

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

██████████ SCHOOL DISTRICT

Docket No. 02-2020-OSPI-01008

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

Agency: Office of Superintendent of Public  
Instruction (OSPI)

Program: Special Education

Cause No. 2020-SE-0035

Administrative Law Judge (ALJ) Johnette Sullivan conducted a hearing by telephone in the above-entitled matter on April 14, 15, 16, and 17, 2020. The Parent<sup>1</sup> of the Student whose education is at issue<sup>2</sup> appeared and was represented by Kerri W. Feeny, attorney at law. The ██████████ School District (District) appeared through ██████████, Executive Director of Student Services. The District was represented by Gregory L. Stevens and Kevin F. O'Neill, attorneys at law. The record of hearing was transcribed by Connie Church, Certified Court Reporter of Capitol Pacific Reporting, Inc. The following is hereby entered:

**STATEMENT OF THE CASE**

*Procedural History*

The Parent filed a due process hearing request (complaint) on February 3, 2020. The District filed a timely response on February 13, 2020. The parties did not resolve all issues at a February 18, 2020, resolution meeting. The ALJ issued a Prehearing Order on March 5, 2020, amended March 18, 2020, which governed the course of the proceedings. The ALJ continued the due process hearing to April 14-17, 2020, to allow time for a multi-day hearing and for the parties to complete discovery. The hearing was to be conducted in-person at a District facility. The ALJ set April 7, 2020, as the deadline for parties to file and exchange lists of witnesses, exhibits and documentary evidence.

Summary Judgment. On March 20, 2020, the Parent requested permission to file a motion for summary judgment with an expedited briefing schedule. On March 24, 2020, the parties agreed to a prehearing conference on March 25, 2020, to discuss the Parent's request. The District objected to an expedited briefing schedule. The Parent did not want to continue the due process hearing. The ALJ granted the Parent permission to file the summary judgment motion by March 26, 2020, and continued the prehearing conference to April 1, 2020, to allow time for the District to read the motion and discuss response times. On April 1, 2020, the District asserted

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<sup>1</sup> In this order, the terms Parent, Grandmother, and ██████████ are used interchangeably.

<sup>2</sup> For administrative efficiency, names of parents and students are not used in the body of orders.



there was not enough time for it to address a summary judgment motion while completing discovery and preparing to meet the April 7, 2020, filing deadline for lists and documents. The ALJ did not grant Parent's request for an expedited briefing schedule and ruled the Parent could move for summary judgment at the close of her presentation at hearing. At the close of the Parent's case on April 16, 2020, the Parent moved for summary judgment on all issues. The District objected. The ALJ considered the Parent's motion with supporting declarations and attachments, and District's argument. The ALJ viewed the evidence most favorably toward the District, the non-moving party, and ruled that the Parent had not established there were no genuine issues of material fact. The ALJ denied Parent's motion for summary judgment on the record.

*Pandemic restrictions.* During the March 25 and April 1, 2020, conferences, the ALJ and parties discussed the "stay home" restrictions by proclamation of the Governor and the state's response to the COVID-19 pandemic. The parties discussed guidance issued by OSPI, and the Chief ALJ's ban on in-person hearings through May 31, 2020. The Parent moved to keep the hearing dates and convene the hearing by telephone conference, or alternatively by video conference. The District cited numerous concerns relating to the Parent's credibility during a video deposition the previous day (March 31, 2020). The District moved to continue the hearing until after authorities lifted pandemic restrictions. By order dated April 3, 2020, the ALJ denied the District's request to continue and converted to a telephone hearing for convenience of the Parent. The ALJ issued an Order for Telephone Hearing on April 9, 2020.

*Motions in limine.* Both parties filed motions *in limine* that they argued to the ALJ on the first day of hearing. The Parent sought to prohibit defenses not raised in response to her due process complaint, particularly a Prior Written Notice (PWN) the District issued on April 6, 2020. The ALJ denied Parent's motion and held the law did not bar the District from suggesting alternative remedies if the Parent proved the violations alleged in her complaint. The ALJ declined to rule on the PWN until such time that the District offered it as an exhibit. The District sought to prohibit Parent's use of declarations for non-District witnesses, asserting that it would be denied cross-examination if Parent did not call the witnesses to testify. Alternatively, if the witnesses did testify use of declarations undermined the hearing process because declarations were "akin to having Parent's attorney whisper into the witnesses' ears what they should say during their live testimony." The ALJ denied the District's motion to exclude direct testimony by declaration of some non-District witnesses. The ALJ ruled that in addition to cross-examination the District had the right to object to portions of any declaration as hearsay or for other legal objection. RP 48.

*Evidentiary ruling.* At hearing, the ALJ ruled on the admissibility of all exhibits offered but for two: Parent's P39 (deposition of School Psychologist [REDACTED]) and District's D24 (a Prior Written Notice issued on April 6, 2020). Post-hearing the ALJ ruled the two exhibits were not admissible for reasons stated in an Evidentiary Ruling issued April 21, 2020.

*Closing arguments.* At day's end on April 17, 2020, the Parent requested oral closing arguments be set the following week. The District requested written closing arguments due May 29, 2020. The ALJ denied the District's request to extend closing of the record by another six weeks. The parties ultimately agreed to present oral closing argument on April 27, 2020.

#### *Decision Due Date*



The parties agreed to extend the 45-day decision due date for good cause. WAC 392-172A-05100, 34 CFR § 300.515(c). See Prehearing Order dated March 6, 2020. The 45-day due date was continued to thirty (30) days after the record of the hearing closes. The ALJ heard parties' oral closing arguments on April 27, 2020. The record closed on that date. Therefore, the decision due date is 30 days thereafter on **May 27, 2020**.

### EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Parent Exhibits: P1 through P9, P10 pp. 1-4, P11 to P16, P17 pp. 1-4, P18, P20 to P22, P24, P25 pp. 1-2, 5-8, 13-23, P26 to P28, P29 pp. 18, 19, 21, 25-31, P30 to P38, P40 to P47, P48 pp. 1-6, and P49

District Exhibits: D2, D9, D12 p. 25, D15, D18, p. 1.

Court Exhibits: C1 (Parent's due process hearing request), C2 (District's response)

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

[REDACTED], District Elementary School Counselor

[REDACTED], Student's Public Defender

[REDACTED], District Principal, [REDACTED] Middle School

[REDACTED], District Assessment Specialist

[REDACTED]

[REDACTED]

[REDACTED], District Superintendent  
[REDACTED], District Executive Director of Student Services  
[REDACTED], District School Psychologist  
[REDACTED], District Program Assistant, Special Services Department

[REDACTED], District Assistant Principal, [REDACTED]  
[REDACTED], District Assistant Director of Special Services  
[REDACTED], District Health and Physical Education teacher, [REDACTED] High School

[REDACTED], District Physical Education teacher, [REDACTED] High School  
[REDACTED], District [REDACTED] School teacher and tutor

### ISSUES AND REMEDIES

The issue(s) for the due process hearing are:

a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) during the two- year period leading up to the filing of the complaint on February 3, 2020:



- i. Failure to offer Individualized Education Programs (IEPs) reasonably calculated to enable Student to make progress in light of his circumstances, specifically failing to ensure access to the classroom, by waiving reevaluation lacking current data upon which to base an IEP, and failing to develop an IEP upon enrollment;
- ii. Failure to deliver specialized instruction during 2017-2018 and 2019-2020, including based on current IEP from August 2019 to date Student placed on an Interim Alternative Educational Setting (IAES), and during the IAES;
- iii. Failure to implement a Behavior Intervention Plan (BIP) between August 2019 and the disciplinary exclusion, specifically the District considered the 2016 BIP to apply to the 2019-2020 school year but did not proactively implement the BIP through instruction or support;
- iv. Failure to collect, maintain and provide progress documentation during the 2017-2018 and 2019-2020 school years or provide IEP progress data at the required intervals;
- v. Failure to review all relevant information in the Student's file at the Manifestation Determination held November 5, 2019, including an IEP because the District had not developed an IEP, and falsely documenting the Student's behavioral outburst was not due to the District's failure to implement an IEP or BIP, and the IAES was inappropriate;
- vi. Reducing the Student's least restrictive environment (LRE) from a 90% general education placement to 0% placement in a general education setting, without considering both academic and nonacademic educational benefits, encompassing socialization opportunities that can occur only at school, failing to consider educational benefit available in the general education school environment with appropriate supplementary aids and services is far more beneficial than restriction to a home placement;
- vii. Predetermination – refusal to allow Student to return to school full-time after the 45-day disciplinary exclusion ended January 17, 2020;
- viii. Failure to follow state-wide disciplinary rules as applied to a special education student, including failing to use exclusionary discipline as a last resort, ignoring state disciplinary regulations and [REDACTED] without any consideration of how the District's failure to serve the Student's special needs (including failure to collaborate with his Parent and support team), effected Student's ability to respond appropriately when engaged in a stressful confrontation with a peer in a setting where no adult was present;

b. The above issues are set forth fully in Part IV of the complaint, paragraphs A through I, pages 14 to 19. See Prehearing Order dated March 6, 2020.

c. And, whether the Grandparent is entitled to her requested remedies:

- i. Declaratory relief the District denied the Student FAPE;
- ii. Immediate return to school on a full-time basis with access to general education classes and general education peers;
- iii. An Independent Educational Evaluation (IEE) at public expense in all areas of suspected disability, to include a Functional Behavior Assessment (FBA)



conducted by a credentialed behavior specialist and not limited to a record review or questionnaire, to include observation of the Student's interactions on campus with teachers and same age peers;

- iv. An updated IEP and Behavior Intervention/Support Plan that are informed by the IEEs. The IEP should be developed at a meeting attended by all required participants, with District to pay the professional(s) who conducted the IEE components to attend the IEP meeting to explain results and make recommendations. At a minimum, the updated IEP needs to include the support of a paraeducator trained to assist during unstructured activities such as physical education, competitive sports, lunch and passing periods;
- v. The District assume the cost of the Student receiving [REDACTED]
- vi. Compensatory services in an amount and in areas to be determined at the hearing;
- vii. Such other and further relief deemed appropriate by the ALJ at hearing.

d. The above remedies are set forth fully in Part V of the complaint, paragraphs 1 through 6, and 8, pages 19 and 20 (the Parent having withdrawn the remedy in paragraph 7 and any relief involving residential placement outside of the District). See Amended Prehearing Order dated March 18, 2020.

e. The ALJ lacks authority to hear and decide issues unrelated to alleged violations of the IDEA. The ALJ will not decide issues and/or grant relief for allegations regarding application of or appeal from application of statewide discipline rules, or discrimination claims under Washington state laws, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. See Prehearing Order dated March 6, 2020.

### 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 facts at issue.

#### *The Student*

1. The Student [REDACTED]

2. The Student's [REDACTED]

[REDACTED] Exhibits P42, p. 3, P44, p. 1.



3. The Student last attended the District in [REDACTED]. Exhibits P13, P42 at p. 3.

4. The Student transferred back into the District in [REDACTED] High School for the 2019-2020 school year.

5. The Student was [REDACTED] when the due process hearing request was filed. Exhibit C1.

6. The Student [REDACTED] RP 356.

7. The Grandmother [REDACTED] School. She was excited to enroll the Student in the [REDACTED] in anticipation of his return. RP 402, 403. About two weeks before school started, she submitted the District's Secondary Registration Form to enroll the Student in [REDACTED]. Exhibit P13. The Grandmother reported that the Student was transferring from [REDACTED]. *Id.*, at p. 1.

8. When a student transfers into the District, the District expects the staff at the school building where a transfer student enrolls to be responsible to send a request for educational records to the student's previous school. RP 681-682. The District cannot document that, upon receipt of the Grandmother's registration, someone at the [REDACTED] requested records from [REDACTED]. By mid-February 2020, the District could not locate records from [REDACTED]. The District made a records request and [REDACTED] responded with a 4-page facsimile on February 13, 2020. Nevertheless, I find the District requested and received the Student's [REDACTED] records before the start of the 2019-2020 school year. I base this finding on credible testimony of Assistant Principal [REDACTED] that identified the 4-page facsimile as the same [REDACTED] records she reviewed before she met the Grandmother and Student. I found her testimony credible in part because she reported specific details from the [REDACTED] records in fall 2019 and January 2020. Exhibit P25, p. 11; RP 694.

[REDACTED] / Wraparound Team

9. [REDACTED] Exhibit P42, p. 1. [REDACTED] She participated in meetings that involved the Student's educational needs. *Id.*, pp. 1-2.

10. [REDACTED] declaration and testimony about dates and sequence of events in the Student's [REDACTED]. Ms. Cate's factual details were consistent with other objective records. For example, her description of the 2016-2017 timeline when the Student left [REDACTED] are supported by documents from [REDACTED] *Id.*, at p. 2, and Exhibit P7. I find that [REDACTED] declaration and testimony about dates and sequence of events in the Student's life are credible.

11. On [REDACTED]



Exhibit P14. The Student's [REDACTED]  
Exhibits P42, p. 3, P44, p. 1.

12. A [REDACTED]

[REDACTED] RP 240, 243.

13. [REDACTED]

[REDACTED] they serve. Exhibit P45, p. 1. [REDACTED] is a clinical director with [REDACTED]. In April 2019, [REDACTED] began to coordinate with the Student's [REDACTED] and staff at [REDACTED] about transition back to [REDACTED]. Exhibit P44, p. 1. The Student's [REDACTED] team in [REDACTED] included [REDACTED] staff [REDACTED] supervises [REDACTED]. *Id.*, at p. 2. [REDACTED] became the Student's [REDACTED] case manager in August 2019. [REDACTED] hired [REDACTED] in early August 2019. RP 339. [REDACTED] had known and served the Student in 2016-2017, when [REDACTED] was an employee of [REDACTED] another agency that supports [REDACTED]. The District had contracted with [REDACTED] to provide 1:1 "line of sight" support to the Student in the last few months of the 2016-2017 school year. Exhibit P41, p. 2; RP 328.

14. Other members of the Student's [REDACTED] team include [REDACTED]

[REDACTED]. RP 195, 198

15. [REDACTED] is an educational advocate with [REDACTED] [REDACTED] to be able to access the special education and general education they require in the public school system. Exhibit P46, p. 1. [REDACTED] has been advocating in the [REDACTED] area for a year and a half. His caseload fluctuates, but he works with about 30 students in [REDACTED], a majority of whom attend the District's schools. *Id.*, at p. 2. He did not become involved with the Student until January 2020, when [REDACTED] asked for the services of an educational advocate. *Id.*, at p. 3.

#### *Registration as a Transfer Student*

16. A section on the Registration Form asked if the Student had attended District schools. The Grandmother checked "yes" and identified [REDACTED] beginning of 7<sup>th</sup>. Exhibit P13, p. 1.

17. The Registration Form had a section for Special Programs/Services and boxes to check "No" or "Yes" if the Student received special education services within the past year. The Grandmother did not check either box. She checked the box for "504 Care Plan" because the form did not have a box for "IEP" as one of the options. She wrote next to the box marked "other" that the Student "had an IEP here" in [REDACTED]. An IEP is an Individualized Education Program. *Id.*, p. 3. RP 408-410.

18. The Registration Form contained multiple sections to describe an individual's "Relationship to Student." The Grandmother identified herself as "Grandmother." *Id.*, p. 1. [REDACTED] She identified two emergency contacts: a grandfather, and [REDACTED]



[REDACTED]. To describe [REDACTED] relationship to the Student, she wrote [REDACTED]. *Id.*, p. 3.

19. As the Executive Director of Student Services for the District, [REDACTED] has many duties including the District's Section 504 coordinator [REDACTED] RP 489. There is no record that any District staff informed [REDACTED] about the Student's registration as a transfer student, or that his Grandmother had referenced a 504 plan at his last placement.

*Enrollment Meeting: August 27, 2019*

20. The Grandmother recalled going to the [REDACTED] before the start of the school year:

When I enrolled him in this school, I was excited. We had a little meeting in an office that was just impromptu. It included [REDACTED] included me. I believe [REDACTED] might have been at it. [REDACTED] was there. And they called [REDACTED] in. And [REDACTED] was checking [the Student] in and giving him classes. And he said at the time, "Your student is on an IEP." And I thought great. And he said, "We'll need to review it." I said, "Yes, we should." And I gave them a lot of documentation. And I told them that he needed help with [REDACTED]; he also needed a little extra time to finish things up; he has a hard time transitioning. And I wanted them to help him to be successful. I didn't hold anything back. You don't tell everybody someone's whole life. But I structured that in a way that I covered all the high spots. And my wraparound team was there and they offered their help. . . .

RP 402-403. The Grandmother's reference to a "wraparound team" being there is not accurate. Only [REDACTED] accompanied her and the Student that day.

21. [REDACTED] recalled going to the [REDACTED] before the start of the school year with the Grandmother and Student for enrollment. He signed a declaration under penalty of perjury that another [REDACTED], also attended that first meeting. P41, p. 3. At hearing, he corrected himself. He attended several meetings at the [REDACTED] but does not believe she attended the first enrollment meeting. RP 324. [REDACTED] communicated with the Grandmother about enrollment, but her first meeting at the [REDACTED] was on September 11, 2019. Exhibit P45, p. 2.

3 [REDACTED]

4 [REDACTED] P45

5 [REDACTED] is one of two IEP coordinators or case managers at the [REDACTED] High School. RP 504, RP 740; P25, p. 11.

6 [REDACTED] is an Assistant Principal at [REDACTED] High School. P19

7 [REDACTED] is a counselor at [REDACTED] High School. RP 710-711, P25, p. 11



22. [REDACTED] recollections primarily involved his communication with [REDACTED], an IEP case manager. He was "upfront and direct" with [REDACTED] did not have prior experience with the Student. [REDACTED] described to District staff the Student's [REDACTED] [REDACTED] explained the Student's [REDACTED] history and need for the 1:1 support. He explained the Student left [REDACTED] in fall 2017 to be placed in a [REDACTED] [REDACTED] RP 41, p. 3.

23. [REDACTED] recalled being called into a meeting on August 27, 2019, precisely because of the Student's history at [REDACTED] School District schools. Exhibit P25, p. 11. She is the vice principal or assistant principal for 9<sup>th</sup> grade to ensure student success. As an assistant or vice principal, she deals with discipline. RP 692, 734

24. [REDACTED] did not hear any discussion about whether or not the Student was a special education student or anything about implementing a prior IEP. RP 694. More probably than not, [REDACTED] IEP comments occurred before she came to the meeting. Nevertheless, [REDACTED] agreed that the Grandmother discussed the need for supports and accommodations for the Student.

... we talked about Student [REDACTED]

[REDACTED] And so we set up some protocols and further communication with teachers to allow that to happen.

*Id.* [REDACTED] admits they discussed the Student leaving the classroom:

... He was really given leave to be able to leave the classroom at any time he was feeling [REDACTED]. And he would come down and see me, come to the main office, wait until I was available, and see me. Teachers were also aware of that, knowing that he would be allowed to leave the room.

RP 695.

25. There is no evidence to show that [REDACTED] explained to the Grandparent that she did not intend to document the agreed supports and accommodations into a written plan. Had she done so, more likely than not the Grandparent would have asked that the District create a written plan.

26. There is no evidence that [REDACTED] or other District staff informed [REDACTED] about the need for a 504 plan or services [REDACTED]

27. The evidence does not establish that during the enrollment process, [REDACTED] fully understood the difference between [REDACTED] [REDACTED] After the enrollment meeting, the evidence does not establish that [REDACTED] fully understood the communicated directly with all seven of the Student's teachers on his first semester schedule. RP 695. On cross-examination, she described her communications with the



teachers as a "formal program of supports." The evidence does not support her description. [REDACTED] did not document the supports and accommodations in the Student's educational records or create a written plan. She admits that at the beginning of the school year, she did not share with the teachers anything about disciplinary history from Student's prior placements or that the District had previously qualified the Student as [REDACTED] with a prior IEP RP 735.

28. On January 6, 2020, [REDACTED] wrote a statement about the enrollment meeting. Referring to herself as VP, she reported:

...

During the meeting on Aug 27 2019, with guardian, student, IEP case manager and counselor, VP reviewed the student's [REDACTED]

[REDACTED]

The concerns of the school were made very clear during this meeting. . . .

Exhibit P25, p. 11.

29. I find that at enrollment, [REDACTED] had serious concerns about the Student's ability to succeed at the [REDACTED]. However, more probably than not she did not convey her concerns in the same tone and manner as she later recounted on January 6, 2020. I make this finding because I found the Grandmother's testimony regarding her enthusiasm at the enrollment meeting to be genuine. The Grandmother's tone did not reflect that her enthusiasm was deflated after meeting [REDACTED]. To the contrary, the Grandmother believed [REDACTED] was going to ensure the District met the Student's need for supports and accommodations.

*Starting [REDACTED]: 2019-2020 School Year*

30. The Student started [REDACTED]

31. The District has a system to flag if an incoming transfer student previously received special education in the District. The system alerted [REDACTED], a Program Assistant in the District's Special Education Department, about the Student's incoming transfer. On September 6, 2019, she sent a request for special education records from [REDACTED]. [REDACTED] followed District protocol to alert [REDACTED] Math teacher, the point-of-contact for [REDACTED] in such situations, and school psychologist [REDACTED]:

Hello [REDACTED] [The Student] was served while he was here in [REDACTED] I have requested his records and have placed him on [REDACTED] caseload for now.



The alert gave [REDACTED] access to the District's IEP online system and the Student's information. RP 683-684, Exhibit P15, p.1.

32. On September 9, 2019, [REDACTED] learned the [REDACTED] had no special education records for the Student. By email, she informed [REDACTED] that the Student was "not served in his last district" and that everything is "expired." *Id.*, at p. 2, Exhibit D2. By "expired", [REDACTED] meant to convey that [REDACTED] special education records were "out of date, out of compliance." RP 676.

33. On September 11, 2019, [REDACTED] met with the Grandmother, and [REDACTED]. [REDACTED] introduced herself and gave her business card to [REDACTED]. She explained the role of [REDACTED]. She described the support team available to collaborate with the District to address any concerning Student behaviors before they escalated or became recurring disciplinary infractions. Exhibit 45, pp. 2-3.

34. [REDACTED] team meetings to review all domains involved in the Student's case. RP 197. She decided to hold the September 26, 2019, meeting at the [REDACTED] to review school-based issues. The [REDACTED] team members present were [REDACTED] and the Grandmother, [REDACTED]. The Student's attorney, [REDACTED], participated by telephone. [REDACTED] recalled the District attendees were the IEP coordinator [REDACTED], and a female general education teacher. RP 198.

35. It is not clear the reasons for the District's failure to invite [REDACTED] to the September 11 or September 26, 2019, meetings with the Student's [REDACTED] duties include serving as the District's [REDACTED]. RP 490; Exhibit P38, pp. 8-9. Superintendent Meek delegated decision-making authority to [REDACTED] attending the District. RP 456. Superintendent [REDACTED] to be familiar with state and federal regulations pertaining to the education of students [REDACTED]. RP 458. [REDACTED] was unaware of the Student's [REDACTED] until somewhere in January 2020. Exhibit P38, p.14. He was not notified by any District staff in fall 2019 that the Student was [REDACTED]. *Id.* [REDACTED] had no knowledge of the Student prior to the October 29, 2019, expulsion.

36. [REDACTED] learned the Student was having some difficulties at school. *Id.* The Student had some frustrations regarding problems with his school-assigned Chromebook. The Student was easily distracted in class and he disrupted the learning of other students. The general education teacher reported the career exploration class was not a good fit for the Student. The other students were two and three years older than the Student, and the Student and class teacher did not get along. [REDACTED] understood the team agreed it was not a good fit but it was the only class available when the Student registered for classes. The general education teacher expressed the Student was [REDACTED]. [REDACTED] recalled the teacher stressed that the Student [REDACTED]. Exhibit P45, pp. 3-4.



37. [REDACTED] initiated the two contacts with [REDACTED] on September 11 and September 26, 2019. Ms. [REDACTED] did not make any requests for support from [REDACTED] prior to the Student's [REDACTED]

38. About the third week or so in September 2019, [REDACTED] was called by the District to accompany the Student and maintain line of sight supervision throughout the day for two days. Exhibit P41, p. 3. [REDACTED] had the Student leave a classroom because the Student was verbally disrespectful to a female teacher.

. . . I went occasionally a few times a week, to check in on him. I would go and watch him at lunch to see how he was doing unsupervised with other kids. I was called a few times by Vice Principal [REDACTED]

RP 329.

39. Assistant Principal [REDACTED] recalled this same period, about the third week or so of September 2019, and a particular class the Student wanted to change due to a conflict between him and the teacher. She helped arrange a schedule change and let the Student choose whichever other class he preferred. RP 697.

40. [REDACTED] stopped by [REDACTED] office 15-20 times to "touch base" in September and October 2019. Exhibit P41, p. 4. [REDACTED] recalled that [REDACTED] repeatedly indicated the Student's behavior issues were minor. [REDACTED] impression was that [REDACTED] and other District administrators believed the Student's behaviors should be addressed as disciplinary infractions instead of considering them manifestations of his [REDACTED]. *Id.*

41. [REDACTED] personally contacted the Grandmother by phone or email to alert her to school incidents involving the Student on September 19, September 25, September 26, October 7, and October 17, 2019. Exhibit P25, p. 11.

42. [REDACTED] recalled the Student came to speak to her on a number of occasions during the first two months of school. RP 695. She thought they developed a good relationship. The Student would come in and was able to de-escalate. She believed the Student knew she was an advocate for him. She would immediately reach back to the teacher to help relay the Student's side of the story. Her goal was also to get the Student back functioning in the class. "And that happened over and over again." RP 696. The Student had disagreements with three different teachers on grading, classroom expectations, use of technology, and the like. She also learned of concerns of the Grandmother. [REDACTED] often let the Student remain in her office or remain out in the general front office area and not have to return to class immediately to allow a little more cooling down period. RP 696-697.

43. [REDACTED] received several [REDACTED]



[REDACTED]. RP 697-698. [REDACTED] responded to these referrals and conversations by allowing the Student to give her his perspective, and she would go back to the teacher. Her goal was

always to de-escalate it, come to a meeting of the minds, get a resolution, and allow the Student to continue back in the class feeling like he's been heard and that the teacher also has been supported in their policies that they do in the classroom.

RP 698. [REDACTED]es felt she "had a very light touch" with the Student regarding when he would have arguments with his teachers. RP 729-730.

44. [REDACTED] formed a different impression. He thought the Student was floundering. He believed the interactions between the Student and [REDACTED] were problematic, as he believed the Student did not [REDACTED]. Exhibit P41, p. 4.

45. Sometime on or before October 1, 2019, school psychologist [REDACTED] reviewed the special education records the District had for the Student, which dated back to 5th grade. RP 574. These documents were available to him:

[REDACTED]

46. The Student's IEP goals were for [REDACTED]. Exhibits P6, p. 16, P8, p. 7, P12, P. 8;

47. The 2016 District IEP provided the Student [REDACTED]. Exhibits P6, p. 16, P12, p. 12. The [REDACTED]. Exhibit P8, p. 11.

48. The extent to which [REDACTED] read the full [REDACTED] plan is unknown. RP 526-27. More probably than not, in completing his professional duties [REDACTED] at least would have read or scanned the goal statement on the first page:

Client is [REDACTED]



expresses that ?<sup>8</sup> [REDACTED]

49. The evidence does not establish how thoroughly or carefully [REDACTED] read the entire [REDACTED]

More probably than not, [REDACTED]

Exhibit P2, p. 5. The Student was smart with "[REDACTED]." *Id.*, p. 6.

50. [REDACTED] recalled at hearing he considered the rating scale results based on the Grandmother's responses to a "BASC<sup>9</sup>." The [REDACTED] *Id.*, p. 5; RP 600.

51. The preponderance of evidence supports a finding that on reading the [REDACTED] immediately recalled his one prior experience working with a student with an [REDACTED]. It is not a common diagnosis among students, in his opinion. RP 574. [REDACTED] found it very challenging to work with the prior student. [REDACTED]

[REDACTED] to introduce that student to the general education environment 100 percent. [REDACTED]

RP 582. Based on his experience, [REDACTED]

[REDACTED] RP 589.

#### *Waiver of Reevaluation*

<sup>8</sup> The question mark (?) key is one below the quote (") key and likely the typist intended to show a quote.

<sup>9</sup> The full title is [REDACTED]. See Exhibit P30, p. 11.



52. The District's initial eligibility evaluation is not part of the record. However, it is undisputed that the District completed an initial evaluation on or about May 2, 2016, that qualified the Student in the category of [REDACTED]. The next re-evaluation was due by May 2, 2019. Exhibit P12, p. 1.

53. As of October 1, 2019, [REDACTED] knew the District's May 2016 initial evaluation had expired. However, [REDACTED] held the opinion that the Student's [REDACTED] RP 544. More probably than not, the [REDACTED] was a significant factor in [REDACTED] decision that the District would "accept" that the Student remained IDEA-eligible without gathering new assessment data. RP 554, 555.

54. In making the above finding, I gave weight to the multiple documents the District issued after October 1, 2019, that are consistent with its determination that it was obvious the Student's diagnoses and eligibility category had not changed since 2015. For example:

- a. Disciplinary Manifestation Determination, November 5, 2019. Exhibit P18, .pp. 4-5
- b. Decision of Hearing Office, November 7, 2019. Exhibit P20, p .2.
- c. IEP, January 10, 2020. Exhibit P28, p. 4.
- d. Evaluation Summary, January 21, 2020. Exhibit D12, p. 7;
- e. IEP, January 24, 2020. Exhibit P33, p. 3.

55. [REDACTED] decided a reevaluation waiver was the appropriate next step. RP 554. He may have considered that a waiver would resolve the expiration issue and give him time to gather more information for subsequent evaluation. RP 555. Such consideration is consistent with the waiver form statement that a request to reevaluate may be made later. Exhibit 17, p. 3.

56. [REDACTED] is an assessment specialist who helps the school psychologists. She helps make parent contacts, to send out information, and does a lot of academic testing. The District had assigned her to work with one psychologist mostly and she was not assigned to the [REDACTED] for the 2019-2020 school year. However, she helped school psychologist [REDACTED] on a few things including for the Student. RP 158-159.

57. [REDACTED] did not make any decisions about action related to the Student. She followed the instructions of [REDACTED]. [REDACTED] did not read the Student's educational records from when he attended the District in [REDACTED]. She looked at the list of records contained for the Student in their IEP online system. RP 160. [REDACTED] understood [REDACTED] had read the Student's prior evaluations and IEPs. RP 162.

58. [REDACTED] believed the Student was a special education student in September 2019. "IEP online" showed he had been in special education in the past. His IEP and evaluation were expired, but the District had not exited the Student from special education. RP 173.

59. [REDACTED] instructions to prepare a Prior Written Notice (PWN) and to call the parent. [REDACTED] understood that [REDACTED] had decided that a waiver of reevaluation was the best way to go. He told her to send out a waiver and PWN and talk to the Parent. She followed his instructions. She followed the training provided by the District on how to use templates for the documents she sent to the Grandparent. RP 162, 164.



60. On October 1, 2019, ██████████ sent a PWN and Request for Reevaluation Waiver to the Grandmother. Exhibits P16, P17, p. 3. The PWN informed the Grandmother the District was proposing a waiver of reevaluation. Specifically, to "waive [the Student's] three year reevaluation." The PWN informed the Grandmother the District would initiate the action on October 4, 2018. The reason for the waiver was:

[The Student] has been evaluated several times since he started program. [The Student] continues to be eligible for services and the team believes his educational program is appropriate to meet his needs. Therefore, there is no need for a reevaluation at this time.

The PWN further informed the Grandmother the other options considered and rejected were "[c]onducting a three year reevaluation" for the reason "it is not believed that a reevaluation is needed." The next section informed the Grandmother of each "procedure, test, record, or report we used or plan to use as the basis for taking this action" as, "Review of records, conference with Case Manager and conference with Adult Student." By Case Manager, ██████████ meant ██████████ *id.* The reference to Adult Student was a mistake as ██████████ intended to mean the conference was with the Parent. RP 161.

61. The Request for Reevaluation Waiver informed the Grandparent that:

"Special education law requires a reevaluation be conducted as least once every three years, unless the parent/guardian and the school district agree that a reevaluation is unnecessary. Parental agreement must be in writing.

The ██████████ School District recommends that a reevaluation is unnecessary at this time and would like to waive your child's reevaluation.

Current Reevaluation Review Date: 05/02/2019

Waiver Agreement Date: 10/01/2019

New Reevaluation Review Date: 10/01/2019

Reason for waiving the reevaluation:

[The Student] has been evaluated several times since he started program. [The Student] continued to be eligible for services and the team believes his educational program is appropriate to meet his needs. Therefore there is no need for a reevaluation at this time."

Exhibit P17, p. 3.

62. ██████████ received training from District staff about what to do when calling parents. She understood she was to explain that a "school psychologist has asked me to help with this and that they have looked over it and made the decision that this would be the best way to go at this time." RP 165. ██████████ followed that training when she called the Grandparent and explained she was helping ██████████, who had looked things over and decided a waiver was the best way to go at that time. *Id.*



63. The Grandmother understood from the District, as of October 1, 2019, that the Student had an IEP. Exhibit P43, p. 2.

64. When the Parent received the PWN and the Request for Reevaluation Waiver, she sent a copy to the Student's attorney, [REDACTED]. RP 245. [REDACTED] was of the opinion they should trust the District as the special education expert. Exhibit P45, p. 6.

65. [REDACTED] received the Request for Reevaluation Waiver form back from the Grandmother. The Grandmother checked the box to "agree" to waive the reevaluation at this time. The Grandmother signed and dated the Waiver October 21, 2019. Exhibit P17, p. 3. [REDACTED] filed the signed Waiver and was not involved in this matter until just prior to the hearing. RP 175.

66. [REDACTED] admits that when a district and parent agree to waive a reevaluation, the school district is required to develop an IEP for the Student. The evidence does not show what specific next-steps [REDACTED] planned to take if the Student's Grandmother agreed to his proposal to waive reevaluation. Six days after he learned the Grandmother had agreed to the waiver, the District expelled the Student on October 29, 2019. [REDACTED] admits the District did not develop an IEP for the Student in fall 2019. RP 555.

67. The District's educational records for the Student include three pages that [REDACTED] saw for the first time a couple of days prior to the hearing: a Notice of Meeting for October 28, 2019; Contact Attempt Report; and, a PWN dated October 28, 2019. RP 167; Exhibit P17, pp. 1-2, 4.

68. The Notice is for an Eligibility meeting for the Student. It lists [REDACTED] as the contact person with her District telephone and email contact information. The Notice includes a long list of individuals invited to the meeting. Many are or were [REDACTED] school staff, not [REDACTED] staff. Two invitees were from [REDACTED] identified as "Assistant Sped Director" is an invitee. *Id.* [REDACTED] was on leave from the District since before the start of the school year. The District named [REDACTED] its acting director in July 2019. RP 452-453.

69. The PWN dated October 28, 2019, proposes to initiate a waiver of the Student's triennial reevaluation until October 21, 2020. The reason the District is proposing or refusing to take action is:

The IEP team, with parent approval, determined that [the Student] would receive meaningful educational benefit from the current education plan, and no new information was necessary in order to provide FAPE.

Exhibit P17, p. 4. The reason the team rejected conducting a formal re-evaluation is stated as:

[The Student] is transferring back to [REDACTED] with appropriate planning and services outlined in his current IEP. The IEP team has determined that new assessment data is unnecessary at this time.

*Id.* Other relevant factors stated were:





77. The teachers focused their efforts on [REDACTED] #1.

[REDACTED]

*Id.* Eventually, [REDACTED] *Id.*

78. The Student turned his focus on [REDACTED] . RP 802.

79. More adults rushed to the boys' locker room. An assistant athletic director alerted Mr. Hohman [REDACTED]

[REDACTED]

[REDACTED]

RP 827-828.

80. When [REDACTED] RP 801.

81. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

RP 803. In [REDACTED] RP 809.

82. [REDACTED] RP 813.

83. [REDACTED] Exhibit P19, p. 1. [REDACTED] conducted more interviews on October 30, 2019.

84. [REDACTED] *Id.*, at pp. 1-2, and RP 703.

85. [REDACTED]

86. [REDACTED], in his role as Executive Director of Student Services for the District, directed [REDACTED] Exhibit P19, p. 1.

87. [REDACTED] has received Right Response training, but she was not in the [REDACTED]. She did not know if any of the [REDACTED] RP 705-706.

88. The next day, on October 30, 2019, [REDACTED] Exhibit P25, pp. 1-2.



*Manifestation Determination*

89. The District sent the Grandmother notice of a November 5, 2019, Manifestation Determination meeting. Exhibit P18, p. 1. The list of invitees included an "IEP Manager." The form stated that Notice of Procedural Safeguards for Special Education Students and Their Families has been provided to parents. *Id.*

90. At the November 5, 2019, meeting the District gave attendees a form for signatures of "IEP Team Members in attendance." The form identified [REDACTED] as the IEP Manager. *Id.*

91. [REDACTED]  
[REDACTED]  
[REDACTED]. *Id.*, at p. 2.

92. [REDACTED] did not report injuries for a third teacher.

93. [REDACTED], the Student's lawyer, questioned a [REDACTED] Exhibit P42, p. 4. At the end of the meeting, [REDACTED] heard someone from the District announce the Student's IEP needed to be reviewed while he was out of school and participating in the digital program. Along with amending the existing IEP, [REDACTED] understood the District wanted to conduct a [REDACTED] However, the District did not present any "existing" documents for review at the meeting. *Id.*, pp. 4-5.

94. [REDACTED] recalled [REDACTED] confirmed the Student was not on a 504 Plan. Exhibit P45, p. 6. District staff referred to the Student's current IEP, but did not provide copies to the attendees. [REDACTED] was confused when District explained that because of the [REDACTED] and update the Student's IEP. Her confusion was because she knew the District had recently approached the Grandmother about waiving the need to reevaluate the Student. *Id.*

95. Superintendent [REDACTED] described [REDACTED] as a speaking agent for the District in the area of special education programming. RP 453-454. [REDACTED] reports directly to Superintendent [REDACTED] RP 455.

96. At a deposition on March 6, 2020, [REDACTED] said he believed the IEP was "verbally shared" at the November 5, 2019, meeting. He described the discussions of the Student's IEP as calling for [REDACTED] Exhibit P38, p. 13.

97. At hearing, [REDACTED] initially backtracked from his deposition. He explained he was at the [REDACTED] November 5, 2019, in another matter when he was invited to the manifestation determination meeting. He claimed at that time he was confused and "led to believe that the Student was on a 504." RP 501. Moments later, he testified that the manifestation determination meeting was held because the Student was either in an IEP process or IEP evaluation or reevaluation. RP 501-502. He testified he could not recall a conversation at the meeting about

whether the Student had an IEP that was being implemented at the time of the October 29, 2019, incident. RP 501. After [REDACTED] reviewed his deposition, he confirmed the statements given on March 6, 2020. "If that was my testimony then, that would have been what had taken place. It's just hard to recall, going back to November." RP 504.

98. After the manifestation determination meeting ended, [REDACTED] completed a Disciplinary Manifestation Determination form. Exhibit P18, pp 4-5. The form begins with an identification of present Student status, with three options: IEP, 504, or Referral. [REDACTED] checked the box for "IEP."

99. [REDACTED] checked "Yes" that the Student had an identified disability he described as "[REDACTED]." *Id.*, at p. 4.

100. The form had a section to list information considered and reviewed. [REDACTED] did not check the boxes labeled Evaluation and diagnostic results, Observations, or 504 Plan. He checked the box labeled "IEP and Placement" under which there were four sub-questions. *Id.*, at pp. 4-5. He checked "Yes" that a [REDACTED] had been completed, and referred to completion date as "05/02/2016." He checked "Yes" there was a [REDACTED] as part of the IEP, and described what was being addressed in the plan as:

[REDACTED]

Other relevant information noted by [REDACTED] was that the Student's Grandmother and Grandfather did not feel that digital instruction was in the Student's best interest and that a contested hearing was being held on 11/6/2019. *Id.*, at p. 5.

101. [REDACTED] checked "Yes" that the conduct in question had a direct and substantial relationship to the Student's disability. *Id.*, at p. 5.

102. [REDACTED] checked "No" that the conduct in question was not a direct result of the District's failure to implement the IEP. *Id.*, at p. 5.

103. The Disciplinary Manifestation Determination form ended with an Actions and Rationale section, in which [REDACTED] wrote:

The MDT determined that the behavior and subsequent altercation is (sic) manifest (sic) of his disability (with reservation; 2 members of the 8 person team voted not manifest, and 1 abstained). In discussing programming options, **the team determined that a re-evaluation for services in** [REDACTED]



[REDACTED]

(Emphasis added.)

*Id.*, at p. 5.

104. [REDACTED] completed a PWN dated November 5, 2019, to inform the Grandparent the District was proposing to initiate [REDACTED]

[REDACTED]

*Id.*, at p. 6.

105. The PWN informed the Grandmother the team had considered but rejected three options:

- [REDACTED]

The option of a [REDACTED]

[REDACTED] The form did explain what “minimal supports” were considered by the team, or why more-than-minimum supports were not an option. *Id.*, at p.6.

106. Further, the PWN informed the Grandmother that

**Services in [REDACTED], as well as general education programming will be provided. An IEP amendment will be created to reflect this alternative learning environment, until such time that [the Student] can return to [REDACTED] (Emphasis added.)**

*Id.*, at p. 6. Additionally, the PWN informed the Grandmother that the team determined that the “**current [REDACTED] may need to be updated. A re-evaluation for services will be initiated, and a new [REDACTED] will be created.**” (Emphasis added) *Id.*, at p. 7. [REDACTED] stated that the PWN action was to be initiated on November 5, 2019. *Id.*

107. At hearing, [REDACTED] recalled considering the Student's [REDACTED] and other facts at the manifestation meeting. He sometimes referred to "we" in his testimony. When asked who he included in "we" he said:

Well, the District IEP team members. I mean I'm not in a position – I'm just one voice in those IEP team meetings. I don't have conversation. I don't mandate to those IEP members what to do or . . . I just – that's not who I am and I'm not in a position to do that.

RP 505.

108. Based on the preponderance of evidence, I find that the manifestation team members considered themselves to be IEP team members. The team did not actually see or read IEP, FBA, or BIP documents. Further, I find that the manifestation determination team discussions about the Student's "current" IEP, FBA, and BIP were based on oral representations by [REDACTED]. I make no findings about whether other District staff made oral representations about the content of the Student's "current" IEP, FBA, and BIP. I find it is more likely than not that all references by [REDACTED] to "current" IEP, FBA and BIP, and to an IEP needing amendment, were to the documents in Student's special education file dated October 16, 2017. See Exhibit P12.

*Disciplinary Hearing*

109. The District convened [REDACTED]

A Disciplinary Manifestation Determination Hearing was held to determine the relationship between [the Student's] disability and his behavior. It was determined that [the Student's] behavior, as an [REDACTED] Student, was a manifestation of his disability. A new [REDACTED].

*Id.*

*Consent for Reevaluation / Initial Evaluation*

110. The parties presented a significant amount of evidence at hearing about whether the District obtained consent from the Grandmother for reevaluation, or a new initial evaluation. The District admits it did not obtain the Grandmother's written consent.



111. [REDACTED] and the Grandparent spoke by telephone sometime in mid-November 2019, but I reject [REDACTED] claim that the Grandmother provided oral consent for a reevaluation. I find she agreed to his request to meet with the Student. [REDACTED] met the Student multiple times over a series of weeks, but he did not conduct assessments until January 14, 2020 (academic) and January 17, 2020 ([REDACTED]). RP 391; Exhibit P30, pp. 11, 18. The Grandmother's impression that [REDACTED] was interviewing the Student and working with him is consistent with [REDACTED] action. She did not "necessarily" think of it as an evaluation but when asked, she guessed it could be. She thought [REDACTED] was getting to know the Student to find the best solutions for the Student to be successful in school. RP 389. Considering the reasons above, and the email exchanges between Grandmother and [REDACTED], I find that the Grandmother did not understand that [REDACTED] was asking her to consent to conduct the Student's triennial reevaluation. At best, she understood that [REDACTED] was reviewing the Student's IEP and doing some type of "personal review" or "personal evaluation." Exhibit P29, pp. 1, 2.

112. I find that at no point did the District ask the Grandmother to consent to an initial evaluation to establish eligibility anew.

113. I make the above three findings in context of the issues to be decided as set forth in the complaint, and listed in the Issue Statement above. The Grandmother was self-represented at all times at issue through the January 24, 2020, IEP meeting. Sometime after the January 24, 2020, IEP meeting, [REDACTED] suggested she seek legal assistance. Exhibit P45, p. 11.

114. A careful reading of the February 3, 2020, complaint shows the Parent made no allegations of District violations of IDEA on basis of lack of consent. Therefore, I make no further findings on the issue of consent to reevaluate or for an initial evaluation.

*District Activity Related to the Student's [REDACTED]*

115. The findings below regarding the District's activity related to [REDACTED]  
[REDACTED]

116. In early November 2019, Superintendent [REDACTED]  
[REDACTED]. RP 465.

117. On November 19, 2019, [REDACTED]  
[REDACTED] Exhibit P21.

118. [REDACTED] concerns at enrollment about whether the District's [REDACTED] was an appropriate setting for the Student [REDACTED]. For example, on December 12, 2019, she emailed [REDACTED]. She expressed her concern about the need to complete the "reassessment" for Student's "SPED IEP", especially with the Christmas break and the [REDACTED] concluding around the second week of January 2020. She ended the email as follows:

Secondly, I wanted to reiterate my argument that should [the Student] return to the

[REDACTED]

Exhibit P23.

119.

[REDACTED]

." Exhibit P25, p. 3.

120.

[REDACTED], the District's counsel. *Id.*, p. 4.

121.

[REDACTED] Exhibit P38, p. 19.

122.

[REDACTED]

[REDACTED]

*Id.*, at p. 16.

[REDACTED]

[REDACTED]



[REDACTED] *Id.*, at p. 20.

123. [REDACTED] Exhibit P47, p. 21.

124. [REDACTED] Exhibit P47, p. 15.

125. [REDACTED] and continued the matter one week. *Id.*, at p. 45

126. Following the hearing, [REDACTED] to write a "school clarification" to respond to the statements the Grandmother made to the Court. *Id.*, pp. 11-12. A portion of [REDACTED] statement is quoted in Finding No. 28 above. Additional responses by [REDACTED] that are relevant to the issues here are:

- a. VP received and reviewed weekly progress updates on the Student's digital classes from the beginning of enrollment in that program.
- b. Student continues to make progress in his courses.
- c. There is nothing in the IEP that would indicate that the Student is unable to make progress in those courses.
- d. Student has no cognitive learning deficiencies. His IEP is based upon [REDACTED]
- e. From grades [REDACTED]
- f. Most recently, a few months prior to his re-enrollment at the [REDACTED]
- g. At one point this fall, [REDACTED] indicated he was called to the Student's home to [REDACTED]

*Id.*, pp. 11-12. [REDACTED] referred to "the IEP on file" which she said indicated it was very difficult to de-escalate this Student. She informed [REDACTED] that the IEP indicated it was almost impossible to guarantee the Student [REDACTED]. The final paragraph of [REDACTED] statement is a list of [REDACTED] *Id.*, pp. 12.

127. On [REDACTED]  
[REDACTED]. *Id.*, p. 23.

128. The District placed the Student in a [REDACTED]  
[REDACTED] The District knew the Grandparent objected. RP 535-536.

129. [REDACTED] is the director of the District's [REDACTED] spoke to the Grandmother and Student by cell phone to get them started. Exhibit P48, p. 5. I find the Grandmother's testimony about access problems credible, some of which she described as follows:

We had just tons and tons of trouble trying to do this by ourselves with no help. Sometimes his computer was locked up – or the Chromebook. A lot of things we weren't told. We had to find them out the hard way, like you do the assignments; then you get a quiz and the quiz is locked. So you call them to get it unlocked. And [REDACTED] Boole's not there. And so you go a whole weekend with nothing to do because you [REDACTED] go beyond it either.

It was a horrible thing to try to do at home, very frustrating, not something I wanted to do for sure. So I kept asking for help.

RP 398. The Grandmother called [REDACTED] in the evenings when he had not responded to her. She thought he was ignoring her. She was not aware that by January 2, 2020, [REDACTED] blocked her number because of the evening calls. RP 399; Exhibit P48, p. 5.

130. [REDACTED] acknowledged communications from the Student or his Grandmother regarding being locked out of the online program, and being unable to submit assignments. RP 724. However, I find that [REDACTED] significantly understated the problems the Student had accessing the online program. I base that finding on the testimony of the Grandparent, supported by emails between her and [REDACTED] and other District staff, and findings above. RP 397-399; Exhibit P48.

131. [REDACTED] had no concern about the Student's ability to learn on the online program, based on his grades and her knowledge of the Student. She described the Student as having "high cognitive levels of ability", and being very articulate, and very articulate in using technology. RP 720-721. [REDACTED] received a weekly program report emailed to her by the program. She thought he did well. RP 721. She considered the first quarter grades. The Student's grade point average (GPA) was [REDACTED] at the end of the first quarter in October 2019. [REDACTED] said the GPA had fallen to [REDACTED] by end of first semester, which was near the end of January 2020. RP 721-22.

132. I find the Student's official transcript is a more reliable record of Student's GPA than [REDACTED] memory. Exhibit D15. It shows the first semester GPA as [REDACTED] The Student's transcript shows 1<sup>st</sup> semester letter grades as follows:

[REDACTED]



[REDACTED]

*Id.*

133. The transcript report date is March 3, 2020. It lists only two grades in the Student's second semester: [REDACTED]. The Student's GPA has continued to decline to [REDACTED] for first part of 2<sup>nd</sup> semester. His cumulative GPA as of March 3, 2020, is [REDACTED]. *Id.*

134. The Grandmother described his grades as "terrible", explaining:

... And he's a very smart boy. He learns easily. Just kind of absorbs things. His IQ is high. And since he's been trying to do schoolwork on his own, his grades are terrible. He has [REDACTED]. For him to sit and read a computer screen like that and do those assignments can't – he just can't keep his mind on it. He needs the stimuli of a classroom, live people, somebody talking to him, and his peers. I think he could have had a scholarship. But he won't get one now.

RP 405. The Grandparent described the digital online program as very poor for the Student:

... [REDACTED]

[REDACTED]

RP 400.

135. [REDACTED] believed the online program was appropriate given the Student's above average IQ, and was of the opinion the Student's initial placement proved very successful.

136. [REDACTED] acknowledge the IAES online program provided the Student with no access to peers. [REDACTED] was of the opinion that peer access could happen at church, at the movies, outside the school setting. [REDACTED] believed the online program "with the one-on-one tutoring and the behavioral piece" met the Student's needs for a free and appropriate public education. Exhibit P. 38, p. 23. The tutoring and behavioral supports were offered in late January 2020. [REDACTED] felt the school setting was meeting the Student's academic needs. *Id.*

137. No District witness or document shows any consideration given by District staff to the Student's diagnosed [REDACTED] in assessing the appropriateness of the online program.

*January 10, 2020, IEP Meeting*



138. On January 7, 2020, the District sent email invitations for an IEP meeting scheduled for January 10, 2020. The Student's attorney [REDACTED] and his Grandmother received invitations. Exhibit P42, p. 5. [REDACTED] received with the invitation a one-page meeting agenda typed on plain paper and no other documents. *Id.*; Exhibit P28, p. 1. The agenda named [REDACTED] as the facilitator.

139. The Grandmother was very concerned she did not see [REDACTED] name. She sent two emails to him on January 7, 2020, to ask him to "please" come because "we need you." Exhibit P29, pp. 10-11. The Grandmother was self-represented and did not have an attorney at that time.

140. On January 9, 2020, District counsel contacted the Student's counsel to continue the January 10, 2020, meeting to February 14, 2020. District's counsel gave two reasons: the District's evaluation needed as the foundation for the IEP and the FBA were not completed; and, the District heard the Student would be undergoing an evaluation [REDACTED] and felt it was entitled to the evaluation, and developing an IEP should wait for that outside evaluation. At that point, the Student was not receiving any 1:1 tutoring or IEP services. District counsel said the District would provide up to [REDACTED] [REDACTED] would agree to continue the IEP and re-entry meeting. Exhibit P42, pp. 5-6. [REDACTED] agreed to contact the [REDACTED] to see if she was willing to continue the meeting. *Id.*, at p. 6.

141. The Grandmother was emphatic the IEP meeting be held as scheduled because delay meant excluding the Student from the [REDACTED] classes for an additional 30 days. *Id.*, at p. 6. The IEP meeting went ahead as scheduled on January 10, 2020.

142. At least 12 individuals participated in the January 10, 2020, IEP meeting: the Grandmother; [REDACTED] [REDACTED] described as a Special Education Coach; [REDACTED] and District's counsel. Exhibit 45, p. 8.

143. [REDACTED] had requested to review the documents in advance of the meeting, but the District did not send her any documents. Exhibit P42, p. 6.

144. It was quickly evident to [REDACTED] why no one had not received documents in advance. The District presented a new IEP and disclosed that all prior District IEPs had expired prior to the start of the 2019-2020 school year. This was a surprise to [REDACTED]. The District offered no explanation for why the review of existing documents and reevaluation mentioned during the November 5, 2019, meeting were not completed. [REDACTED] someone on the District staff asked [REDACTED] if he could complete the evaluation by January 21, and he promised to do his best. The Grandparent wanted the Student back in school when the suspension ended January 17, 2020. The District claimed it could not consider allowing the Student to return to school before the IEP assessment was completed. Exhibit P42, p. 6.

145. [REDACTED] was unclear if the District had even started the evaluation. If it had started the evaluation, it did not present any assessment results at that meeting. Exhibit P46, p. 3.

146. Nevertheless, District staff circulated an IEP with a Cover Page, which those present in person signed. Exhibit P28, p. 4. The Cover Page is stamped "DRAFT" at the top. A large X has been drawn through DRAFT and above handwritten the word "Final." There are no other



changes to the form, but for the signatures of the attendees. The form identifies the Student's disability as [REDACTED] It describes the "most recent evaluation date" as October 1, 2019, and that the next re-evaluation must occur before October 1, 2020. The IEP start date is January 13, 2020. *Id.*

147. The District issued a PWN for the action to be initiated January 13, 2020. The PWN informed the Grandmother the District was proposing to **continue** an IEP. (Emphasis added.) Exhibit P28, p. 17. Pertinent to issues in this case are these statements in the PWN:

The IEP team proposed tutoring for 5 days a week, one hour per day. The IEP team proposed to provide [REDACTED]

[The Student] is undergoing an evaluation at this time. [REDACTED]

Options considered and rejected:

Reasons we rejected those options were:

The team agrees that [the Student] needs [REDACTED]

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action  
Student records review, parent/staff input, support services input, digital courses progress review, student transcripts, discipline history, attendance.

*Id.*

148. Regarding the Student's challenges, the IEP of January 10, 2020 states:

Grandparents and staff report the following areas of need for [the Student]: [REDACTED]

Exhibit P28, p. 6. Of pertinent issue in this case is the section regarding team considerations when behavior impedes learning, with the box checked as follows:

In the case of a student whose behavior impedes his or her learning, or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior.

The PWN response is as follows:

[The Student] exhibits behaviors that impede his learning and at times the learning of others. **[The Student] has strategies in place for staff to utilize in the school/classroom. [REDACTED], which are being updated through a reevaluation with the IEP team.** (Emphasis added.)

*Id.*

149. [REDACTED] could not identify any supports the District provided. RP 623-624. Based on a preponderance of evidence, I find that as of January 10, 2020, it was wholly inaccurate to state the District had strategies in place for staff to utilize in the school/classroom.

150. The January 10, 2020, IEP lists Student's present levels of performance. For [REDACTED]

[REDACTED]

*Id.*, at p. 7.

151. The January 10, 2020, IEP identified two Special Education and Related Services:

- a. [REDACTED]

*Id.*, at p. 14. The total [REDACTED] The providers were to deliver the special education minutes in a special education setting. The January 10, 2020, IEP specified the certificated special education teacher would provide services at a location off of the school campus. The IEP did not specify the location at which the certified [REDACTED]



152. An issue in dispute concerns when [REDACTED] read and comprehended the contents of a January 9, 2020, email from [REDACTED] in the special education department. Exhibit P27, p. 1. The subject line was "Returning Student." She wrote:

Hello [REDACTED] We have found out the [the Student] had been [REDACTED]

[REDACTED]<sup>10</sup>. I am taking him off your caseload.

By DNQ, [REDACTED] meant "does not qualify". [REDACTED] did not include the [REDACTED] records as an attachment to the email. *Id.*

153. At hearing, [REDACTED] said he received the "[REDACTED]" on January 9<sup>th</sup>. He "vaguely" recalled that at the January 10, 2019, IEP meeting that it had been "acknowledged at the meeting." RP 539. By acknowledge, he meant acknowledging that District staff at the [REDACTED] had a 504 Plan for the Student. RP 539-540. He said he discovered the information when someone he could not recall "vaguely" alluded to it at the meeting. He believed the speaker was someone talking on behalf of the District. More likely than not, I find that [REDACTED] had not located and read the actual [REDACTED] documents referenced in [REDACTED] email prior to the meeting. In context of the facts known to [REDACTED] and his actions up to that date, I find it unbelievable that a school psychologist would only have a vague recall of news of a 504 plan being in place because that would have meant a significant turn of events.

154. [REDACTED] admits he was not aware of any implementation by the District of a 504 plan in fall 2019. He had seen no data that supported implementation of a 504 plan in the District in fall 2019. RP 540.

155. Student advocates recalled District staff using the term "expired" in relation to the IEP, including [REDACTED] (Exhibit P46, p. 3), [REDACTED] (Exhibit P42, p. 6) but not the word "exit" or that the District staff acknowledged implementing a 504 Plan for the Student in fall 2019.

156. If indeed a District representative "alluded" to the [REDACTED] records, I find that the unknown representative did not intend to inform the other IEP team members. I make that finding because in the context of this case, in the midst of an IAES, a reevaluation, and an IEP meeting, discovery of a written 504 Plan would have been a significant turn of events that would have required a discussion about how that development impacted the plans for the Student.

#### *Assessments after the January 10, 2020, IEP Meeting*

157. On or about January 14, 2020, [REDACTED] met with the Student and administered the Woodcock Johnson Tests of Achievement – 4<sup>th</sup> edition (WJ-IV-ACH), to get a broad picture of the Student's overall academic ability as compared to same aged peers. Exhibit P30, p. 18.

158. On or about January 15, 2020, [REDACTED] sent questionnaires to the Grandparent, Student, and a couple of teachers. Exhibit P29, pp. 13-16. The teachers did not reply. [REDACTED]

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<sup>10</sup> [REDACTED] reference to [REDACTED] is a mystery. The Grandmother identified [REDACTED] as the Student's birthplace (Exhibit P13, p. 1). There is no evidence [REDACTED]



██████████ described the Grandparent's questionnaire as a "BASC-2" and that he had conducted a "BASC-3" as part of his evaluation of the Student. RP 600. The Grandparent and Student completed their respective questionnaires on January 17, 2020. Exhibit P30, pp. 14, 16.

159. On January 21, 2020, by email ██████████ submitted "the most current version" of the student's special education eligibility evaluation and an updated FBA, to the Grandparent, ██████████. Exhibit P29, p. 21.

*January 21, 2020 Meeting*

160. A careful reading of the February 3, 2020, complaint shows the Parent made no allegations of District violations of IDEA regarding evaluations and reevaluations under WAC 392-172A-03005 through -03040. Therefore, I make the findings below in context of the issues to be decided as set forth in the complaint, noted in the Issue Statement above.

161. The District issued a Notice that described it as both an "Eligibility" meeting and a "Reevaluation" meeting. Exhibit P30, p. 1.

162. The form for an Evaluation Summary allows the author to label it an Initial Evaluation or a Reevaluation. ██████████ checked the box for Reevaluation. The Summary stated the Student met eligibility criteria for ██████████. Exhibit P30, p. 5. ██████████ completed the Summary that same day, on January 21, 2020. RP 591.

163. Beyond recounting Student information and prior evaluations and assessments dating back to 2015, ██████████ presented very little new data:

- a. Current medications
- b. For ██████████  
██████████
- c. For academic: the WJ-IV-ACH results, with description of 2019-2020 classroom performance
- d. For ██████████
- e. Student's classroom grades

Exhibit P30, pp. 10-20. For cognitive data, ██████████ relied on the data from the IEE in September 2015, when the Student was administered the Wechsler Intelligence Scales for Children – 4<sup>th</sup> edition. *Id.*, at p. 19.

164. I find that on or before January 21, 2020, ██████████ had read and comprehended ██████████ January 9 email regarding the ██████████ records. I make this finding because of a small paragraph in the Areas of Evaluation section of his Evaluation Summary. Exhibit P30, p. 10. From those documents, ██████████ knew that ██████████ exercised the Student's educational rights in October 2018. None of the ██████████ records made mention of the Grandmother as a participant. Exhibit P27, pp. 2-7.

165. The "Background Information" section of the Evaluation Summary ended as follows:



It should be noted that during his time in [REDACTED] his IEP team found him ineligible for special education services, and he was dismissed from programming. [The Student] was placed on a 504 plan (to accommodate for [REDACTED] as noted in the exit evaluation) prior to coming back to the [REDACTED] School District, and it is reported that this document was made available to school staff at the time. However, this document was not made available to special education services staff, and a re-evaluation commenced at the behest of the school based team in [REDACTED]

*Id.*, p. 10. There is no evidence to suggest [REDACTED] brought this paragraph to the attention of the team. There is no evidence the team had any meaningful discussion of what was the meaning or significance of the term "exit evaluation" in context of a reevaluation.

166. The Student had given permission for his [REDACTED] In a letter dated December 23, 2019, the [REDACTED] Exhibit P24. The Grandmother gave the letter to [REDACTED] RP 386. There is no evidence that [REDACTED] considered the letter or contacted the therapist in preparing the Evaluation Summary.

167. The Grandparent's responses to the BASC-3 Parent Rating Scales online questionnaire were in the clinically significant range for: [REDACTED]. Her responses suggested the Student [REDACTED]. *Id.*, p. 14. The Student's self-report responses were within normal limits in all but three categories. His responses [REDACTED] *Id.*, at pp. 16-17.

168. The data from the WJ-IV-ACH provided little if any new information about the Student. It was a forgone conclusion that the Student did not require specially designed instruction in any academic areas. However, [REDACTED] made note that classroom performance varies when compared to the scores. The Student was missing 25 total assignments in his current digital performances placement and failing each of three classes due to missing assignments. The Student had been passing his classes, though missing work on occasion, before the digital learning placement. *Id.*, p. 18.

169. The complaint did not allege violations in relation to the FBA completed by [REDACTED]; however, I make findings about the FBA in context of the Issue Statement above.

170. [REDACTED] did not conduct a classroom observation of the Student. [REDACTED] reported [REDACTED] September 1, 2019 and October 30, 2019, but otherwise presented no data. He noted it was difficult to pinpoint a single antecedent condition that may serve as a trigger. "Broadly speaking, [the Student] [REDACTED]"

[REDACTED] *Id.*, p. 41. [REDACTED] recounted the Student's history of a [REDACTED] in the District 2013-2016, and his [REDACTED]; he did not provide information about prior interventions implemented. *Id.*, p. 42.

171. The FBA recommends a BIP for the Student. Regarding replacement behavior to be taught, the FBA recommends:

[REDACTED]

The FBA described setting event strategies as follows:

[The Student] [REDACTED]

[The Student] [REDACTED]

The FBA described antecedent strategies as follows:

[The Student] [REDACTED]

For teaching strategies, the FBA stated:

[The Student] [REDACTED]

Regarding antecedent strategies, the FBA recommends that

[The Student] [REDACTED]

Finally, consequence strategies were described as follows:

If [the Student] [REDACTED]



[REDACTED]

If [the Student] [REDACTED]

[REDACTED]

*Id.*, at pp. 43-44.

172. The team members were not in agreement about the Student's placement. The Grandmother and Student advocates were frustrated with the lack of a re-entry plan to school. [REDACTED] wrote the Evaluation Summary and FBA with multiple references about school-based events. Nevertheless, District team members recommended the Student continue in the online program. The Grandparent and all Student advocates were unable to prevail with multiple options for consideration that would allow the Student to return to the [REDACTED] campus. Another meeting was set for January 24, 2020.

*January 24, 2020 Meeting*

173. Unbeknownst to the Grandmother and the Student's advocates, on Thursday, January 23, 2020, the District filed a due process hearing request. It sent a copy in the regular postpaid mail to the Grandmother. The request referred to the October 29, 2019, emergency expulsion, the 45-day IAES, and that the District "believes that returning the student to his previous educational setting is substantially likely [REDACTED]". The District's proposed solution was for an ALJ to order placing the student in another interim alternative setting for another forty-five school days. Exhibit P32.

174. The Grandmother had not received the District's due process hearing request before the January 24, 2020, IEP Amendment meeting.

175. On Friday, January 24, 2020, [REDACTED] and other District staff participated in the IEP Amendment meeting. Exhibit P33, p. 3. Not one member of the District staff informed the Grandmother or Student advocates of the due process hearing request or that the District wanted to extend the IAES for another forty-five school days. Instead, they allowed the Grandmother and Student advocates to make numerous suggestions and options for re-entry plans that District staff roundly rejected, and particularly by [REDACTED]. Exhibits P42, p. 7, P44, p. 3, P45, p. 10.

176. It had been 11 weeks since the manifestation determination team met on November 5, 2019. The evidence does not establish that the IEP team members considered information about the [REDACTED], beyond what they considered in the manifestation determination meeting.

177. [REDACTED] and other District team members who testified at hearing denied that any school person told them what they were supposed to say or decide at the IEP meeting. RP 726,

178. The meeting ended with an IEP Amendment approved by the majority of the District team members and rejected by the Grandmother and Student advocates. The Grandmother and Student's advocates considered the IEP Amendment to be an unlawful extension of the IAES, and objected to the lack of a District plan that had any details for a re-entry plan. Exhibits P41, p. 7, P42, p. 7, P43, pp. 4-5, P44, pp. 3-4, P45, p. 10. [REDACTED] was shocked when [REDACTED] replied to the Grandmother's objection by stating she could file a due process hearing request. P44, p. 4.

179. The District issued a PWN dated January 24, 2020, to propose to continue an IEP on January 29, 2020. *Id.*, at pp. 19-20. Pertinent to the issues here are these statements:

The team rejected adding a period of instruction at [REDACTED]

[The Student] and grandma will work with the general education digital teacher to determine which courses to take to stay on track for graduation. The team discussed having music, possible piano or guitar, as another course option and will meet with [the Student] to determine his interest.

*Id.*, at p. 19.

180. The IEP Amendment continued to refer to the October 1, 2019, as the "most recent" evaluation date. Exhibit P33, p. 1. There were some mentions of the January 21, 2020, evaluation, however. A section for Present Levels of Educational Performance and Measurable Annual Goals (Amendment) includes a short summary of information about the Student's history consistent with prior histories, and states:

The IEP team should consider placement options in accordance both with [the Student's] least restrictive environment, to include consideration of his opportunities for successful [REDACTED]

*Id.*, at p. 6.

181. The January 10, 2020, IEP goals for [REDACTED] were re-stated in the IEP Amendment. *Id.*, at pp. 8-9.

182. The IEP Amendment doubled the service minutes, from [REDACTED]

as [REDACTED] The January 10 IEP described the latter [REDACTED] The IEP [REDACTED]



Amendment states the [REDACTED] would be monitored by a special education teacher. All services are located in a special education setting. *Id.*, at p. 16.

183. While service minutes doubled from [REDACTED], the IEP continued to provide [REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

The placement option offered this further explanation:

[The Student] [REDACTED]  
[REDACTED]

*Id.*

184. The evidence does not support a finding regarding the factors the IEP team considered, if any, to determine that a home-based online program met the Student's need for a highly structured environment in which he could work on [REDACTED].

185. On Tuesday, January 28, 2020, the District withdrew its January 23, 2020, hearing request without further explanation. Exhibit P34.

*Grandmother's Knowledge and Understanding of Student's Exit from Special Education*

186. The findings above address that the Grandmother was not part of the evaluation team in October 2018 that determined the Student's academic progress was not limited by his disability and that accommodation for his [REDACTED] would be best met by a 504 plan. She did not sign the 504 plan. The 2018 504 Plan was signed by the Student's [REDACTED] [REDACTED] Exhibit P27, pp. 2-6. Nevertheless, the Grandmother knew the term 504 plan. She knew the Student had had a 504 plan. He had one in the District in 2015, when he was in [REDACTED] school. Exhibit P3. She referred to a 504 plan on the Registration Form, but also to an IEP plan.

187. Regarding the Grandmother's knowledge, this exchange occurred during cross-examination by District counsel:

Q: Okay. And Parent, isn't it true that you had been told by representatives of the Student's last placement in [REDACTED] that he was on a 504?

A: I believe I was.

Q: Right. And wasn't it [REDACTED] –

A: That's how they got him into the school.

Q: And was it [REDACTED]? And that's spelled –

A: Yes.

Q: --for the court reporter –

A: Yes. They tried to – they tried to get him in with an IEP. But there was no one to do one so they just did a 504 there.

Q: Okay. And for the court reporter, that's [REDACTED]  
So, Parent, you had – you had told the school when you enrolled the Student in August 2019 that he was on a 504 plan; correct?

A: No. No. You're putting words in my mouth. I didn't tell them. They told me he had an IEP.

RP 410-411.

Except for counsel's question, there is no evidence of a representative in [REDACTED]. There is evidence of a [REDACTED], a District employee. RP 234. There is evidence of [REDACTED], listed under "Family" in [REDACTED] School District records as Student's [REDACTED]. Exhibit D18, p. 2. Further, there is no evidence of a 504 Plan from [REDACTED]. The educational records in evidence from [REDACTED] do not mention 504, 504 Plan, 504 Care Plan, or similar terms. Exhibit D18. The 504 plan is from [REDACTED]. District's counsel's question concerned the "Student's last placement" which was not [REDACTED]. The list of [REDACTED] team members does not include a name similar to a [REDACTED]. Exhibit P27, pp. 2-6.

The cross-examination regarding Exhibit P13 continued:

Q: . . . Parent, on this form. Above your handwritten notation in the same box, does the form ask, "Has the student received special classes/special education services within the last year?"

A: Yes.

Q: And you checked – underneath that question you checked "504 care plan"?

A: Well, I didn't even answer the question because he wasn't here that year prior. So I just included what he had had. See it says to say yes or no. I didn't answer it.

Q: No. My question, Parent, is underneath the question, "Has the student received special classes/special education services with the last year," did you check "504 Care Plan."

A: I did.

Q: Okay. Thank you.



A: And—but I wasn't telling them that he was on a 504. He just had that.

188. I have considered the above exchange with District counsel and the other options in the section discussed:

ESL/ELL  Gifted  Special Ed. Resource room  Speech  LAP Math  LAP Reading

The form did not include IEP as an option, and implied that students with an IEP only receive services in a special education resource room. The evidence establishes the Grandparent reasonably relied on the expertise of the District staff regarding procedures and rules, and at no point did the District present her with a 504 plan for the Student. Importantly [REDACTED] did not tell the Grandparent at time of enrollment that she was not going to document the supports and accommodations, and did not inform [REDACTED], the 504 coordinator. There is the added element here of requirements of [REDACTED], as evidenced by the Grandmother's statement about what she understood was needed to get him into a school. For the reasons stated, I find that the Grandmother knows the terms 504 plan and IEP, but that she does not have a meaningful understanding of the distinction between them. I find that she did not have meaningful knowledge in August 2019 about the Student's IDEA status when she completed the Registration form.

*Implementing the January 10, 2020 IEP and January 24, 2020 IEP Amendment*

189. The District opted to pay a [REDACTED] [REDACTED] RP 400-401. The [REDACTED] annual goal was stated as:

By [REDACTED]

Exhibit P33, p 8

190. The tutor is [REDACTED]. She holds a Master's in Science with a special education emphasis. She started tutoring the Student on January 14, 2020. RP 838. She and the Student generally met between 4:00 p.m. and 6:30 p.m. four or five days a week unless she had training or either had other appointments. They met in the District's main administration office. RP 839. [REDACTED] estimated she met the Student 25 to 30 times. RP 844,

191. [REDACTED] last tutored the Student on March 2, 2020. RP 839. That day the Student had brought his own computer, not the school Chromebook, and [REDACTED]. Then the Student [REDACTED] asked what he was doing and why, to which the Student said, "Well, just wait. Just wait." Then, he told [REDACTED]

[REDACTED] RP 840.

192. [REDACTED] had ended the previous tutoring session early, to the Student's objection. She ended early because the Student would not comply with her instructions or do his work. The Student said, "No" and said they needed to stay until the session was over because his Grandmother would get upset. RP 841. [REDACTED] explained she could not ask the District to pay her for another [REDACTED] while the Student was not doing any work. When the Grandmother texted to ask why the session ended early, [REDACTED] explained what happened. RP 841-842.

193. [REDACTED] believed the Student's decision [REDACTED] about her decision to end the previous session early. RP 840-841.

194. The District knew other people would be in the main building when the Student and [REDACTED] arrived for a tutoring session, but that [REDACTED]

RP 845-846.

RP 847.

195. [REDACTED] agreed to continue tutoring the Student, [REDACTED]. RP 843. The District emailed a request to change the location to the library. The Student and Grandmother "flatly turned it down" because it was not district property, all kinds of people are there and the pandemic was starting, and the library had distractions. The District wanted the Grandmother to provide the transportation. The Grandmother believed the Student benefited from the physical exercise, [REDACTED]. RP 425-426.

196. There is no evidence the District has offered other arrangements to provide the [REDACTED]

197. [REDACTED] supervised by a special education teacher was to provide the [REDACTED]

By [REDACTED]

Exhibit P. 33, p. 9.

198. The District has declined to provide the Parent with any records of the name and qualifications of the [REDACTED]

199. The January 24, 2020, PWN proposed to add an additional [REDACTED] Exhibit P19, p. 33; RP 625-626. It is not clear whether those [REDACTED]



[REDACTED]

The IEP Amendment does not list peer group minutes in the service matrix. Exhibit P19, p. 16. The District offered to provide the Student with a facilitated peer group, in response to concerns of the Grandmother and Student's advocates. RP 278, 762, 785. The District claimed it was waiting for the Student to provide a list of peers he would like to be able to include in the peer group. RP 763. The Student has not been in a facilitated peer group session. RP 785.

200. [REDACTED] agreed it would be important for the District to at least try to provide some supports to the Student before relegating him from a [REDACTED]. RP 624.

[REDACTED]

201. [REDACTED]

202. [REDACTED]

203. The District did not offer Exhibit D14 in evidence, identified [REDACTED]

204. On or shortly after October 29, 2019, [REDACTED] RP 805.

205. [REDACTED]  
[REDACTED] RP 830-831.

206. [REDACTED]  
[REDACTED]. *Id.*

207. At some point, [REDACTED]  
[REDACTED]. RP 828, 835.

208. [REDACTED]  
[REDACTED] RP 810.

209. There is no evidence of contact by the Student with the three teachers since [REDACTED]  
[REDACTED]

210. The District submitted a declaration from [REDACTED]  
[REDACTED]

[REDACTED]

Exhibit P40. [REDACTED]  
[REDACTED]

*Remedies*

211. The District agrees to the Parent's request for an Independent Educational Evaluation (IEE) at public expense in all areas of suspected disability, to include a [REDACTED] and not limited to a record review or questionnaire, to include observation of the Student's interactions on campus with teachers and same age peers.



212. The Parent requests that [REDACTED] conduct the IEE, and is willing to collaborate with the District to select a Board Certified Behavior Analyst (BCBA) for part of the evaluation. The District does not agree to [REDACTED] and argues that the IEE should be conducted by someone in the area on the District's approved list of independent evaluators.

213. The Parent requests an order that would prohibit the District from sharing evaluation information with any third party without written consent of the Parent or a court order.

214. The Parent requests an updated IEP and BIP/Support Plan that are informed by the IEEs. The Parent requests that development of the IEP should be at a meeting attended by all required participants, with the District to pay the professional(s) who conducted the IEE components to attend the IEP meeting to help to explain results and make recommendations about positive behavioral supports, even if the IEP team needs more than one meeting. If more than one meeting is required to update the IEP, the Parent requests that the District pay the independent professionals to attend all meetings.

215. The Parent asserts there are many [REDACTED] with access to general education peers, and an appropriate IEP informed and developed by the IEEs.

216. The Parent requests that the updated IEP state that in addition to her, a member of the Student's [REDACTED] team be present for interactions between the S and the assigned District administrator, and for any meeting regarding academic planning, academic disputes, or disciplinary action. The Parent wants the District to recognize and include the [REDACTED] team and not require the S to meet with District staff without a support person present.

217. The Parent requests that updated IEP provide that the Student's established [REDACTED] specified in the January 24, 2020, IEP (individualized [REDACTED]). The Parent asserts that a trusting relationship between Student and [REDACTED]

[REDACTED] Further, the Parent asserts the District's payment to the [REDACTED]

[REDACTED] summaries to the District-assigned IEP coordinator.

218. At a minimum, the Parent requests an updated IEP that includes the support of a paraeducator trained to assist during unstructured activities such as lunch and passing periods.

219. Specifically, in closing the Parent asks the District be directed to provide a dedicated support person, initially for the whole school day, with the option to fade or reduce the 1:1 support in the classroom based on progress review. The Parent requests that the District not eliminate the 1:1 support from the Student in unstructured settings or unstructured periods or during transitions, without data showing that the Student no longer needs the 1:1 support. The Parent requests the

dedicated paraeducator [REDACTED]

[REDACTED] The Parent requests the District make the paraeducator available to allow the Student to participate in extracurricular activities available to general education students, such as special interest clubs, field trips, and school events.

220. The Parent seeks compensatory education and services for the purpose of addressing missed educational opportunities during the Student's first [REDACTED] The Parent's calculation considers that the expulsion occurred prior to end of first quarter, and the Student lacked appropriate [REDACTED] from the start of school. The Parent based the compensatory education and services requests on the [REDACTED] the District identified as necessary for FAPE in the January 24, 2020, IEP: [REDACTED]

[REDACTED]

[REDACTED]

In addition, the Parent requests [REDACTED] described below.

221. The Parent requests that the District contract with the Student's established [REDACTED]

[REDACTED] of the Student's choosing.

222. The Parent requests that the [REDACTED] be provided by a certificated teacher at District expense.

223. The Parent asks that the Student be able to access these [REDACTED] at any time prior to June 2023.

224. The Parent requests compensatory education and services in the area of [REDACTED]

[REDACTED]

[REDACTED] RP 405. The Parent requests [REDACTED]

[REDACTED]

225. The Parent requests relief in the form of training for District administrators, special education staff, and clerical or administrative staff tasked with the [REDACTED]



student's educational records from a prior district. Specifically, the Parent believes the evidence is that from the superintendent to the clerical support staff, there is lack of understanding of the District's responsibility to expedite obtaining special education records of students [REDACTED]

226. District [REDACTED]

227. The Parent asserts that the above remedies are necessary and appropriate in response to the District's violations of IDEA and denial of FAPE during the Student's [REDACTED]. The Parent asserts that with appropriate [REDACTED], the Student can participate with peers in general education and be successful. The Parent is concerned that without appropriate supports the Student will not be successful academically, will be at increased risk for dropping out of school [REDACTED]. The Parent asserts there are [REDACTED]

The Parent also disputes the District self-description of the [REDACTED]

[REDACTED] does not excuse the District from meeting the Student's needs and providing FAPE.

#### *District Defense*

228. The District's Response to Complaint denied that it violated the IDEA and state regulations implementing the IDEA and denied that it failed to offer the Student FAPE during all times relevant to the complaint. It claimed that from the Student's transfer into the District in August 2019, the District provided the Student with appropriate accommodations and supports under a Section 504

Plan. It contended the District later referred the Student for a special education evaluation, which the District completed in January 2020, and subsequently developed and implemented an appropriate IEP for the Student in a timely manner.

229. The District argues that weight should be given to the opinion of [REDACTED]

[REDACTED]

*Id.*

230. [REDACTED] is a high school graduate. He attended one quarter at a community college. He admitted he is not qualified to say what educational program the Student should have in place. RP 337.

231. At hearing, the District argues that the appropriate placement for the Student is a [REDACTED]

[REDACTED]

RP 853-854.

232. The District is willing to [REDACTED]

[REDACTED]

*Id.*

233. The Parent rejected the District's offer [REDACTED]

[REDACTED]

### 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 Parents. *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, 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 (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).

#### *Discrimination*

6. OAH lacks authority to hear and decide issues unrelated to alleged violations of the IDEA. I make no conclusions of law, decide no issues, and grant no relief regarding complaint allegations regarding application of or appeal from application of statewide discipline rules, or discrimination claims under Washington state laws, Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. See Prehearing Order dated March 6, 2020.

#### *Statute of limitations*

7. OAH has jurisdiction over the two-year period prior to filing of the complaint on February 3, 2020. The Parent did not plead an exception to the statute of limitation and conceded at the prehearing conference that the look-back period was limited to two years. See Prehearing Order dated March 6, 2020. The Student did not attend District schools at any time during that two-year period prior to August 28, 2019. The period over which OAH has jurisdiction started with enrollment in August 2019.

#### *Exit from Special Education October 2018*

8. In October 2018, the Student's [REDACTED] school staff agreed the Student no longer had a qualifying disability under the IDEA. They decided to exit the Student from special education.

9. As a matter of law, therefore, the Student was not considered a student eligible for special education after October 2018, and until such time that a district determined him to be eligible again. WAC 392-172A-02000; WAC 392-172A-03005.

10. Because no district had determined the Student was eligible for special education at time of his enrollment in the District in August 2019, he was not eligible for special education at that time.

11. The Parent's complaint does not allege child find violations. WAC 392-172A-02040. I make no conclusions of law regarding a violation of child find because that is outside of the scope of the complaint and the issues over which OAH has jurisdiction in this case.

#### *Failure to offer Individualized Education Programs (IEPs) reasonably calculated to enable Student to make progress in light of his circumstances, specifically failing to ensure access to the classroom, by waiving reevaluation lacking current data upon which to base an IEP, and failing to develop an IEP upon enrollment*

12. I have considered the issues presented in the complaint and the facts of this case, and concluded the Parent failed to prove the claims concerning District's failure to offer or develop an IEP for the Student upon enrollment in August 2019. I conclude the Parent has not proven any



violation of the IDEA with respect to this issue because, as discussed above, the Student was not eligible for special education at the time of enrollment and the Parent raised no Child Find issues.

*Failure to deliver specialized instruction during 2017-2018 and 2019-2020, including based on current IEP from August 2019 to date Student placed on an Interim Alternative Educational Setting (IAES), and during the IAES.*

13. For the reasons stated above, the periods prior to February 2018 are outside the scope of OAH jurisdiction because of the statute of limitations. I conclude the Parent has not proven a violation of IDEA with respect to this issue for periods prior to February 2018.

14. The Student did not attend District schools between February 2018 and enrollment in August 2019. I conclude the Parent has not proven a violation of IDEA with respect to this issue for that period.

15. A consequence of the October 2018 exit from special education by [REDACTED] is that the Student did not have a "current IEP" from August 2019 to the date he was placed on an IAES. The conclusions below address the District's obligation to develop an IEP after its October 1, 2019, eligibility determination. The District's November 5, 2019, change of placement to an IAES happened 5 school days after it received the Grandparent's waiver agreement dated October 22, 2019. Under these facts, I conclude the Parent has not proven a violation of the IDEA with respect to this issue from August 2019 until the date it changed Student's placement to an IAES.

*Failure to implement a Behavior Intervention Plan (BIP) between August 2019 and the disciplinary exclusion, specifically the District considered the 2016 BIP to apply to the 2019-2020 school year but did not proactively implement the BIP through instruction or support.*

16. For the reasons stated above, the Student did not have a BIP in effect between August 2019 and the disciplinary exclusion. The conclusions below address the District's references to its 2016 BIP in relation to other issues. However, under the issues set forth in the complaint and these facts, the Parent has not proven a violation of IDEA with respect to this issue for that period.

*Failure to collect, maintain and provide progress documentation during the 2017-2018 and 2019-2020 school years or provide IEP progress data at the required intervals*

17. A district's obligation under the IDEA is to measure annual progress toward IEP goals in the areas of reading, math, written language, and social emotional behavioral. WAC 392-172A-03090(1)(c)(ii); 34 CFR § 300.320(a)(3). The regulation does not use the term "report card" although the 1997 IDEA reauthorization included congressional committee reports where the term "IEP report card" was used S. Rep. No. 105-17, 105th Cong., 1st Sess. 22 (1997); H.R. Rep. No. 105-95, 105th Cong., 1st Sess. 102 (1997). The regulations do not specify the exact content of the reports, or the remedy for failure to issue periodic reports of progress toward IEP goals.

18. A district's failure to provide progress reporting data can be a procedural violation that results in a denial of FAPE. *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 855-856 (9<sup>th</sup> Cir. 2014).



19. For the reasons stated above, the periods prior to February 2018 are outside the scope of OAH jurisdiction. I conclude the Parent has not proven a violation of IDEA with respect to this issue for periods prior to February 2018.

20. The Student did not attend District schools between February 2018 and enrollment in August 2019. I conclude the Parent has not proven a violation of IDEA with respect to this issue for that period.

21. For the reasons stated above, the District was not obligated under the IDEA to collect and maintain progress documentation at time of enrollment in August 2019. The District's obligation under the Student's current IEP was quarterly, but as of the date the Parent filed the complaint on February 3, 2020, a quarterly report was not yet due. In respect to the January 24, 2020, IEP, I conclude the Parent has not proven a violation of IDEA with respect to this issue.

22. I address this issue further in conclusions below related to the District's development of an IEP within 30 days after it and the Parent agreed to the Student's eligibility determination.

*Failure to review all relevant information in the Student's file at the Manifestation Determination held November 5, 2019, including an IEP because the District had not developed an IEP, falsely documenting the Student's behavioral outburst was not due to the District's failure to implement an IEP or BIP, and the IAES was inappropriate.*

23. The IDEA sets forth specific procedural requirements for the discipline of a student eligible for special education. When a school district seeks to expel a student or suspend him from school for more than ten days for violation of a code of student conduct, a review of all relevant information in the student's file must be conducted within ten days of the decision to determine whether the misconduct is a manifestation of the student's disability. WAC 392-172A-05146(1). This manifestation review is to be made by "the school district, the parent, and relevant members of the student's IEP team." *Id.* I conclude (a) the District knew of the September 2015 diagnosed [REDACTED], on which it continued to rely during manifestation determination on November 5, 2019, and in IEP development in January 2020; and (b) the District had determined on October 1, 2019, the Student was eligible for special education under the qualifying category of [REDACTED], with which determination the Grandmother agreed. 34 CFR 300.534; WAC 392-172A-05140 through WAC 392-172A-05175.

24. Failure to review all relevant information in the Student's file. The preponderance of evidence is overwhelming that the manifestation team did not review all relevant information in the Student's file. The District did not present documents from the Student's file for the team to review. The team received from [REDACTED] and District staff a cursory, oral review of some but not all of the Student's [REDACTED]. Discussion about the Student's [REDACTED]

[REDACTED]. The District's failure in this regard is obvious given that the team members did not understand District records about an "expired" evaluation and IEP, or that the District and Parent had recently agreed that they did not need additional current assessments in order to accept a determination to re-establish eligibility for special education. I conclude the Parent has proven a procedural violation of the IDEA in this respect, which resulted in a violation of her right to participate in the manifestation meeting and meaningfully discuss placement options.



25. Failure to have developed an IEP for review by the manifestation determination team. The District knew that it recently, through [REDACTED], had re-determined the Student's eligibility for special education, and that the Grandmother's agreement meant the District had 30 days in which to develop an IEP. The District knew that it did not have a current IEP because it had not yet developed one following the recent re-determination of eligibility. The Parent has not proven the District was obligated to have developed an IEP for the Student by November 5, 2019, because the decision to waive an evaluation and use the District's prior evaluation was recent and less than 30 days had passed. WAC 392-172A-03105. For these reasons and others stated above, I conclude the Parent has not proven a violation of the IDEA with respect to this issue.

26. Falsely documenting that the Student's [REDACTED] was not due to the District's failure to implement an IEP or BIP. The District's manifestation determination considered oral reports of the May 2016 FBA and BIP, documents that it knew or should have known were expired. Exhibit P18, p. 5. For the reasons stated above, I cannot conclude that the District failed to implement an IEP or BIP prior to the conduct at issue on October 29, 2019, because there was no current IEP or BIP to implement. I must conclude the Parent has not proven the District failed to implement an IEP or BIP that were in effect between August 2019 and the October 29, 2019, incident.

27. The IAES was inappropriate. The District had an obligation to provide the Student with protections under the IDEA during the disciplinary action. I noted in the conclusions above the District knew of and continued to relied upon the September 2015 diagnoses, including when it determined on October 1, 2019, the Student was eligible for special education under the qualifying category of [REDACTED], with which determination the Grandmother agreed. 34 CFR 300.534; WAC 392-172A-05140 through WAC 392-172A-05175.

28. The manifestation determination team decided the Student's conduct on October 29, 2019, was a manifestation of his [REDACTED]. WAC 392-172A-05147. The team's decision to recommend an FBA be conducted met the requirements of WAC 392-172A-05147(1), and I find no violation in that respect.

29. Except in special circumstances described in WAC 392-172A-05149, the District was required by WAC [REDACTED]

[REDACTED]

[REDACTED]

Exhibits P18, p. 5, P20, p. 2. [REDACTED]

[REDACTED]

[REDACTED]

18 USC 1365(3)(h); WAC 392-172A-05149(1)(c).

30. The District did not document the specific injuries that the team discussed. The manifestation determination refers only to the fact [REDACTED] Exhibit P18, pp. 4-5. My findings are that more probably than not, [REDACTED]

[REDACTED] Exhibit P19, p. 1.

31. The manifestation determination team must find the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

32. Manifestation determination teams [REDACTED]

[REDACTED]



33. After the [REDACTED]

34. [REDACTED]

35. I conclude that the District's decision on November 5, 2019, to justify an IAES change of placement violated the IDEA. The District applied the wrong legal standard to determine that the Student's [REDACTED]

36. I further conclude that the District's violation of the IDEA in respect to the IAES resulted in a denial of FAPE to the Student. I considered that, more likely than not, the focus on implementing the IAES distracted [REDACTED] and other District staff from timely developing an IEP following the October 2019 re-determination of Student eligibility for special education under the category of [REDACTED]. I considered that the IAES improperly resulted in 100% isolation of the Student from his general education peers. I considered the days lost in expediting an FBA due to the focus on implementing the digital online program, and the need to solve the many glitches and access problems the Student experienced with the online program. In addition, I considered the Student's drop in grades and the increase in missing assignments during the IAES.

*Failure to deliver specialized instruction based on a current IEP after the October 2019 re-determination that the Student was eligible for special education, during the Interim Alternative Educational Setting (IAES)*

37. This issue included periods that I addressed in conclusions above. I conclude that the District's 30-day timeline to develop an IEP began on October 22, 2019. That is the date the Parent agreed with the District's October 1, 2019, determination that the Student was eligible for special education under the qualifying category of [REDACTED]. She agreed with the District's determination to make the eligibility determination based on a records review without conducting current assessments.

38. The District's PWN and Request for Waiver met the requirements of WAC 392-172A-05010 and WAC 392-172A-03005, but for the mistaken references to reevaluation rather than initial evaluation. Exhibits P16, P17, p. 3. I conclude it would be improper under the facts of this case to allow the District to claim technical noncompliance as a defense. It would be improper to allow the District to defend based on any failures to follow evaluation procedures in WAC 392-172A-03020. I give little weight to the evidence of the District's repeated references to



reevaluation or its failure to understand and inform the Parent that the Student needed a new initial evaluation following the [REDACTED] exit. I give greater weight to the undisputed evidence that the District and the Parent accepted the prior evaluations as a basis for determining that the Student was eligible for specialized instruction and services under the qualifying category of [REDACTED].

39. Under the unique facts of this case, I conclude the District's failure to convene a group of qualified professionals to meet with the Parent to make an eligibility determination in accord with WAC 392-172A-03040 is not a defense. I conclude the District may not rely in this case on its failure to convene an evaluation team for its failure to meet timelines to develop an IEP following the Parent's acceptance of its proposal to rely on records review, past evaluations, and waive additional assessments.

40. I conclude it would be improper to allow the District to defend that its timeline to develop and implement an IEP did not start on October 22, 2019, when it received the Grandmother's acceptance of the evaluation waiver. [REDACTED] acknowledged the District should have developed an IEP upon receipt of the Grandmother's waiver. Moreover, the manifestation team convened on November 5, 2019, and confirmed the Student's eligibility for special education under the qualifying category of [REDACTED]. Both the District and the Parent were satisfied after a review of the Student's records that the student had a qualifying disability. I conclude from the totality of the evidence that the Student's exit from special education ended on October 22, 2019. The District then had 30 days to develop the Student's IEP. WAC 392-172A-03105(2)(a).

41. I reject the District's argument that the 30-day timeline to develop an IEP began after it completed the January 21, 2020, reevaluation recommended during the manifestation determination meeting.

42. The District's calendar shows the 30<sup>th</sup> day following October 22 (October 23 counted as day 1 of the 30-day count) is November 21, 2019. Exhibit P1, p. 2. I conclude that the District's obligation to provide the Student with special education services and a FAPE began the next school day, Friday, November 22, 2019.

43. I conclude the Parent has proven the District failed to deliver specialized instruction based on a current IEP starting November 22, 2019. The Parent has proven a violation of the IDEA on this issue, and that the violation resulted in a denial of FAPE to the Student. In addition, the District's failure to act constituted a procedural violation because it denied the Parent's right to participate in timely development of a current IEP. Further, I conclude that procedural violation resulted in denial of FAPE to the Student.

*Reducing the Student's least restrictive environment (LRE) from a 90% general education placement to 0% placement in a general education setting, without considering both academic and nonacademic educational benefits, encompassing socialization opportunities that can occur only at school, failing to consider educational benefit available in the general education school environment with appropriate supplementary aids and services is far more beneficial than restriction to a home placement*



44. 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.*

45. In the context of an IAES imposed because of “special circumstances” like infliction of serious bodily injury, an IAES is defined as a placement that will allow the student to:

[c]ontinue to receive educational services, that provide a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student’s IEP.

WAC 392-172A-05145(4)(a); see 20 USC §1415(k)(2); 34 CFR §300.530.

46. Not only did the District violate the IDEA by placing the Student in an IAES, but the IAES itself violated the IDEA. The District’s exclusion of the Student from any access to general education peers violated the IDEA. Starting November 22, 2019, the District’s failure to develop and implement an IEP violated the IDEA. In addition, the District failed to obtain the Parent’s consent to the post-November 5, 2019, reevaluation, which further impeded the Parent’s right to participate in the reevaluation process and plan the Student’s re-entry to [REDACTED] when the IAES ended. For the reasons and conclusions stated above, I conclude the Parent has proven violations with respect to this issue and that the violations resulted in a denial of FAPE to the Student beginning November 22, 2019.

47. The District exacerbated these violations when it purported to implement an IEP signed by team members on January 10, 2020, despite the fact it had no completed the reevaluation and FBA that were to follow the November 5, 2019, manifestation determination meeting. I conclude the Parent has proven this issue in context of the District’s actions in relation to the January 10, 2020, IEP, which further resulted in a denial of FAPE to the Student.

#### *Predetermination*

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

49. 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), *cert. denied*, 544 U. S. 928, 128 S.Ct. 1662 (2005). Predetermination may also occur when a District makes a placement



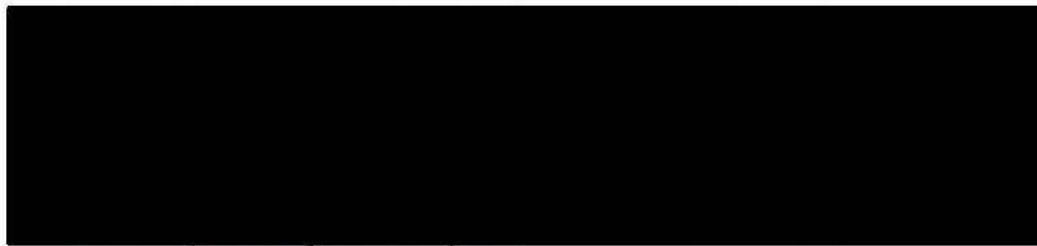
determination prior to an IEP meeting and is unwilling to consider other alternatives. *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007, unpublished). A mere desire by a district for public school placement over private does not establish predetermination. *Id.*

50. A school district violates the IDEA if it predetermines placement for a student before the IEP is developed or steers the IEP to the predetermined placement. *K.D. ex rel. C.L. v. Dep't of Educ., Hawaii*, 665 G.3d 1110, 1123 (9th Cir. 2011). Further, predetermination violates the IDEA because the Act requires that the placement be based on the IEP, and not vice versa. *Id.*

51. I conclude that it is not sufficient for District staff to assert that no one told them how to vote or what to choose at the IEP team meeting regarding the Student's placement, to show that no predetermination occurred. That fact is merely one consideration in the District's favor. I find that no single act or failure to act by the District proves predetermination of a non-campus placement. When I consider the totality of the circumstances, the overwhelming conclusion and logical persuasiveness of the evidence is that the District predetermined a non-campus placement before the January 24, 2020, IEP meeting. These facts support the conclusion:

- a. The District's repeated lack of transparency in failing to provide for review the documents from the Student's file;
- b. The District's placement in the Student's file of documents which were created after-the-fact to document action the District had not actually taken, like the PWN and notice for an October 28, 2019 meeting, a day prior to the disciplinary expulsion;
- c. The District's failure to obtain the Parent's knowing consent to evaluation after November 5, 2019, considered in context of the multiple meetings [REDACTED] had with the Student without a stated purpose and which were not explained in the Evaluation Summary dated January 21, 2020;
- d. The District's failure [REDACTED]
- e. The District's failure to circulate questionnaires to teachers, the Parent and the Student until after January 10, 2020, long after the November 5, 2020, manifestation determination meeting;
- f. The District's failure to obtain questionnaire responses from any teacher;
- g. The District's failure to include classroom observations of the Student to inform its FBA;
- h. The District's repeated attempts starting January 6, 2020, [REDACTED]





- i. The District's decision to convene an IEP meeting on January 10, 2020, knowing its evaluation was incomplete; and further, the District nevertheless developed and adopted an IEP on January 10, 2020, that maintained the off-campus online program placement, days before the IAES was to expire on January 17, 2020; and
- j. The District's acknowledgement at hearing that the January 10, 2020, IEP was invalid and descriptions of the January 24, 2020, IEP as an IEP Amendment were inaccurate;
- k. The shameful silence by District staff through the entire January 24, 2020, IEP meeting, who necessarily had to pretend to respond to placement options suggested by the Parent and Student's advocates who were unaware that the day before, January 23, 2020, the District filed a due process hearing request to extend the IAES and the Student's exclusion from the campus; and
- l. Having managed to finally develop an IEP on January 24, 2020, that continued to restrict the Student from the [REDACTED] campus with 100% exclusion from his general education peers, the District withdrew its request to extend the IAES.

52. I give little weight to the fact the District made some modifications to the IEP in response to requests and recommendations by the Parent and the Student's advocates. The doubling of service minutes for [REDACTED], for example, does not in context of the total circumstances listed above show the District had not predetermined an off-campus placement.

[REDACTED] However, it was improper for the District to pursue multiple strategies with a goal of restricting the Student to an off-campus placement.

53. I find the Parent has proven the District predetermined the Student's placement off-campus with 100% exclusion from general education peers. I conclude the District's predetermination violated IDEA and resulted in denial of FAPE.

54. In reaching the conclusion about a denial of FAPE, I am aware that the District closed the [REDACTED] to comply with Governor Inslee's March 13, 2020, proclamation to stay home, stay safe. The Governor has extended the initial proclamation and at this writing, the District has not reopened the [REDACTED] campus for in-person classroom learning. The evidence does not establish whether the Student's peers are being provided with access to other general education students during this period, even if by remote group video conferences.

*Failure to follow state-wide disciplinary rules as applied to a special education student, including failing to use exclusionary discipline as a last resort, ignoring state disciplinary regulations and [REDACTED] without any consideration of how the District's failure to serve the Student's special needs, including failure to collaborate with his Parent and support team) effected*



*Student's ability to respond appropriately when engaged in a stressful confrontation with a peer in a setting where no adult was present*

55. I do not have jurisdiction over state-wide disciplinary matters [REDACTED] decisions. Based on the above conclusions, the Parent has proven the District's IAES placement improperly excluded the Student for more than ten consecutive school days. WAC 392-172A-05145. The District had re-determined the Student's eligibility for special education services under the qualifying category of [REDACTED]. The District violated the IDEA when it failed to return the Student to his prior [REDACTED] placement by November 14, 2019, the 11<sup>th</sup> consecutive day of exclusion (since November 11 was a holiday). However, while the Student had rights under the IDEA as a student eligible for special education, he did not yet have an IEP. Therefore, I conclude the District's violation of the IDEA by failing to return the Student to school by November 14, 2019, did not result in a denial of FAPE until November 22, 2019. The reason the violation did not result in a denial of FAPE starting November 14, 2019, is that the District's 30-day timeline to develop an IEP for the Student had not yet expired. The District's obligation to provide the Student with FAPE began effective November 22, 2019, the day after it was required to develop an IEP for the Student. Exhibit P1, p. 2.

#### *Remedies*

56. The Parent has proven multiple procedural violations of the IDEA. Not all procedural violations warrant a remedy. However, the violations proven by the Parent individually and collectively are significant and warrant remedies because I concluded they impeded the Student's right to FAPE and deprived the Student of an educational benefit as of November 22, 2019, the date by which the District failed to develop an IEP. The District cured most of the procedural violations when it developed the January 24, 2020, IEP. However, procedural violations related to predetermination of Student's placement continued thereafter.

57. The District agreed the Parent is entitled to an IEE at public expense in all areas of suspected disability. The issue in dispute is the identity of the professionals to conduct the IEE. The September 2015 IEE on which the District heavily relied was conducted by a [REDACTED] described as rare one of the Student's diagnoses, [REDACTED]. The District's recordkeeping and documentary errors were a significant factor in the miscommunication and misunderstandings with the Parent and [REDACTED] team. For these reasons, the Parent has proven that a clinician of her choice is appropriate. The Parent is entitled to an order that the IEE be conducted by [REDACTED] and to include a Functional Behavior Assessment (FBA) conducted by a credentialed behavior specialist identified by agreement of the Parent and District. However, if the parties cannot agree on a credentialed [REDACTED] and agreed to by the Parent consistent with WAC 392-172A-05005. The independent professional evaluators shall determine how to include observation of the Student's interactions with teachers and same age peers while the campus is closed during the pandemic.

58. The Parent has not proven that under the IDEA she is entitled to an order that prohibits the District from sharing evaluation information with any third party without written consent of the Parent or a court order. The Parent strongly disagreed with the District's decision to share information from the Student's educational records [REDACTED]



However, legal rights and responsibilities outside of the IDEA are outside of OAH's jurisdiction. Therefore, I deny this remedy as outside the scope of the IDEA.

59. The Parent is entitled to an order that following completion of the IEE, the District shall convene an IEP team meeting to update the January 24, 2020, IEP and develop a BIP/Support Plan informed by the IEE. Given the District's history of failing to review documents in the Student's file, the multiple misstatements in District documents, and the overwhelming but understandable focus on the events of October 29, 2019, as definitive of the Student's future disability-related conduct, and potential fear of interacting with the Student in an IEP meeting, I conclude the Parent is entitled to an order requiring the District to pay the professional(s) who conducted the IEE components to attend the IEP meeting to help to explain results and make recommendations about positive behavioral supports, even if the IEP team needs more than one meeting.

60. I am writing this decision with less than week before the 2019-2020 school year ends on June 5, 2020, with pandemic restrictions still in place. Exhibit P1, p. 2. Accordingly, I will not order the Student's immediate return to the [REDACTED] campus before the IEEs are completed.

61. The Parent is entitled to an order that the updated IEP recognize the Student has a [REDACTED]. The Parent is entitled to an order that the updated IEP provide that the District will invite the Parent, and to invite [REDACTED] to provide a member, to support the Student when he interacts with the assigned assistant principal or other District administrator regarding academic planning, academic disputes, or disciplinary action. The Parent's request for a [REDACTED] member to be present for all interactions between the Student and a District administrator is too broad and impractical in the [REDACTED] setting and I deny that portion of the request.

62. The Parent is entitled to an order that the Student's established [REDACTED] [REDACTED] at District expense so long as that provider is available to serve the Student. If in the updated IEP the Student continues to need [REDACTED] [REDACTED] These IEP provisions shall continue until the IEP team considers progress data and determines the Student no longer requires [REDACTED]. Further, the updated IEP shall provide that the [REDACTED]. The Parent has not proven she is entitled, under the IDEA, to an order that wholly restricts the District from accessing the [REDACTED] [REDACTED] or by the District that are beyond the scope of my authority. Therefore, I deny this requested remedy as beyond the scope of the IDEA.

63. The Parent has not proven the Student will benefit from a 1:1 dedicated paraeducator during the whole school day, when 10<sup>th</sup> grade begins in fall 2020. I am denying this requested remedy because the evaluations of record are too old and without sufficient supportive evidence, I cannot conclude that the Student would benefit. I am unable to consider the results and recommendations of the IEE, and therefore the remedy is premature. I am very mindful that the [REDACTED]

[REDACTED]

The evidence of record is insufficient to establish that a 1:1 dedicated paraeducator is an appropriate support to meet his needs. The benefit of a 1:1 aid for the Student in 2017 is insufficient to conclude that he would similarly benefit in [REDACTED] School. Nothing in this order prevents the Student's IEP team from including paraeducator support in his IEP if it determines such support is warranted.

64. The Parent is entitled to compensatory education and services for the period starting November 22, 2019, through filing of the complaint on February 3, 2020. During that period, the District's High School was in session for approximately eight weeks. Exhibit P1, p. 2. The quantum of services is determined based on the District's own determination that the Student required [REDACTED]

[REDACTED]

65. The Parent's request for tutoring directed at credit recovery is reasonable and appropriate given the Student's lack of progress in the online program and the District's unwarranted removal of the Student to the IAES. The Parent appeared to calculate [REDACTED]

[REDACTED]

66. In addition, the Parent requests [REDACTED]. The Parent's dissatisfaction with the current IEP's [REDACTED] does not warrant compensatory education for the period between January 24, 2020, the date of the IEP, and February 3, 2020, the date the complaint was filed. I deny the request for compensatory education in the area of [REDACTED]

67. The Parent is entitled to an order that requires the District to provide training for District administrators, special education staff, and clerical or administrative staff tasked with the



responsibility to obtain a [REDACTED] educational records from a prior district. The District shall consult with representatives of [REDACTED] to provide a [REDACTED]

[REDACTED]

Within two weeks of completing the training, the District shall report to the Parent that it has complied with this part of the order.

68. The Student was [REDACTED]

[REDACTED]

69. For the reasons stated above, I conclude that it is premature to address the Student's need for a [REDACTED]

[REDACTED]

70. I reject a [REDACTED]

[REDACTED]

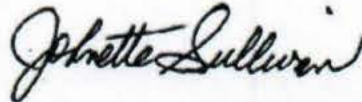
Based on the evidence of record, I must conclude the IEP team is the appropriate venue to determine the appropriate placement for the Student, when fully informed by the IEE.

71. 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**

The [REDACTED] School District has violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education as concluded herein. The Parent is awarded the remedies at Conclusions of Law Nos. 57 through 59, Nos. 61, 62, 64, 65, 67 and 68.

Signed on the date of mailing.



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Johnette Sullivan  
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.



DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served a copy of this document on each of the parties listed below. I mailed a copy to the parties at their addresses of record using U.S. Mail.

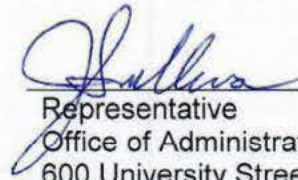
Grandparent  
c/o Feeney Law Office, PLLC  
1177 Jadwin Avenue, Suite 104  
Richland, WA 99352

[REDACTED], Director of Special Education  
[REDACTED] School District  
[REDACTED]

Kerri W. Feeney, Attorney at Law  
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Alexander Fern, Attorney at Law  
Stevens Clay Law Office P.S.  
421 West Riverside Avenue, Suite 1575  
Spokane, WA 99201

Dated May 27, 2020, at Yakima, Washington.



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Representative  
Office of Administrative Hearings  
600 University Street, Suite 1500  
Seattle, WA 98101-3126

cc: Administrative Resource Services, OSPI