IEP

27. The Student’s IEP team met and an IEP was created on May 29, 2018. D7. The Parents attended this meeting along with Dr. Woolverton, Ms. Galbraith, Ms. Thom, Ms. Matalomani, Ms. Maki, Ms. Buchotz, and Mary Garrett¹¹. Mother T159, T172; D7p1. The IEP included five social/emotional goals for the Student involving self-regulation, transitions, and problem solving. D7p5. The IEP stated that progress towards Student’s goals would be reported in written progress reports created each semester. D7p5. Progress reports for the first semester of the 2018-2019 school year were scheduled to be completed at the end of January, after the date of the due process hearing. Woolverton T44; Thom T551.

28. Dr. Cecchet opined that these goals were inappropriate because they focused on behavioral needs rather than social and emotional needs. Cecchet T254.

¹¹ Ms. Garrett is a District occupational therapist. D7p1.

29. Dr. Woolverton opined that the IEP goals were appropriate for the Student because they focused on school-type behaviors, problem-solving, emotional regulation, and direction following, which are skills Student needs to be successful in school. Woolverton T620.

30. The IEP also included SDI in the areas of social/emotional and communication. D7p9. For social/emotional, the Student would receive thirty minutes of SDI, four times per week from a paraprofessional who was monitored by a special education teacher. *Id.* For communication, the Student would receive twenty minutes of SDI monthly from a speech and language pathologist. *Id.* The parties agree the speech and language minutes were erroneously included in the IEP. Woolverton T630; D13p6.

31. Dr. Cecchet opined that the amount of SDI in social/emotional was appropriate, but the location in which the services were provided and the service providers were inappropriate. Cecchet T246-47. In her opinion, the individual delivering SDI and the individual monitoring the delivery of SDI should have specialized training. *Id.* She opined that the person delivering SDI should be trained as a Board Certified Behavioral Analyst (BCBA), a behavior technician supervised by a BCBA, a master's level clinician, or a psychologist with experience as a BCBA. She also opined that the individual monitoring the delivery of SDI should be trained in Applied Behavior Analysis (ABA) so they can appropriately supervise the individual delivering SDI. *Id.* Further, Dr. Cecchet opined that delivering SDI in the general education setting was inappropriate and should instead be delivered in a special education setting. *Id.* at 248.

32. Dr. Cornett opined that the amount and frequency of the SDI was appropriate for the Student. Cornett T716. However, it was her opinion that the SDI should not be delivered in a general education setting because the Student's attention deficits would cause distractibility and make delivery of services challenging. *Id.*

33. The IEP stated that 99.17% of the service minutes would be delivered in the general education setting. D7p9. The IEP considered whether the Student should be placed in the District's developmental preschool, but determined it would be inappropriate as it did not offer the Student exposure to typical peers. Thom T545; Woolverton T623. The IEP specified that the Student would be placed "with age appropriate peers in the neighborhood preschool and daycare." *Id.* at 10. The start date for services was listed as September 4, 2018. *Id.* at 9.

34. A PWN was sent to the Parents on May 29, 2018, proposing to implement the Student's IEP on September 4, 2018. D7p13. It noted that the Student's neuropsychological evaluation was considered and some recommendations from Dr. Cornett regarding accommodations were incorporated into the Student's IEP. *Id.* It was also noted that the team "discussed a number of learning environments where [Student] could be serviced." *Id.*

35. There is conflicting testimony regarding the discussion of the Early Childhood Education and Assistance Program (ECEAP)¹² as a potential placement for the Student during the May 29,

¹² ECEAP is a general education preschool program intended to provide early intervention services. It generally serves students who are low income, students who are homeless or living in foster care, and students who have IEPs. McGinnis T577; Woolverton T612. Students in ECEAP are ages three to five. *Id.*

2018 IEP meeting. Dr. Woolverton testified that she mentioned ECEAP to the Parents and indicated it was for low-income families. Woolverton T624. When the Parents did not ask further questions, she understood that to mean they were not interested in the program. *Id.* Dr. Woolverton also testified that she was aware the Mother is an attorney. *Id.* at T674. The Parents, however, testified that they were told by Dr. Woolverton that the Student would not qualify for ECEAP due to their income. Mother T66; Father T174, T180. Ms. Matalomani, who was also present for the IEP meeting, similarly testified that Dr. Woolverton told the Parents ECEAP was not an option for the Student due to the Parents' income. Matalomani T131. Ms. Galbraith and Ms. Thom both testified that they do not remember any discussion of ECEAP during the IEP meeting. Galbraith T502-04; Thom T546. Based on the Parents' and Ms. Matalomani's similar testimony along with the admission from Dr. Woolverton that she discussed the income restriction for ECEAP and was aware of the Mother's profession, I find that Parents were incorrectly told during the May 2018 IEP meeting that ECEAP was not available for the Student.

36. There is also conflicting testimony regarding the discussion of whether services could be delivered at the Student's daycare, In His Steps, during the May 29, 2018 IEP meeting. The Parents and Ms. Matalomani understood from the discussion that kindergarten was the only place where the Student could receive services. Mother T67, T69; Father T179; Matalomani T128, T132, T141-42. Dr. Woolverton testified she told the Parents that services could be delivered in kindergarten, but she also told the Parents that services could be delivered in any daycare setting as long as it is within the District boundaries. Woolverton T624, T632. Ms. Thom, testified that it was her understanding services would be delivered in the Student's daycare. Thom T547.

37. In considering the testimony as well as the May 29, 2018 IEP and PWN, I find that, while early entrance kindergarten was discussed at the May IEP meeting, it was not determined to be the only setting in which Student could receive services. The May IEP and PWN do not mention kindergarten as a potential placement for the Student, instead stating that the Student will receive services in "the neighborhood preschool and daycare." D7p10. These documents were created contemporaneously with the IEP meeting and are consistent with the testimony of Dr. Woolverton and Ms. Thom. As such, I find that the Parents were not told that kindergarten was the only setting in which services could be delivered to the Student.

38. The last day of the 2017-2018 school year for the District was June 15, 2018. D17p1. The school year for the District's preschool programs ended a few days prior to June 15, 2018. Thom T543. The Student did not receive any SDI during the 2017-2018 school year.

Early Entrance Kindergarten

39. The cutoff date to attend kindergarten in the District in August 31. Larsen T394. Students who turn five after that date must request a variance to attend kindergarten. The Student's fifth birthday was after the cutoff date for the 2018-2019 school year. *Id.* On June 18, 2018, the Parents notified Cheryl Larsen, principal of Mountain Way Elementary School, a school in the District, that they intended to apply for a variance to allow the Student to start kindergarten in the fall. D8p3. Ms. Larsen instructed the Parents to complete the kindergarten early entrance application on the District website by July 21, 2018. *Id.*

40. On July 19, 2018, the Parents emailed Ms. Larsen the Student's application for early entrance to kindergarten along with a copy of the neuropsychological evaluation completed by Dr. Cornett. D8p1.

41. The kindergarten early entrance assessment includes a questionnaire completed by the Parents, the Ages and Stages Questionnaire, Third Edition (ASQ-3); a classroom experience and teacher observation; and a standardized test, the Developmental Tasks for Kindergarten Readiness, Second Edition (DTKR-II). Larsen T394-403. The District requires that students score at least 116 on the DTKR-II to be granted early entrance to kindergarten. *Id.* at T436-37. Scores from the ASQ-3 and the classroom experience and teacher observation are used for informational purposes, but do not affect whether a student is admitted to kindergarten. *Id.* at 440-41.

42. On August 15, 2018, the Student completed the kindergarten early entrance assessment. D9. The Student and his twin brother underwent part of the classroom experience and teacher observation portion of the assessment together. Larsen T417-18. The Student underwent the DTKR-II separate from his twin. *Id.* The DTKR-II was administered by Ms. Galbraith and the Student earned a score of 105. Galbraith T522-23; D9p9.

43. On August 16, 2018, Ms. Larsen notified the Parents by email that the Student did not meet the criteria for early entrance to kindergarten due to his score on the DTKR-II. D10p1. The Parents responded by email on August 17, 2018, stating they disagreed with the decision. D11p1. The Parents also notified the District in this email that it would be putting the Student in a private placement and would be seeking reimbursement from the District. *Id.*

44. On August 27, 2018, Ms. Matalomani wrote a letter to the District expressing her opinion that the Student had the skills to be successful in kindergarten. P8. Her opinion was based on her experience with the Student and on the IEP team's recommendations and statements made during the May 29, 2018 IEP meeting. *Id.*

45. On August 28, 2018, Dr. Cecchet wrote a letter to the District expressing her opinion that the Student was ready for kindergarten and that failure to place the Student in kindergarten would negatively affect his "academic development, behavior, socioemotional functioning; and speech and language." P9.

46. On August 28, 2018, a PWN written by Dr. Woolverton was sent to the Parents refusing the Parents' request for private educational placement and reimbursement for the Student. D12p1. The PWN stated that the Parents' request was refused because the District had offered the Student a FAPE in his least restrictive setting. *Id.* It also noted the District rejected the option of enrolling the Student as an early entrance kindergarten student. *Id.* The PWN noted that the Student's performance on the early entrance test suggested he would not be successful in kindergarten at this time and that placement in kindergarten was not required to provide the Student with FAPE. *Id.* The Student's IEP would be implemented in the typical preschool setting. *Id.*

47. The August 28, 2018 PWN also included a discussion of the May 29, 2018 IEP meeting. *Id.* It stated that the team considered multiple settings where the Student's services could be delivered, including ECEAP, special education preschool, private preschool, and early entrance

kindergarten. *Id.* at 2. It stated the IEP team concluded that all except the special education preschool would be appropriate settings for the Student to receive FAPE. *Id.* The PWN also stated that the “parents opted to wait until the start of the 2018 school year rather than start services right at the end of the school year.” *Id.*

48. On August 30, 2018, the Parents applied for the Student to attend ECEAP. McGinnis T579; Mother T116. The Parents learned that the Student would be eligible for ECEAP due to his IEP by reading an advertisement on the town reader board and Facebook page. Mother T157.

September 2018 IEP

49. On September 4, 2018, an IEP meeting was held and the Student’s IEP was amended. D13. The Parents attended the meeting along with their attorney. *Id.* at 1. Dr. Woolverton, Ms. Thom, Brittany McGinnis¹³, Ms. Garrett, and Susan Burk¹⁴ also attended. *Id.* The Student’s goals and the SDI for social/emotional were not changed. However, the SDI minutes for communication were removed from the IEP by agreement of the IEP team. *Id.* at 2, 6; Woolverton T630. The percentage of time spent in the general education setting was also adjusted to 100 percent. D13p2. It was noted the Student would be attending and receiving services in ECEAP. *Id.* at 3. While the Parents requested the Student be placed in early entrance kindergarten, the team did not discuss whether to override the general education decision and place the Student in early entrance kindergarten. Mother T82; Thom T573; McGinnis T594-95; Galbraith T517-18.

50. A PWN written by Dr. Woolverton was sent to the Parents on September 5, 2018, proposing the initiation of special education services for the Student in ECEAP. D13p6. The PWN stated that the District would not be changing the provider of SDI to a “master’s level person” as requested by the Parents. *Id.* It stated SDI would be delivered by a paraprofessional who has the “necessary background and skills” to provide the services and would be supervised by a special education teacher. *Id.* The PWN also stated the IEP team declined to place the Student in general education kindergarten as an early entrance student at the start of the school year or in January 2019. *Id.* The team concluded the Student was not ready for kindergarten based on his performance on the early entrance assessment and noted that promotion to a higher grade was a general education decision that was generally not made by IEP teams as long as IEP services could “be delivered regardless of grade year.” *Id.* at 7.

51. Grade level, including early entrance to kindergarten, is a general education decision. Woolverton T50-51; Thom T561. However, if an IEP team determines a student could only receive FAPE if he or she was admitted as an early entrance kindergarten student, it would be written into the student’s IEP and he or she would be placed in kindergarten without needing to undergo the early entrance assessment. Woolverton T638. Ms. Thom, Ms. Galbraith, and Ms. McGinnis were unaware an IEP team could override the general education decision. Thom T573; Galbraith T517-18; McGinnis T594-95.

¹³ Ms. McGinnis is the program manager and family support for ECEAP. McGinnis T577. Ms. McGinnis has a bachelor’s degree in psychology from the University of Washington. *Id.* at T578.

¹⁴ Ms. Burk is a general education teacher in the District. D13p1.

2018 - 2019 School Year

52. September 5, 2018, was the first day of the 2018-2019 school year for the District, and the first day the Student attended ECEAP. D17p2; McGinnis T579; Thom T549.

53. As of the date of the due process hearing, ECEAP had twenty students enrolled, including the Student at issue. McGinnis T580-81. Eight of the students in ECEAP were five years old, one was three years old, and the remainder were four years old. *Id.* The Student was five years old. Three students in ECEAP are older than the Student. *Id.* at 592.

54. During the 2018-2019 school year, the Student received his SDI from a Cheryl Pullen, a paraprofessional, under the supervision of Ms. Thom. D16p1; Woolverton T31. Paraprofessionals in the District have at least two years of college and are trained in the area in which they are required to deliver SDI. Woolverton T694-95. Ms. Pullen is a Speech Language Pathologist Assistant. D16p1. Ms. Pullen uses Zones of Regulation, Social Thinking, and Second Step as the curriculum for the Student. Woolverton T33. The Social Thinking curriculum is specifically developed for students on the autism spectrum who experience social/pragmatic language issues. Woolverton T38. The SDI for the Student is delivered through a "push-in" model where Ms. Pullen delivers the services in the general education classroom. *Id.* at T34.

55. Ms. McGinnis and Ms. Thom have both observed the Student receiving SDI in the ECEAP classroom. McGinnis T591-92; Thom T562-65.

56. Conflicting testimony was provided regarding the number of behavioral incidents involving the Student during the 2018-2019 school year. Ms. Thom testified that she was not sure of the frequency of the Student being isolated or restrained, but she thought it might be once or twice a week. Thom T565. Ms. McGinnis, however, testified that up to the date of the due process hearing, the Student had been asked to leave school midday one time and had been restrained due to behavioral issues on two occasions. McGinnis T583-84. Ms. McGinnis observed the Student in the ECEAP classroom roughly sixty times and is provided documentation any time a student from ECEAP is disciplined. McGinnis T584-85, T588. Ms. Thom is not provided a copy of this documentation. *Id.* at T599.

57. Because Ms. McGinnis has more regular interaction with the Student and is provided documentation of all behavioral incidents, she is in the best position to provide accurate information regarding the frequency of Student's behavioral incidents. As such, her testimony regarding the frequency of Student's behavioral incidents is given greater weight. I find that during the 2018-2019 school year, the Student was sent home midday on one occasion and restrained on two occasions due to behavioral issues.

58. At some point in October or November of 2018, the Student's Risperdal medication was increased to try to address his behavioral problems. Mother T90; Cecchet T304. The medication increase improved the Student's behavior. *Id.*

59. Ms. Thom opined that she did not have any concerns regarding the appropriateness of ECEAP for the Student. *Id.* at T574. This opinion was based on her conversations with the Student's teacher and the paraprofessional delivering SDI, who reported the Student was progressing and doing well in ECEAP. Thom T552-53.

60. Ms. McGinnis opined that the Student had developmentally similar peers in the ECEAP program and she did not have any concerns regarding the appropriateness of ECEAP for the Student. McGinnis T588-90.

61. Dr. Woolverton opined that, as of November 2018, the Student was doing well in the ECEAP program. Woolverton T647. She observed the Student participating in class and interacting with peers. *Id.*

62. Since the start of the 2018-2019 school year, the Parents have attended two parent-teacher conferences related to the Student. Mother T87; Root T313. William Root,¹⁵ a BCBA working with the family, attended these meetings as well. Root T313. The Student's progress towards his IEP goals was discussed at these meetings. Mother T87.

63. Dr. Cecchet and Mr. Root observed the Student in his ECEAP classroom in January 2018 for approximately thirty minutes. Cecchet T239; Root T319.

64. Dr. Cecchet opined that ECEAP was not an appropriate placement for the Student because the classroom is set up for children younger than the Student, and it focuses more on appropriate behavior and less on academic skills. Cecchet T238. She opined that this causes the Student to not be emotionally engaged in school and led to the Student regressing in multiple areas. Cecchet T230-32, T238. Dr. Cecchet also opined that the other students in ECEAP are not age appropriate peers for the Student, making it difficult for the Student to learn through peer modeling. *Id.* at T239.

65. Mr. Root opined that the Student had regressed in his social-emotional skills over the semester. Root T319. He noted that from the time he started working with the Student at the beginning of the school year, the Student had become more likely to act out using physical aggression. *Id.*

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

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

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

¹⁵ Mr. Root has a bachelor's degree in philosophy and a master's degree in rehabilitation: behavior analysis. P16. He is currently pursuing his Ph.D. in rehabilitation: behavior analysis. *Id.* Mr. Root currently works as a BCBA for Help Everyone Achieve in Life (HELP).

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 *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, supra, 458 U.S. at 206-07 (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." *Id.* at 200-01.

4. 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," 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 (9th Cir.), *cert. denied*, 583 U.S. ___, 138 S. Ct. 556 (2017).

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

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

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

Whether the District violated the IDEA and denied the Student FAPE by failing to find the Student eligible for special education and related services as of January 5, 2018.

6. A student who is eligible for special education is defined as a student who has a disability in one of thirteen eligibility categories and who, because of the disability and an adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services. WAC 392-172A-01035(1)(a); 34 CFR § 300.8(a). This is in essence a three-part test for special education eligibility.

7. One of the thirteen eligibility categories is “developmental delay.” WAC 392-172A-01035(2)(d)(i). This category is for students ages three through eight who experience developmental delays in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development or adaptive development. *Id.* To qualify under this category, a child must be two standard deviations below the mean in one of the five areas, or one and a half standard deviations below the mean in two or more of the five areas. *Id.* Districts are not required to use the developmental delay category for students ages three to eight. WAC 392-172A-01035(2)(d)(iii).

8. Another eligibility category is “other health impairment.” WAC 392-172A-01035(j). An individual who meets this category is defined as “having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that: is due to chronic or acute health problems such as asthma, attention deficit disorder or attentional deficit hyperactivity disorder...” *Id.* (emphasis added).

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

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

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

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

11. Like IEPs, the appropriateness of an evaluation must be determined in light of what was known, or should have been known, at the time the evaluation was conducted. Also, whether an evaluation is appropriate should not be judged in hindsight. This is the so-called snapshot rule. See *Adams v. Oregon*, 195 F.3d 1141, 31 IDELR 130 (9th Cir. 2001).

12. For the Student's initial evaluation, the District used two assessment tools to evaluate the Student in the area of social/emotional, the DAYC-II and a student observation¹⁶. FOF¹⁷ 13, 15. These tools were insufficient to appropriately evaluate the Student. First, the observation of the Student was performed in the preschool setting without any students present other than the Student's twin brother. FOF 15. It is hard to see how an observation with limited peer interaction would provide relevant information for a student who was being evaluated for deficits in social skills.

13. Second, the District did not observe the Student in his current day care or request observations from his past day care provider, Ms. Buchotz, or treating psychologist, Dr. Cecchet. The District argues that the Student was not attending a daycare at the time of the initial evaluation, which is why the Student was not observed in that setting. This is contrary to the testimony of Ms. Matalomani, who credibly testified that the Student enrolled in her program in January 2018, whereas the evaluation was not completed until February 13, 2018. FOF 5. Regardless, even if the Student had not been enrolled in In His Steps daycare, he had previously been enrolled in Granite Falls Daycare and the District could have reached out to Ms. Buchotz, as they did during the second evaluation. Further, the District could have asked for observations from the Student's treating psychologist who provided a letter to the District in support of the evaluation. It appears both Dr. Cecchet and Ms. Buchotz were willing to provide information, so it is unclear why none was obtained. The District evaluated the student for social emotional deficits, which would appear to make observational information from individuals who saw the Student in social settings particularly relevant. However, the District failed to perform classroom-based observations or seek observations from the Student's prior teachers or service providers, which would have been appropriate.

14. As the observational information was limited, it appears the District relied entirely on the results of the DAYC-II in finding the Student not eligible for special education. The Parents provided a completed questionnaire, medical history form, and a letter from Dr. Cecchet, noting the Student had been diagnosed with ADHD and DBD and was prescribed medications. FOF 8. However, the evaluation provided no discussion of Dr. Cecchet's letter. The evaluation states that the Student was denied services because the results of the DAYC-II failed to show deficits significant enough to qualify under the Developmental Delay eligibility category. FOF 16. In relying entirely on one assessment tool to determine Student's eligibility, the District failed to use a variety of tools as required by WAC 392-172A-03020(2)(a).

15. The evaluation also fails to consider any other eligibility categories. It seems particularly unusual that the evaluation team did not consider whether the Student qualified under the category of Other Health Impairment given the fact that they were aware the Student was diagnosed with ADHD which is specifically mentioned in WAC 392-172A-01035(2)(j)(i). It is true that whether a child meets an eligibility category is only the first step in determining whether a child is eligible for special education. See WAC 392-172A-01035(1)(a); 34 CFR § 300.8(a). Thus,

¹⁶ The District also evaluated the Student in the area of communication; however, neither party asserts that the Student needs special education services in that area and the Parents are not contesting that portion of the evaluation so it will not be addressed.

¹⁷ Citation to findings of fact is by "FOF" followed by the corresponding number, e.g. FOF 13 is a citation to Finding of Fact number 13.

the District argues that whether the evaluation team looked at the OHI eligibility category is irrelevant because the team determined the Student did not need specially designed instruction. Essentially, the District is arguing that the Student was found not eligible under the third prong of the test in WAC 392-172A-01035, thus any lack of analysis regarding the first prong is harmless error. However, the evaluation itself makes no mention of any analysis done beyond the first prong of the test. It appears the evaluation team looked at the developmental delay category, determined the Student's score on the DAYC-II did not satisfy the category requirements, and concluded the Student was not eligible for services. There is no discussion of any adverse educational impact from the Student's impairments, or whether SDI was needed.

16. Further, even if the evaluation team concluded the Student did not need SDI, the available evidence does not appear to support that finding. The team was aware of the Student's diagnosis and the medications prescribed. FOF 12. Ms. Galbraith was surprised by the medications prescribed to the Student because it is unusual for those types of medications to be prescribed to someone so young. *Id.* This would imply the Student's impairments were significant. Additionally, the results of the DAYC-II, while not at the level required for the developmental delay eligibility category, did show the Student was 1.13 standard deviations below the mean and that children with his score "have not attained social competence developmental levels that are expected for children their age." FOF 13. Further, the Student's test score indicated he was "among the bottom 25% of children in the test's norms." *Id.* All of this information along with the Parents' reports support a finding that the Student needed SDI. If the District believed otherwise, it provided no explanation in the evaluation summary or prior written notice.

17. The Student was found eligible under the Other Health Impairment eligibility category during a second evaluation done in May 2018, less than three months later. FOF 23. Evaluation team members Ms. Galbraith and Ms. Thom both testified that the Student was found eligible in May rather than in the first evaluation because additional information was provided. The information Ms. Galbraith was lacking in the first evaluation was the Student's diagnosis on an axes and the psychological evaluation from Dr. Bosenberg. FOF 25. Dr. Bosenberg's psychological evaluation was not provided to the District during the initial evaluation. However, the District was aware of the diagnoses and medications discussed by Dr. Bosenberg because the Parents provided that information in the medical history form and in the letter from Dr. Cecchet. FOF 8. It is unclear what additional information Ms. Galbraith gleaned from Dr. Bosenberg's evaluation that had not already been provided.

18. For Ms. Thom, the new information provided during the second evaluation that affected the Student's eligibility was the observations done in the Student's daycares and communications with the Student's daycare provider. As already discussed, it is not clear why the District failed to observe the Student in his daycare or contact his previous daycare provider during the initial evaluation. It appears the information the District found valuable in the Student's second evaluation was either provided or readily available to the District during the first evaluation, making it unclear why a different result was reached in May 2018.

19. The evaluation completed in February 2018 failed to include appropriate observations; failed to utilize a variety of assessment tools, instead relying exclusively on the DAYC-II; failed to consider other eligibility categories; and failed to fully analyze whether the Student was eligible for special education services. As such, the evaluation was inappropriate and the District procedurally violated the IDEA. As a result of the inappropriate evaluation, the Student was not found eligible for special education until the end of the 2017-2018 school year, more than four

months after the Parents initially contacted the District and requested an evaluation. This delay also prevented the Student from receiving services until the 2018-2019 school year. As such, this procedural violation deprived the Student of educational benefits for the second half of the 2017-2018 school year, and denied the Student FAPE.

Whether the District violated the IDEA and denied the Student FAPE by failing to provide the Student with an appropriate educational placement since January 5, 2018, including failing to place the Student in kindergarten with appropriate supports for the 2018-2019 school year.

20. 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.*

21. The Parents contest the appropriateness of both the services and educational setting in the Student’s September IEP. In regards to services, the IEP provides thirty minutes of social/emotional SDI to be delivered in the general education setting by a paraprofessional overseen by a special education teacher. FOF 30. The Parents argue that the District has not provided evidence sufficient to show that services were actually being delivered to the Student. While the Parents did not allege any IEP implementation issues in the original complaint, the argument fails regardless. Ms. McGinnis, the director of ECEAP, and Ms. Thom, the special education teacher overseeing the Student’s SDI delivery, both observed the Student receiving SDI during the 2018-2019 school year. FOF 55. Further, the burden of proof rests with the Parents, and no evidence has been offered to show that the District is not delivering SDI to the Student.

22. The Parents further argue that it is inappropriate for the Student’s SDI to be delivered by a paraprofessional. The Parents argue the Student’s SDI should be delivered by a BCBA or similarly trained individual, as opined by Dr. Cecchet. FOF 31. While the Parents may believe that a BCBA or similarly trained individual would be the ideal person to provide SDI for the Student, that is not the standard required of the District. *See Rowley*, U.S. at 206-07. Under WAC 392-172A-02090(1)(i), SDI must be delivered by staff that is appropriately qualified. Paraprofessionals may provide SDI as long as the SDI is designed and supervised by a certificated special education staff member. *Id.* Paraprofessionals in the District are required to have two years of college education and are trained in the area of services that they deliver. FOF 54. Further, the paraprofessional delivering the Student’s SDI is monitored by Ms. Thom, a certificated special education teacher. *Id.* The Parents have not proven that it is inappropriate for the Student to receive SDI from a paraprofessional.

23. The Parents also argue that the Student’s behavior is deteriorating and he is not making progress in ECEAP, thus proving the SDI is inappropriate. The appropriateness of an IEP is determined at the time the IEP is created, thus making information regarding the Student’s performance after the fact significantly less relevant. *See Adams*, 195 F.3d at 1149. However, while the Student had a few behavioral incidents, overall he was doing well in ECEAP. FOF 59-61. The Parents, Dr. Cecchet, and Mr. Root testified that the Student’s social and verbal skills were regressing. FOF 64, 65. I accord some weight to this testimony as they all spend a significant amount of the time with the Student. However, a student’s behavior is often different across settings. In fact, it was noted in the BASC-III assessment done as part of the Student’s reevaluation that the Student appeared to have more challenging behaviors in the home

environment. FOF 22. As such, I accord more weight to the testimony of the District witnesses who all opined the Student was performing well.

24. Additionally, it is difficult to accurately assess the Student's progress over such a short time period. IEPs are generally created to be implemented over a one-year period. See WAC 392-172A-03110(3)(a). The Student's IEP was implemented starting September 5, 2018, and the Parents filed their Complaint on November 2, 2018. Progress reporting was not due until the end of the semester, in January 2019. Even if a student's progress is considered in determining the appropriateness of an IEP, less than two months into an IEP is not an adequate amount of time to reliably establish the student's progress or lack thereof. As such, the Parents have not proven that the Student failed to progress or that any lack of progress was due to inappropriate SDI.

25. The Parents also argue it is inappropriate for the Student to receive SDI in the general education setting. The Parents argue SDI should be delivered in a 1:1 setting outside of the classroom away from any potential distractions. School districts must ensure that special education students are served in the "least restrictive environment." WAC 392-172A-02050. This means students should be served "(1) to the maximum extent appropriate in the general education environment with students who are nondisabled; and (2) Special classes, separate schooling or other removal of students eligible for special education from the general educational 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.*

26. The Student receives SDI in the general education setting. FOF 54. It is Dr. Cornett's opinion that SDI in the general education setting would not be effective because the Student's attention deficits would cause distractibility and make delivery of services challenging. FOF 32. However, the Parents have provided no evidence to show that the Student is in fact experiencing difficulty with distractibility in the general education classroom, or that it is interfering with his receipt of SDI. None of the District witnesses had any concern about the Student receiving SDI in the general education setting, and Dr. Cornett is not a certificated teacher nor does she have experience delivering SDI. FOF 26. As such, I conclude the Parents have not met their burden of showing the Student's SDI being delivered in the general education setting is inappropriate.

27. The Parents also argue the District violated the IDEA by placing the Student in ECEAP rather than kindergarten. While the Student may have succeeded as an early entrance kindergartener, that is not the issue to be decided. The issue is whether ECEAP was an appropriate placement for the Student. ECEAP, like kindergarten, is a general education setting. FOF 35. Further, ECEAP includes students similar in age to the Student. FOF 53. The Parents have not shown that kindergarten would be a less restrictive environment or that ECEAP is an inappropriate setting for the Student.

28. It is concluded that the Parents have not proven that the educational placement, including the District's decision not to place the Student in kindergarten, was a violation of the IDEA.

Whether the District violated the IDEA and denied the Student FAPE by failing to allow Parents meaningful participation in the IEP process during meetings held on February 13, 2018, March 15, 2018, May 29, 2018, and September 4, 2018

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

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

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

30. 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).

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

32. The Parents argue the District prevented them from meaningfully participating in the Student's educational plan in several ways¹⁸. First, the Parents allege the District denied them meaningful participation during the initial evaluation process by failing to ask the Parents for additional medical information and by not informing Parents of their right to request a reevaluation. Parents have cited no authority requiring a District to request additional medical information from Parents, or inform Parents of the right to request a reevaluation. The Parents were not prohibited from providing medical information during the initial evaluation. Further, whether the Parents were told they could request a reevaluation, they did in fact request one just over one month after the results of the first evaluation. FOF 12, 19.

33. The Parents also argue they were denied meaningful participation because the Student was not found eligible for special education during the initial evaluation. They reason that the Student's failure to be found eligible denied them the right to provide input on the Student's placement and services. The Parents do not contest that they participated in the evaluation and were present for the evaluation team meeting. Failure to find the Student eligible for services is not, in itself, proof that the Parents were denied meaningful participation. If that argument were accepted, any school district who finds a student ineligible for services would be violating the IDEA.

¹⁸ One of the Parents' arguments involves a Safety Plan created by the District on December 6, 2018. Because this document was created after the Complaint was filed, it is outside of the relevant time period and it will not be addressed in this decision.

34. The Parents further argue the District denied them meaningful participation during the May 2018 IEP meeting by making incorrect statements regarding the educational settings available for the Student. It is clear that the Parents were provided incorrect information regarding the ECEAP program. FOF 35. Regardless, Parents have not shown how these statements denied them meaningful participation. In regards to ECEAP, even if the Parents had been told about the program in May, the Student would still have begun enrollment in September 2018. Further, the Parents were present and allowed to provide input during the May meeting, and some aspects of Dr. Cornett's evaluation were incorporated into the Student's IEP. FOF 34. While the Parents are understandably frustrated with the District, I do not find that it denied the Parents meaningful participation.

35. The Parents also argue that the District denied them meaningful participation during the September IEP meeting. They allege Dr. Woolverton controlled the meeting, did not consider the Parents members of the IEP team, and engaged in verbal confrontations with the Parents legal counsel¹⁹. Similar to the previous discussion, the Parents were present for and participated in this meeting. FOF 49. Despite the contentious nature of the meeting, the parents have not proven that any of the alleged actions denied them meaningful participation.

36. Finally, the Parents argue the District denied them meaningful participation because it failed to provide them with information regarding the Student's programming and progress. However, from the start of the 2018-2019 school year to the date the Complaint was filed, the Parents have attended two parent-teacher conferences where the Student's goals were discussed. FOF 62. Also, the Parents were not scheduled to receive progress reports, per the IEP, until the end of the semester, which was after the date of the hearing. FOF 27.

37. Based on a review of the record and consideration of all available evidence, it is concluded the District did not deny the Parents meaningful participation in the Student's educational program.

Whether the District violated the IDEA and denied the Student FAPE by denying the Student early entrance to kindergarten on August 16, 2018, based on general education procedures without involving the Student's IEP team in the decision.

38. The Parents argue that the District's requirements for early entrance to kindergarten violate the IDEA. They argue that the Student's IEP team is responsible for determining the appropriate placement of the Student. However, because the District's early-entrance requirements did not allow the Student's early entry to kindergarten, it prevented the IEP team from considering kindergarten as a potential placement for the Student. Therefore, the Parents contend that the District's early-entrance requirements usurped the IEP team's placement authority, thus violating the IDEA.

39. Placement determinations for students eligible for special education, including preschool students, should be made by a group of individuals, including the parents, who are

¹⁹ The Parents also allege they were denied meaningful participation because the IEP team refused to discuss early entrance kindergarten as a potential placement for the Student. Because the kindergarten issue has been raised separately, this allegation will be addressed in Conclusions of Law 38-44.

"knowledgeable about the student, evaluation data, and placement options." WAC 392-172A-02060. The placement decision should be based on the student's IEP and comply with the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070. *Id.* Districts must ensure that parents of eligible students are members of any group making decisions about the student's placement. WAC 392-172A-05001; 34 CFR § 300.327; 34 CFR § 300.501(c).

40. A district violates a parent's right to meaningfully participate in the IEP process if it predetermines a student's placement, such as when 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). Predetermination may also occur when a District makes a placement determination prior to an IEP meeting and is unwilling to consider other alternatives. *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007).

41. During the September IEP meeting, the Parents requested the Student be placed in early entrance kindergarten despite the Student not passing the entrance test. FOF 49. The Parents were told that kindergarten was not a placement option because early entry was a general education decision. *Id.* The District can override this general education decision; however, Dr. Woolverton appears to be the only member of the IEP team that was aware of this possibility. Ms. Thom, Ms. Galbraith, and Ms. McGinnis believed that early entrance to kindergarten was a general education decision that could not be overridden by the IEP team. FOF 51. Given that multiple District IEP team members as well as the Parents were unaware that the IEP team could override the early entrance kindergarten requirements, it is clear the IEP team did not consider early entrance kindergarten as a potential placement for the Student during the September IEP meeting.

42. The only discussion of early entrance kindergarten, and whether it would be an appropriate placement for the Student, is found in the PWN sent to the Parents on September 5, 2018. FOF 50. However, this PWN was written by Dr. Woolverton, the only IEP team member aware that early entrance kindergarten was a potential placement for the Student. It appears Dr. Woolverton made a unilateral determination regarding early entrance kindergarten. The District IEP team members had already decided that early entrance kindergarten would not be considered prior to the September IEP meeting, thus predetermining the Student's placement. This impeded the Parents' right to participate in the IEP process and denied the Student FAPE.

43. However, the IEP team did consider a continuum of placements, from a special education setting in the District's developmental preschool to a general education setting in ECEAP. FOF 33, 50. The District determined the Student should be placed solely in a general education setting, thus ECEAP was chosen. FOF 49. The Parents have presented no evidence to show that kindergarten is a less restrictive placement than ECEAP. Nor, as discussed previously, have they proven that ECEAP was an inappropriate placement. As such, the record shows the IEP team did consider a continuum of placements and placed the Student in his least restrictive environment.

44. Despite the District's failure to discuss kindergarten as a potential placement, the Student was placed in his least restrictive environment. Further, the Parents have not proven that the Student's placement or programming for the 2018-2019 school year were inappropriate. As such, no remedy is warranted for the District's violation.

Whether the District violated the IDEA and denied the Student FAPE by failing to provide special education and related services to the Student from January 5, 2018, until the end of the 2017-2018 school year.

45. The District did not provide services to the Student after the May 2018 IEP meeting. FOF 38. Whether this decision constituted a violation of the IDEA is irrelevant in light of the previous conclusion that the District denied the Student FAPE by completing an inappropriate initial evaluation. Had the District properly evaluated the Student in February 2018, services likely would have been provided for some portion of the 2017-2018 school year. As such, this issue and any corresponding remedy is fully resolved by the previous issue and will not be separately addressed.

Whether the Parents are entitled to their requested remedies.

46. The Parents request 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 (9th 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 (9th 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.

47. The Parents have proven that the District violated the IDEA by failing to conduct an appropriate evaluation in February 2018. Had the Student been properly evaluated in February, he likely would have received at least some amount of SDI during the 2017-2018 school year. As such, compensatory education is an appropriate remedy for the District's violation.

48. The Parents have not proven that the SDI determined for the Student in his IEP was inappropriate. Therefore, the Student's IEP will be the basis of determining the award of compensatory education.

49. The Student's initial evaluation was completed on February 13, 2018. FOF 16. Had the evaluation team found the Student eligible for services at that time, the IEP team would have had until March 15, 2018, to develop the Student's IEP and would have been required to start implementing the IEP "as soon as possible" following that date. See WAC 392-172A-03105(2). The last day of the 2017-2018 school year was June 15, 2018. FOF 38. The IEP provided the Student with thirty minutes of social/emotional SDI four times per week. FOF 30. No evidence was offered to prove the District would need additional time or preparation to begin delivering the Student's services. As such, compensatory education has been calculated starting March 19, 2018, the first school day following the IEP team's deadline to complete the IEP.

50. From May 19, 2018, through June 15, 2018, the District was in session for twelve weeks²⁰. At thirty minutes per day, four days per week, the Student received two hours of SDI per week. Accordingly, had the Student been receiving services during this time he would have received twenty-four hours of SDI.

51. The District shall provide the Student with twenty-four (24) hours of social/emotional compensatory education in the general education setting in the manner in which the Student's SDI is currently being implemented through his IEP. The compensatory education services should be delivered within six (6) months from the date of this decision.

52. The Parents also request as a remedy reimbursement for out of pocket expenses incurred for Dr. Cornett's neuropsychological evaluation, Dr. Cecchet's April 2018 letter, and the kindergarten early entrance examination fee. None of these expenses were relevant to the District's IDEA violation. Dr. Cornett's evaluation was not completed or provided to the District until after the Student's was found eligible for services. Dr. Cecchet's letter, while provided to the evaluation team, does not appear to have been a determining factor in the evaluation team's decision. Finally, the Parents were not required to assess the Student for early kindergarten entrance; they elected to do so. Further, even if the expenses were related to the IDEA violation at issue, the Parents have provided no evidence to prove any expenses they incurred. As such, the requested remedy is denied.

53. 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.

ORDER

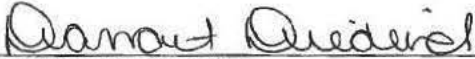
1. The Granite Falls School District has violated the Individuals with Disabilities Education Act and denied the Student a free appropriate public education by:

- a. Failing to properly evaluate the Student after he was referred to the District by his Parents on January 5, 2018; and
- b. Denying the Parents meaningful participation by predetermining the Student's placement at the September 2018 IEP meeting.

2. The Parents are awarded 24 hours of social/emotional compensatory education for the violation. The award of compensatory education will be provided in accordance with Conclusion of Law 51.

²⁰ The District's spring break on April 2 through April 6, 2018, has not been included in the calculation.

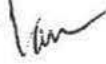
Signed at Seattle, Washington on March 29, 2019.


DANA DIEDERICH
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.

CERTIFICATE OF SERVICE

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

Parents



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