

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION

IN THE MATTER OF

OSPI CAUSE NO. 2020-SE-0093

OAH DOCKET NO. 06-2020-OSPI-01081

WAPATO SCHOOL DISTRICT

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

A due process hearing in this matter was held before Administrative Law Judge (ALJ) Johnette Sullivan by video conference on December 10, 2020. The Parent of the Student whose education is at issue<sup>1</sup> appeared and was represented by Shannon M. McMinimee and Alexander Hagel, attorneys at law. The Wapato School District (District), was represented by Anthony Anselmo, attorney at law, with attorney John Dalley observing. Also present for the District was Shannon Torres, Executive Director of Teaching and Learning. The following is hereby entered:

**STATEMENT OF THE CASE**

*Procedural History*

The Parent filed a Due Process Hearing Request (Complaint) with the Office of Superintendent of Public Instruction (OSPI) on June 19, 2020. OSPI assigned Cause No. 2020-SE-0093 and forwarded the Complaint to the Office of Administrative Hearings (OAH). OAH assigned the matter to ALJ Johnette Sullivan. The District filed a response to the Complaint on June 29, 2020. ALJ Sullivan issued prehearing orders on July 21, 2020, October 7, 2020, October 29, 2020, and November 13, 2020.

*Decision Due Date*

As set forth in the prehearing order dated July 21, 2020, the due date for a written decision in this case was extended at the Parent's request to thirty (30) days after the record of the hearing closes. The record closed on January 13, 2021, when the parties timely submitted post-hearing briefs. Accordingly, the due date for a written decision in this case is **February 12, 2021**.

**EVIDENCE RELIED UPON**

The ALJ admitted the following exhibits into evidence:

Parent Exhibits: P1 through P3, P6, and P7.<sup>2</sup>

District Exhibits: D1, D2 p. 21 only, and D7 through D10.<sup>3</sup>

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<sup>1</sup>To ensure confidentiality, names of parents and students are not used. "Parent" in the singular refers to the Mother.

<sup>2</sup> Parent withdrew Exhibits P4 and P5.

<sup>3</sup> The District did not offer Exhibits D3 through D5, and D11.

The following witnesses testified under oath, listed in order of appearance:

Kristi Irion, Vice Principal at Camas Elementary School  
Irina Patan, Principal at Camas Elementary School  
Karen McGraw, Director of Special Education  
Mother  
Kaylynn Wingfield, Instructional Coach at Camas Elementary School  
Audrey Rosales, Resource Room teacher at Camas Elementary School

### **ISSUES**

1. The issues for the due process hearing were set forth in the first prehearing order:
  - a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and its implementing regulations and denied the Student a free appropriate public education (FAPE) during the period from March 17, 2020 through date of filing the complaint on June 19, 2020, by:
    - i. Failing to offer the Student individualized and appropriate Extended School Year (ESY) services for the summer of 2020 consistent with WAC 392-172A-02020;
    - ii. Failing to comply with procedural requirements of the IDEA and in turn failing to provide the Student FAPE by predetermining that the Student would not be eligible for ESY for the summer of 2020 based on particular categories of disability;
    - iii. Failing to comply with procedural requirements of the IDEA and in turn failing to provide the Student FAPE by refusing to consider information from the Parent related to the Student's history of regression during the break in receipt of instruction and how he has struggled with recoupment of skills after breaks;
    - iv. Failing to comply with procedural requirements of the IDEA and in turn failing to provide the Student FAPE by refusing to consider information from the Parent related to the Student's regression between March 17, 2020 and June 18, 2020, when he had gone three months without the receipt of any in-person instruction and no instruction in social and emotional skills.
  - b. And, whether the Parent is entitled to the requested remedies:
    - i. Declaratory relief finding that the District violated the IDEA and that the Student was denied FAPE by the District's actions;
    - ii. Compensatory education and supplemental services for the Student to allow him to obtain the educational benefit that he would have received but not for the District's violation of the IDEA and denial of FAPE;
    - iii. Reimbursement to the Parent for her obtaining any educational materials and services due to the District's failure to provide the Student with FAPE;

- iv. And/or other equitable remedies, as appropriate.

See Prehearing Order dated July 21, 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 specific facts at issue.

#### ***Background: Second Grade 2019-2020 School Year***

1. The Student was [REDACTED] when he began second grade in fall 2019 at Whitney Elementary School (Whitney) in the Yakima School District (Yakima). He lived with both Parents and two siblings. The Parents' attorney referred the Student for an initial evaluation for eligibility for special education. P1p8.<sup>4</sup>

2. In September 2019, the Student's Yakima evaluation team met and considered the spring 2019 performance data gathered at the end of first grade. *Id.*, pp12-21. The team included the Student's Parents and attorneys for the Parents and Yakima. The Yakima evaluation team found the Student displayed the characteristics of a student with disabilities from attention deficit hyperactivity disorder (ADHD) and concluded he was eligible for special education and related services under the category of Other Health Impairment. P1pp21, 25. The Student's evaluation team recommended specially designed instruction (SDI) and related services in basic reading, reading fluency, and behavior (social/emotional).<sup>5</sup> *Id.*, p23.

3. On October 16, 2019, the Student's Yakima IEP team including his Mother met to develop an educational plan based on the recommendations in the initial evaluation. *Id.*, pp27, 39.

4. The Student's Yakima IEP team developed three goals in the areas of basic reading and reading fluency, summarized as:

[The Student] will improve phonetic decoding skills from reading 9 correct words out of 12 on 1<sup>st</sup> grade words to 10 correct words out of 12 (83% accuracy) on 2<sup>nd</sup> grade words by 10/15/20

[The Student] will read 2<sup>nd</sup> grade level high frequency words in isolation, improving reading skills from 4 out of 6 correct 1<sup>st</sup> grade high frequency words to 5 out of 6 correct 2<sup>nd</sup> grade high frequency words by 10/15/20

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<sup>4</sup> Citation to the exhibits are by the party ("P" for the Parent, "D" for the District) and page number. For example, the citation to P1p8 is to the Parent's Exhibit 1 at page 8.

<sup>5</sup> The Yakima initial evaluation determined the Student was not in need of SDI and related services in twenty-five other areas including reading comprehension, functional reading, or behavior (organizational skills). P1p23.

[The Student] will improve oral reading fluency from 24 correct words per minute at the 1<sup>st</sup> grade level, to 52 correct words per minute at the 2<sup>nd</sup> grade level by 10/15/20

*Id.*, pp28-30.

5. The Student's Yakima IEP team developed one goal in the area of behavior (social/emotional) for social skills, in sum:

[The Student] will increase awareness of his state of alertness and emotions as demonstrated when the emotional/alertness state (zone of feeling) [the Student] reports matches the teacher's assessment from 0% accuracy to 80% accuracy by 10/15/20

*Id.*, p32.

6. The Mother relocated with the Student and his siblings to live within the boundaries of the Wapato School District (District or WSD). The Mother enrolled the Student in the District after the winter break, on or about January 8, 2020. P1p5, D1. Yakima sent the Student's educational records to the District on or about January 13, 2020, which included the initial evaluation report and the IEP. P1p1, Irion T27.<sup>6</sup> In addition, Yakima sent an independent educational evaluation (IEE) of the Student by Dr. Lionel Enns,<sup>7</sup> PhD, BCBA-D. Dr. Enns assessed the Student on November 21, 2019, and December 9, 2019, and issued his report on December 10, 2019. P1pp49-88.

7. The District received a second IEE by Marilea Brock,<sup>8</sup> MS, CCC-SLP of Communication Connection NW. Ms. Brock observed the Student at Whitney on November 25, 2019, and tested the Student. Ms. Brock dated her report on January 20, 2020. P3.

8. The Student completed second grade at the District's Camas Elementary School (Camas).<sup>9</sup> His classes were in-person through March 13, 2020, and thereafter instruction was remote from home because Camas closed due to the COVID-19 pandemic. Mother T134, McGraw T108.

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<sup>6</sup> Citations to the hearing transcript are to the name of the witness, except in the case of the Mother, followed by the page number(s) on which the testimony appears. For example, the citation to Irion T27 is a citation to the testimony of witness Kristi Irion at page 27 of the transcript.

<sup>7</sup> The record does not contain additional information about Dr. Enns. The ALJ understood the initials that follow his name commonly meant that he is a board certified behavior analyst with a doctorate.

<sup>8</sup> The record does not contain additional information about Ms. Brock. The ALJ understood the initials that follow her name commonly meant that she has a master's degree and certificate of clinical competency in speech language pathology.

<sup>9</sup> There are no issues raised in the Complaint regarding IDEA violations or denials of FAPE by Yakima or the District for the Student's second grade 2019-2020 school year, or District action related to the IEEs, reevaluation and development of a new IEP. The issues are limited to the Student's eligibility for ESY in the District in summer 2020.

## **Request for ESY for Summer 2020**

9. The Student's October 2019 IEP had a section for consideration of special factors. One factor was, "Does this Student require Extended School Year (ESY) services?" The Yakima IEP team checked the box marked, "No." The Yakima IEP team left blank the boxes marked, "Yes" and "Will be determined by the IEP team by: [blank space]." P1p33.

10. At Parent's request, the District scheduled an IEP meeting to consider ESY services for the Student for summer 2020. The day prior to the meeting, the Parent's attorney communicated to the District's attorney that the Parent was seeking:

. . . structured, intentional instruction during ESY, including in-person instruction. If the WSD is continuing to only offer remote learning through its staff, we are going to ask that the WSD use third party providers who are willing to provide in-person instruction, including Brock's Academy along with all of the technology necessary for [the Student] to access whatever online learning the WSD is offering.

P6. The Mother's attorney alerted the District's attorney that the Mother would participate to the best of her ability but may need to step away from the meeting at times because she was sick. The Mother's attorney assured the District's attorney that she and co-counsel knew what the Mother wanted. *Id.*

## **June 19, 2020, IEP Meeting for ESY**

*Linda Hamlin*

11. Linda Hamlin is a District school psychologist. She did not testify at the due process hearing. She attended the June 2020 IEP meeting and afterward she prepared a Prior Written Notice (PWN). P7. The PWN included a description of each procedure, test, record, or report used or planned to be use as the basis for the District's action on the ESY request:

Parent input, teacher observation, teacher data, Dibels scores and progress monitoring data, review of zone of regulation data, review of behavior notes, student file, review of the independent educational evaluations provided by parent, review of the transfer evaluation and IEP from Yakima School District.

*Id.*

12. It is undisputed that neither Ms. Hamlin nor anyone else for the District presented the June 2020 IEP team with data about the Student's progress or regression in relation to his IEP goals for the period after March 13, 2020. Wingfield T166-169, Rosales T201-205, Irion T58-59, McGraw T116.

*Irina Patan*

13. Irina Patan<sup>10</sup> is the principal at Camas. She attended the Student's June 2020 IEP meeting. Patan T75. The meeting was not in-person. It was a remote meeting. *Id.*, T77. Ms. Patan recalled that Ms. Hamlin, the school psychologist, spoke at the meeting about the reports and evaluations in Exhibit P1, and that the Student had an ADHD diagnosis. Ms. Patan could not recall the details of the information presented at the meeting. Patan T94-95. She could not remember if she personally reviewed the Yakima initial evaluation or the IEE reports of Dr. Enns and Ms. Brock.

14. Ms. Patan identified documents discussed at the IEP team meeting. D8, D9, D10. The documents contained the data gathered by the Student's special education and general education teachers to assess the Student's progress toward the four IEP goals through March 13, 2020. *Id.*, T83-84, 89-90. She believed the data on reading fluency and high frequency sight words (D8, D9) showed the Student was well on his way to meeting second grade standards. She described as "pretty incredible" the Student's scores on a standardized test for high frequency words in January 2020 after the winter break. She admitted she did not know what his scores had been at Whitney before the Yakima winter break. *Id.*, 89-90. Ms. Patan answered that she did not know or could not remember in response to many questions during her testimony. For example, see: Patan T79-83, T88, and T92.

15. Ms. Patan was the only witness to identify the District's Special Education Department Progress Reports for the four IEP goals. D7. The person responsible to generate the Progress Reports was a substitute case manager who was not at Camas working with the Student every day. The substitute case manager gathered data from Camas staff who worked with the Student. Ms. Patan did not know if paraeducators worked with the Student. She did not describe how the substitute case manager gathered the data collected by Camas staff in order to compile the Progress Reports. Ms. Patan did not identify the Progress Reports as part of the group of documents shared and considered at the IEP team meeting.

*Karen McGraw*

16. Karen McGraw<sup>11</sup> is the District's Director of Special Education. Ms. McGraw is the administrator for ESY services in the District. McGraw T105. Ms. McGraw had not contacted Dr. Enns or Ms. Brock to ask for either's opinion about the Student's need for ESY services. She did not know if Linda Hamlin, the school psychologist, had asked for an opinion. *Id.*, T118, T119.

17. Ms. McGraw did not know the Student well. She had not provided him with direct instruction. A few times prior to March 13, 2020, she observed the Student in the hallway or office for about five minutes. She had not observed him in other settings. McGraw T107.

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<sup>10</sup> Irina Patan was previously employed as a principal at another District elementary school, and a special services coordinator in another district. Patan T67-68. She is identified as Irina Lupas in some District records. *Id.*, T75.

<sup>11</sup> Karen McGraw holds a Washington State Principal certificate and a pre-K to 8 general education teaching endorsement. She is not certified or endorsed to teach special education in Washington. McGraw T103.

18. Ms. McGraw listened to what the Mother shared during the June 2020 IEP meeting. She considered the Mother's report that the Student would not listen when the Mother tried to do school work with him. *Id.*, T114. She recalled a discussion at the meeting about the meaning of the word "recoupment." She did not remember that the Parent spoke to that concept when she talked at the IEP team meeting about the Student. She did not recall that the Parent talked at the meeting about the Student struggling after a summer break. *Id.*, T115. Ms. McGraw considered the data from District staff that the Student was close to meeting his IEP goals by March 13, 2020. *Id.*, T115, 117. Ms. McGraw explained how the IEP team looked for data on regression considering any breaks. She recalled looking "for any information in any of the reports that we had, the evaluation reports, the IEP, if anything had ever been brought up before." *Id.*, T116. Ms. McGraw explained the District had not gathered data after the April 2020 spring break to determine if the Student had regressed and that a period of recoupment was necessary because there was no need. She did not believe the Student had a history of regression. *Id.*

### *Audrey Rosales*

19. Audrey Rosales<sup>12</sup> is the Camas resource room teacher for special education. Ms. Rosales did not know the Student well. She left on maternity leave a couple of days after the Student entered Camas. She taught and tested the Student for about two hours over two days the week ending on January 17, 2020. Ms. Rosales returned from leave on April 1, 2020, after the District began remote instruction. Rosales T185-186, 190-191, 196.

20. To prepare for the IEP meeting, Ms. Rosales reviewed the Student's IEP and his IEP goals. Rosales T186-187. She reviewed the data she and other District staff gathered regarding the Student's progress toward his IEP goals through March 13, 2020, the last day of in-person classes. D8, D9, D10, Rosales T187-192. She recalled the IEP team considered those documents at the meeting. *Id.*

21. Ms. Rosales recalled having spoken with the substitute teacher, the resource room teacher from Satus Elementary School (Satus) who took over her caseload, and the para-educator in the Camas resource room.<sup>13</sup> Ms. Rosales understood that that Student had been on track to meet his IEP goals. In her absence, she learned the Student had some incidences with behavior and they had been working on how to handle situations differently in the resource room. *Id.*, 208.

22. Prior to the June 2020 IEP meeting, Ms. Rosales had not contacted any Yakima staff to ask about Student data gathered in November or December 2019, or if Yakima staff had any information about Student regression or recoupment after breaks. *Id.*, T207.

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<sup>12</sup> Ms. Rosales has a degree in education from Heritage University. Rosales T185

<sup>13</sup> The substitute teacher was Eva Garza, a certified teacher but not a certified special education teacher. She worked under the supervision of Tonya Shold, the District's special education teacher assigned to Satus. McGraw T108, Rosales T186, Irion T31. Marisol Romero was a para-educator at Camas. McGraw T110. The record contains no testimony from Ms. Garza, Ms. Shold, or Ms. Romero, although the Parent listed each as a potential witness. See Parent's Witness List filed October 22, 2020. Parent's counsel released Ms. Garza and Ms. Romero after deciding during the hearing not to call them to testify. McMinimee T122.

23. Ms. Rosales considered the Mother's statements at the time of the June 2020 IEP meeting, but at hearing she recalled only a "little bit" about what the Mother had stated. She recalled the Mother shared at the IEP team meeting that she was having problems with the Student's behavior at home. She did not recall what the Mother shared about the Student's academics. *Id.*, T192. She recalled the Mother told the team she had trouble getting the Student to work on the packets of materials the District sent home for him. She did not recall the Mother telling the team that the Student "always struggles after summer breaks" or would "struggle a lot in fall of 2020." *Id.*, T213.

24. Ms. Rosales considered the data gathered by the Student's general and special education teachers regarding progress towards his IEP goals through March 13, 2020, in deciding the Student did not need ESY services in summer 2020. Based on his achievements through March 13, 2020, she did not believe he would significantly regress over the summer or have difficulty recouping skills after returning from the summer break. *Id.*, T193-194. She weighed the Student's performance during her assessments in mid-January 2020, in comparison to the annual IEP goals set in October 2019. In that period, the Student experienced the Yakima winter break and the relocation from Yakima to Wapato. *Id.*, T187, 199, 205.

25. Ms. Rosales did not meet with any District staff to discuss ESY for the Student prior to the June 19, 2020, IEP meeting. *Id.*, T207. Ms. Rosales had not made a decision about the Student's need for ESY before the June 2020 IEP meeting. She described having an open mind when she went to the meeting. She had not made an agreement with other District staff about the Student's eligibility for ESY before the meeting. *Id.*, T194. She decided the Student was not eligible for ESY based on the data collected by Camas staff through March 13, 2020, about his IEP goals. She did not think he would have significant regression over a break or take a long time to recoup any skills after returning. *Id.*

#### *Kristi Irion*

26. Kristi Irion<sup>14</sup> is the vice principal at Camas. Irion T21. Ms. Irion's duties included student discipline. *Id.*, T32-33. Ms. Irion had reviewed the Student's educational records from Yakima when he transferred to Camas in January 2020. *Id.*, T24, 27, 36.

27. To prepare for the IEP meeting, Ms. Irion reviewed the Student's records. She considered her interactions with the Student, her notes of the school year events, her conversations with staff and with the Mother. P2pp27-31. Ms. Irion had previously reviewed the IEE reports from Dr. Enns and Ms. Brock. Her knowledge of Dr. Enns' report "played into what she knew about the Student." She considered her knowledge of Ms. Brock's report, as well. Irion T53-55.

28. Ms. Irion recalled that someone presented Dr. Enns' report for the IEP team to consider during the June 2020 IEP meeting. *Id.*, T53. Ms. Irion recalled team discussion of the data showing satisfactory progress toward IEP goals up to March 13, 2020. *Id.*, T52-53.

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<sup>14</sup> Kristi Irion has a Washington State Program Administrator certificate, with a minor in early childhood education K-8, and a master's in 6-12 curriculum. Irion T24-25.



*Kaylynn Wingfield*

29. Kaylynn Wingfield<sup>15</sup> is a general education teacher and taught the Student's second grade class at Camas. Her job title is instructional coach. Wingfield T146-147. To prepare for the IEP meeting, Ms. Wingfield reviewed the Student's IEP and his goals. *Id.*, T149, 150-151. She also reviewed the data gathered regarding progress toward his goals through March 13, 2020, the last day of in-person classes. D8, D9, D10, Wingfield T151-154. She had not made a decision about the Student's need for ESY before the IEP meeting and described having an open mind when she went to the meeting. She had not made an agreement with other District staff about the Student's eligibility for ESY before the meeting. *Id.*, T157-158.

30. Ms. Wingfield recalled that she told the IEP team how the Student was progressing towards his goals, in particular with phonics and fluency, as well as his behavior (social/emotional) goal. *Id.*, T155-156. She shared with the IEP team the classroom data from the curriculum she used to measure the Student's progress toward his behavior (social/emotional) goal. D10; Wingfield T155-156. She considered what the Mother shared at the IEP meeting about the Student's "increased behavior at home" and the Mother's frustration that the Student was not completing his work. *Id.*, T156. She recalled the Mother reported that the Student's behavior was more than she could handle at times, but not that his Mother stated his behavior had worsened. She remembered the Mother talked "a lot" about the Student's behavior. She did not recall the Mother telling the IEP team that the Student had gone backwards in a discussion of regression of skills. *Id.*, T174. Ms. Wingfield was familiar with the Student's challenges regulating his behavior. She had made lengthy full-page notes about his behavior in the classroom throughout the school day when he was in her classroom. She identified her notes for the period March 2 through March 13, 2020. *Id.*, 169; P2pp14-26. There is no evidence that Ms. Wingfield discussed the Student's behavior at the IEP team meeting, because regulating his behavior was not his IEP goal.

31. Ms. Wingfield did not believe the Student needed ESY services for summer 2020, in significant part because she felt the Student was "really close to if not already mastering" his IEP goals. She had not observed a loss of skills from the fall 2019 data from Yakima, when he entered her class after the winter break. Based on her experience with the Student, she did not see evidence that he was likely to regress and not be able to recoup in a timely manner. *Id.*, 157.

***Data on Areas of Basic Reading and Reading Fluency***

32. The June 2020 IEP team considered the Student's data at Camas in the areas of basic reading and reading fluency. The District assessed the Student's progress toward his IEP goals in the areas of basic reading and reading fluency goals. They used the Dolch Sight Word List Assessment (Dolch) for high frequency words in isolation. D9, Irion T52, Patan T91, Wingfield T151-152, Rosales T199. They assessed the Student's progress in oral reading fluency for words correct per minute and phonetics using DIBELS Progress Monitoring (DIBELS) for second grade. D8, Irion T52, Wingfield T151, Rosales T187. Affixed to the first three DIBELS forms are notes about the Student's scores on second grade phonetics in the DIBELS stories. D9pp1-3. Ms. Rosales conceded the data presented a very small snapshot of time of the Student's performance. Rosales T203.

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<sup>15</sup> Ms. Wingfield has a bachelor's degree in elementary education and a master's degree in K-6 reading literacy and mathematics. Wingfield T147.

33. The June 2020 IEP considered basic reading and reading fluency data gathered at Camas between January 17, 2020, and March 13, 2020, as follows:

Student's IEP Goal	Test Date	Data from District Tests
<p>Improve phonetic decoding skills to 10 correct second grade words out of 12 words (83% accuracy) by 10/15/2020. P1p28.</p>	Jan. 17 2020	<p>Score tallied as 12 correct of 17 on second grade phonetic words, which would equate to a 70% accuracy rate. However, the note identified 15 words from the DIBELS story as phonetic words and did not identify which five words were incorrect phonetically. A rate of 10 correct of 15 phonetic words would equate to a 66% accuracy rate. D8p1</p>
	Feb. 12, 2020	<p>Score tallied as 10 words correct of 11 second grade phonetic words, which equated to a 90% accuracy rate. The note identified 11 words from the DIBELS story with a -1 marked to show the single incorrect word. D8p2</p>
	March 9, 2020	<p>Score tallied 10 words correct of 13 second grade phonetic words, which equated to a 77% accuracy rate. The note identified 13 words from the DIBELS story but did not identify which 3 words were incorrect phonetically. D8p3</p>
<p>Improve reading second grade level high frequency words in isolation to 5 correct out of 6 words by 10/15/2020. P1p29.</p>	Jan. 17, 2020	<p>Scored 174 correct out of 179 words (97%) on four Dolch lists: primer (52 words, one marked incorrect), first grade (41 words, two marked incorrect), second grade (46 words, none marked incorrect), and third grade (40 words, two marked incorrect) D9pp1-4, Rosales T199</p>
	Feb. 5, 2020	<p>Scored 179 of 179 (100%) on the same four Dolch lists for primer, first, second and third grades. D9pp5-8.</p> <p>The record does not contain any Dolch scores after February 5, 2020.</p>

Improve oral reading fluency to 52 correct words per minute at the second grade level by 10/15/2020. P1p30.	Jan. 17, 2020	Scored 54 correct words of 60 words per minute at second grade level, using DIBELS for oral reading fluency. D8p1, Rosales T187.
	Undated	Scored 61 correct words of 63 words per minute at second grade level, using DIBELS for oral reading fluency. D8p2
	March 9, 2020	Scored 53 correct words of 56 words per minute at second grade level, using DIBELS for oral reading fluency. D8p3
	Undated	Scored 73 correct words of 75 words per minute at second grade level, using DIBELS for oral reading fluency. D8p4
	Undated	Scored 61 correct words of 63 words per minute at second grade level, using DIBELS for oral reading fluency. D8p5

34. The DIBELS forms did not report accuracy percentages for the phonetic decoding tests. For these findings, the ALJ calculated the accuracy percentages included in the table above from the raw scores in the DIBELS story data. D8pp1-3.<sup>16</sup>

**Data on Area of Behavior (Social/Emotional)**

35. The June 2020 IEP team considered the Student’s data gathered at Camas for the area of behavior (social/emotional) through March 13, 2020. D10, Irion T52, Patan T91, Wingfield T151-52, Rosales T187.

36. To measure the Student’s progress toward his behavior (social/emotional) goal, the IEP referred to zones of regulation, a curriculum to help students identify their own mood when engaged in certain behaviors. The curriculum used colors. For example, the color green for a good mood, yellow might show confusion or anxiety, and red might indicate the need for a break in order to return to a good mood. P1p32, Irion T35, 52, 59; Wingfield T155. The zones of regulation curriculum involved daily conversations in the classroom between the Student and his teacher usually on an hourly basis, recorded on daily charts. Wingfield T154-155.

37. Each daily chart had three columns labeled schedule (with icons to identify school day events such as reading time, math time, recess, and music time), behavior, and notes. The completed charts contain thick horizontal marks in the middle “behavior” columns as if made using

<sup>16</sup> The District’s IEP Progress Report to the Parent contained the scores but a note affixed to the Progress Report on this goal stated percentages. D7p1. Those percentages different from the ALJ’s calculations above. However, any conflict is deemed to be irrelevant and no additional findings are made because none of the witnesses including the Mother identified the IEP Progress Reports as having been shared and discussed at the June 2020 IEP team meeting.

a colored highlighter. However, the charts in evidence are in black and white. The color of the Student's mood zones are not evident in the charts in the record, except for the occasional "yellow" spelled out. D10p18.

38. The Student's IEP goal for behavior (social/emotional) was to increase his awareness of his own state of alertness and emotions. His progress toward the goal was to be demonstrated when his report of his emotional/alertness state (his zone of feeling) matched the teacher's assessment of his state. The goal called for the Student to improve from 0% accuracy to 80% accuracy (matching his own assessment to the teacher's assessment 80% of the time). P1p32.

39. Ms. Wingfield observed that the Student was nearly always aware of his emotional state. Wingfield T154-155.

40. Ms. Irion or Ms. Patan responded to reports of Student misbehavior on February 5, February 28, March 3, and March 5, 2020. P2p1, Irion T38-39. Ms. Irion observed the Student was able to identify his emotions from "day one" and that he was able to identify his emotions even when he could not regulate his behavior. She estimated he matched his teachers' assessments 90 to 100% of the time. *Id.*, T36. Ms. Irion observed that the Student was able to use the zones to identify his emotions and moods even when his behavior worsened in March 2020, and identification was his IEP goal, not behavior regulation. *Id.*, T36-38.

41. The District did not train the Parent to use the zones of regulation curriculum or the daily charts at home with the Student during the period of remote instruction. *Id.*, T59.

42. Ms. Irion contacted, at the Mother's suggestion, the principal and school counselor at Whitney in Yakima, to discuss behavior strategies for the Student. Irion T27-29. However, the evidence does not establish that Ms. Irion, the Parent, or any other member of the June 2020 IEP team discussed these contacts or the outcome of the contacts in determination the Student's eligibility for ESY for summer 2020. Therefore, the ALJ made no findings from testimony of Ms. Irion or the Mother about those events.

43. Ms. Irion conceded the June 2020 IEP team had only the Mother's reports of Student behavior for the period after in-person classes ended on March 13, 2020. *Id.*, T57. She recalled the Mother shared with the IEP team her concerns about the Student's behavior; however, at the time of hearing Ms. Irion could not recall anything specific about the Student that the Mother shared at the meeting. *Id.*, T58-59.

44. Ms. Irion was mistaken in her belief that some of the Student's misbehavior at home might have related to not following the directions to access school online from home. *Id.* She was mistaken that on a day that she monitored Ms. Wingfield's remote classroom, she had observed the Student. *Id.*, T61-62. The preponderance of credible evidence supports a finding that the Student never participated in a remote classroom instruction due to lack of online access at his home. Mother T126.

### ***Interruptions in Educational Services in the 2019-2020 School Year***

45. Before enrolling in the District, the Student experienced an interruption in educational services during the planned winter break at Whitney in Yakima. After enrollment in the District,

he experienced an interruption in educational services during the planned spring break at Camas from April 6-10, 2020. D1, Rosales T198, Patan T86, 87, McGraw T115, Wingfield T176.

46. The Student experienced an interruption in educational services during scheduled holidays and no-school days at Camas on January 20, February 14, February 17, May 22, May 25, and June 5, 2020. D1.

47. The Student experienced an interruption in educational services due to three short-term disciplinary suspensions on February 5, March 5, and March 6, 2020. P2p1.

48. The Student experienced an interruption in educational services that started on Monday, March 16, 2020, when school closed due to the COVID-19 pandemic. Mother T121, Irion T28, Wingfield T158. The evidence does not establish the date thereafter that the District provided online educational services to second grade students. That date is irrelevant here, however, as the Student did not have online access at home. Mother T126. The preponderance of evidence supports a finding that the District began providing remote educational services to students without online access when it began mailing packets of schoolwork to students' homes. The date that Ms. Wingfield or other staff began sending packets to the Student's home is not in the record. The date that Ms. Rosales began sending packets to the Student's home was, more probably than not, on Wednesday, April 15, 2020, for the week beginning Monday, April 20, 2020. Rosales T198, Wingfield T162, Irion T61. Therefore, the period in which the Student experienced an interruption in educational services due to the pandemic school closure was more likely than not from Monday, March 16, 2020, through Friday, April 17, 2020, a period of five weeks that included the scheduled spring break.

### ***Remote Instruction***

49. The preponderance of evidence supports a finding that for the week of April 20, 2020, through the end of the 2019-2020 school year the District provided educational materials to the Student by packets mailed to the Student's home. The packets contained general education schoolwork and reading and social goal materials. Rosales T195, 198, Wingfield T162, Irion T61. The District scheduled the last day of school for the 2019-2020 school year for Tuesday, June 16, 2020, with June 17-18, 2020, as snow makeup days if needed. D1. Therefore, more probably than not the District mailed nine packets to the Student's home from Wednesday April 15, 2020, to Wednesday June 10, 2020.

50. Parent's counsel questioned Ms. Wingfield at hearing about whether she was aware of challenges the Parent had in receiving mail from the District. Ms. Wingfield did not answer about awareness or lack of awareness, only that she knew the Parent received packets because the Parent talked to her about them on occasion. Ms. Wingfield could not verify that the Parent received all the packets mailed by the District. Wingfield T180, 181.

51. Other than the content of the question put to Ms. Wingfield, there is no evidence to support a finding that the Parent did not receive all of the packets mailed by the District. The Parent did not testify that she had challenges receiving the packets in the mail. There is no evidence to support a finding that the Parent informed the other members of the June 2020 IEP team about mail delivery problems that interfered with receipt of the packets.

52. The Mother described a time when Ms. Wingfield called to check in, in which Ms. Wingfield understood the Student “was doing his packages” because that is what the Mother had told her he was doing. The Mother understood that Ms. Wingfield would count the Student as “basically present” considering that he was doing his work and that he was in class but at home. Mother T215. Ms. Wingfield spoke to the Mother during the period of remote instruction and learned about the Mother’s frustration that the Student was not completing his schoolwork and misbehaving. Wingfield T1700. The preponderance of credible evidence established that the Parent received the weekly packets of schoolwork.

53. During the period of remote instruction, the Mother explained to District staff that she could not turn in the packets to show the Student’s schoolwork because she lacked transportation. The Mother has the packets with the Student’s schoolwork in a drawer at home. Mother T132-133.

54. The District did not provide training to the Parent about how to use the materials in the weekly packets, which accommodations to use with the Student, or how to gather data in relation to his IEP goals. Rosales T198, Wingfield T165-166, Mother T125. Even if staff had offered to train her, the Mother thought she probably would not have been able to “do it alone” because of her disability. *Id.*

55. There is no evidence that the Mother or her attorneys provided the Student’s remote schoolwork to the other June 2020 IEP team members to show the Student’s efforts and challenges with remote instruction, in support of the request for ESY services for summer 2020.

56. The ALJ makes no findings specific to the schoolwork that the Student completed in full or in part or had not completed at all during the period of remote instruction, or the accuracy or inaccuracy of his efforts.

### ***Communications between the Mother and the District in the Period of Remote Instruction***

57. After the school closure, Ms. Patan, the Camas principal, directed the general education and special education teachers to keep a log of their communications with parents and students. Patan T80-81. There are no logs in evidence. The Mother did not keep a record of the dates that she spoke with school staff. The evidence does not establish the dates on which the Mother and District staff spoke, however, all their communications were by telephone during the period at issue here.

58. The Mother recalled that during remote instruction, the Student’s general education teacher Ms. Wingfield would telephone to ask how the Student was doing. Ms. Wingfield even sent a postcard. The Mother described Ms. Wingfield as very kind and sweet. Mother T131. The Mother believed that Ms. Wingfield had dealt with the Student in-person in the classroom and understood the challenges the Student presented. *Id.*

. . . I think that she knew kind of what I was going through at home, and she would call, and those times when I would call her and I'm like, "Hey, here's Student, do you think that you can explain to him how important his work is?", and she would have a conversation with Student for me. I think that maybe that happened on two occasions. And that's pretty much all that we did. She just called and asked

if he was completing his packets, and I would tell her he was doing what I can get him to do, but she was the only one.

*Id.*, T131-132. The Mother recalled sitting down and talking with the Student after he had spoken with Ms. Wingfield. She recalled they talked “a little bit while he was looking around the room.” *Id.*, T132. The Mother recalled the conversations with Ms. Wingfield made the Student do his work for that day to an extent, but it was short lived. *Id.*

59. Ms. Wingfield confirmed telephone contacts with the Mother and Student during the period of remote instruction. Wingfield T162. The District had ordered staff to stay home. Ms. Wingfield had not offered to travel to the Student’s home to pick up his weekly schoolwork. *Id.*, T164, 178-179, 181-182. Ms. Wingfield established office hours during which she set up one-on-one remote appointments with the Mother, not all of which the Mother kept. Ms. Wingfield attempted to make weekly contact but did not always reach someone at the Student’s home. She was not able to observe the Student through the remote Zoom classes because the Student’s home did not have online access. *Id.*, T162, 164.

60. The Mother did not recall the identities of the special education staff or others from the District with whom she spoke during the period of remote instruction. She conceded she might have spoken with Ms. Rosales, but had no recollection. Mother T131.

61. On occasion when the Mother and older sibling did not know how to help the Student with his schoolwork, the Mother called the District to ask for help. *Id.*, T133. She did not identify the individuals with whom she spoke, or the outcome of those calls, or whether she discussed the calls for help at the June 2020 IEP team meeting.

62. Ms. Rosales did not speak with the Student during the period of remote instruction. Rosales T197. She claimed that she called and spoke with the Mother on a weekly basis to ask if the Mother or Student had any questions or needed any help. She claimed the Mother always responded that they did not need any help. *Id.*, T197. Ms. Rosales’ claim that she spoke weekly with the Mother is suspect. The Mother liked Ms. Wingfield, yet Ms. Wingfield was not able to consistently, weekly speak with the Mother, even on days she had scheduled appointments with the Mother. The Mother’s telephone had limited service, and sometimes she had to go outside to use the telephone. During the hearing, the Mother’s telephone connection was lost at least three times. See T75-76, 122-123, 209. Ms. Rosales’ claim that the Mother responded that she and the Student had no questions and did not need help is not credible. The ALJ gives greater weight to the evidence about the frustrations and concerns the Mother stated in her conversations with Ms. Wingfield, and the manner in which the Mother repeated her frustrations and difficulty understanding because she herself has a disability and reads poorly.

### ***District’s ESY Policy***

63. The District’s Board adopted policies. See D2. The policy manual contains 39-pages, but only the page with the paragraph about ESY services was offered and admitted into evidence:

Extended school year (ESY) services. The consideration for ESY services is a team decision, based on information provided in the evaluation report and based on the individual needs of a student. ESY services are not limited by categories

of disability, or limited by type (sic) amount or duration of the services. If the need for ESY services is not addressed in the IEP and ESY services may be appropriate for the student, the IEP team will meet by April to address the need for ESY. Factors for the team to consider when determining the need for ESY may include, but are not limited to: 1) Evidence of regression **or** recoupment time based on documented evidence; or 2) A documented determination based on the professional judgment of the IEP team including consideration of the nature and severity of the student's disability, the rate of progress and emerging skills.

(Bold emphasis added). *Id.*, p21. At the June 2020 IEP team meeting, the Parent through her attorney challenged the criteria by which the team should decide eligibility for ESY services. According to the Parent, the District's policy required the team to consider evidence of regression **or** recoupment, not regression and recoupment, to qualify for ESY services.

64. Ms. Patan recalled that during the June 2020 IEP meeting, someone displayed a "screen shot" of the District's "ESY criteria." Patan T77. She could not recall if the District's attorney read from the state criteria in the Washington Administrative Code (WAC). *Id.*, T77-78. Ms. Irion recalled the WAC reading by the District's attorney, but did not recall a screen shot display. Irion T63. Asked by Parent's attorney at hearing about a document titled Wapato School District's Extended School Year Criteria, Ms. Irion did not recall having ever seen or known that a document by that title existed. *Id.*, T63-64. The evidence does not contain a document that bears the title Wapato School District's Extended School Year Criteria.

65. The District had not historically designated certain weeks or periods in which it would provide ESY services. McGraw T105-106. Ms. McGraw explained the District provided or contracted to provide ESY services as needed in a student's IEP. *Id.* In summer 2020, the District contracted with providers for some IEEs for students, but it did not provide or contract to provide virtual or in-person ESY services to any special education student. *Id.*, T106, 112-113.

### ***The IEEs***

66. At the time of hearing, none of the District staff recalled any details of the presentation at the IEP team meeting by the school psychologist about the IEEs<sup>17</sup> from Dr. Enns and Ms. Brock. The District's policy refers to a team decision based on information from "the evaluation report." D2p21. The findings below regarding the IEEs are made only in the context of the issues in the Complaint.

67. Dr. Enns' neuropsychological report made no specific reference to the Student's October 2019 IEP goals, or regression or recoupment of skills or ESY. P1pp49-88. Dr. Enns considered the Student began kindergarten in Moxee, Washington, until November 2017, when the Student moved to MLK Elementary in Yakima. The Student transferred to Whitney in October 2018. Dr. Enns stated school records from kindergarten and first grade suggest the Student met standard in reading, writing, and math. He noted school-related behavior incidents in May 2019, and September to November 2019. P1p51.

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<sup>17</sup> The District's response to the IEEs, including actions related to a reevaluation and development of a new IEP based on a reevaluation, are not at issue in the Complaint.



68. Dr. Enns concluded the Student showed average decoding skills. *Id.*, p69. Regarding reading comprehension and fluency, Dr. Enns concluded the Student was in average range, typical. *Id.*, p70. He encouraged the Parents and school team to celebrate the Student's successes, which Dr. Enns felt were "substantial" and "Despite rather impacted neurological functioning, [the Student] has developed adequate academic skills and is showing more capable social behaviors at school." *Id.*, p73. In the section for school supports, Dr. Enns recognized the Student's skills were not lagging his peers in any meaningful way. The Student was making gains in both reading and spelling and had a close bond with a specific Whitney teacher. Dr. Enns cautioned against altering the Student's current support.

69. Dr. Enns considered that the two most critical aspects of functioning in need of support for the Student were social and social emotional. He identified need for emotional regulation skills and other skills outside the scope of the October 2019 IEP and the issues in this case. He predicted failure<sup>18</sup> without and conversely the ability to develop appropriate skills with "tiered, intentional guidance." In the section for school supports, Dr. Enns addressed the Student's need for direct, intentional instruction in a wide range of social skills that are beyond the scope of issues here.<sup>19</sup> *Id.*, p74. Regarding emotional regulation, Dr. Enns encouraged use of preventative practices such as reading his "yellow zone" and finding ways to self-sooth. *Id.*, p75. The remainder of the supports for emotional regulation address matters not at issue here.<sup>20</sup> *Id.*

70. Ms. Brock's comprehensive communication evaluation made no specific reference to the Student's October 2019 IEP or IEP goals, or regression or recoupment of skills or ESY. P3.

71. Ms. Brock assessed the Student using The Test of Integrated Language and Literacy Skills (TILLS), in categories of listening, speaking, reading, writing, and memory. She found that the Student's subtest scores and composite scores were within the average range. There was a low likelihood the Student had a literacy disorder. *Id.*, pp2-3. Ms. Brock administered The Social Language Development Test – Elementary: Normative Update (SLDT-E:NU), to compare the Student's social language develop to students his age. Ms. Brock's opinion that the assessment results may indicate a social communication disorder are outside the scope of ESY issues. *Id.*, pp6-7. Ms. Brock made recommendations for the Student to be successful in academic and social communication settings. *Id.*, pp8-9. One recommendation is relevant to the issues here, that programs like zones of regulation may benefit the Student to increase self-awareness and self-regulation skills. *Id.*, p8.

### ***The Student's Mother***

72. The Mother has a learning disability. She believes she does not read as well as the Student's older sibling who is age 9. Mother T123.

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<sup>18</sup> The prediction of failure is in a short paragraph that also addressed learning explicit social skills and developing friendships and other peer relationships. P1p73.

<sup>19</sup> For example, Dr. Enns addresses the Student's needs related to initiating friendships, engaging in reciprocal conversations, conversation, repair, reading nonverbal behaviors, and cooperative play skills.

<sup>20</sup> For example, potential benefits of cognitive behavioral strategies, occupational therapy, and other active methods to practice strategies guided by a variety of providers.

73. The District concedes it did not send staff to the Student's home during the school closure. Irion T59, 61, Patan T88. The Mother "offered them to come here any time" but understood the District had "opted out of home visits." Mother T128.

74. The Mother described the Student as a person who does not adapt to change. After remote instruction began, the Mother grew concerned about the Student's behavior at home. She called the Student's doctor and asked for a referral to a counselor. In addition to addressing behavior, the Mother hoped counseling would provide the Student with a schedule and help him give his attention to his homework. *Id.* At the June 2020 IEP meeting, the Mother told the District about contacting the Student's doctor for a referral to counseling. *Id.*, T128, 219.

75. The Parent offered no evidence about providing the June 2020 IEP team information about counseling, beyond that information about a referral from the Student's doctor. The Parent offered no evidence to prove that she or others on her behalf informed the District about (a) whether and how frequently the Student actually received counseling, (b) the manner or method by which a counselor delivered the counseling services to the Student, and (c) expenses or costs incurred related to counseling. During that time, the Parent lacked transportation, online access for remote video conference therapy, and reliable telephone coverage. *Id.*, T133, 136, 216. Therefore, the ALJ made no findings about the Student's receipt of counseling services during the period of remote instruction in relation to his need for ESY services in summer 2020.

76. The Mother described how the Student did at home after he was not receiving in-person services at Camas.

Not very well. He -- A lot of his struggles are his behavior and his ability to concentrate, and that will affect his work at times when he is losing control, I guess you would call it. So, yeah, a great deal. It affected him a lot. He would throw tantrums similar to the behavior exhibit that you guys have, the same thing he would do here at home, except for a little bit worse. I'm guessing that it was him not having -- he received -- it depends on when he goes to school and he receives special ed. education that he -- [interruption by court reporter]-- It helps him a little bit. It does help him.

*Id.*, T121. The Mother did not confirm or state that she shared the same information with the District at the June 2020 IEP team meeting.

77. However, the Mother recalled she had shared with the IEP team how the Student went "backwards" in his reading abilities after in-person services at school ended.

. . . He would forget. "Well, I used to know that, mom", he would say, or he would just not want to do it at all. He'd get mad and throw stuff at the wall, not meaning to aim at anybody, but just at the wall, or he'd stomp, just -- I mean I'm not a teacher or a psychologist. Part of that could have been just his behavior that caused him to regress, to move back instead of forward, I guess that's what that means. . . .

*Id.*, T123-124. She recalled she shared with the District about why she wanted ESY services for the Student.

I explained just like I did a little bit ago about him being referred to counseling that time. I told them that he is forgetting, not learning. He's not advancing. He was going back. He wasn't even at a stand-still; he was backwards.

*Id.*, T128-129. The Parent offered to give an example and continued

I can give you an example. We would read a paragraph and he would maybe read four words out of the whole paragraph, but in between he was not participating, he was -- either because of his energy or because he was throwing a fit about how he didn't want to do this, and, "Well, if you can't read, ma, why do I have to read?", you know. So, was he not listening like they said I said? Oh, yeah, but it's not because he's just he's a child and doesn't want to listen, he has a disability, and, therefore, it affected him, and his reading, his learning, his behavior, his social skills his everything, and I stressed that to them.

*Id.*, T128-129. It is not clear from the evidence that the Mother shared with the IEP team the above example and the information about the child wondering why he had to learn to read.

78. The Mother explained at hearing how the Student had known some "tricky" words by sight, like "mute" with the silent "e." However, during the remote instruction at home he had tried to sound out that word and grown frustrated. *Id.*, T133. The Mother described tricky words as those that students do not learn to read but rather memorize and know by sight. She believed the Student had lost words that he had memorized by sight before March 13, 2020. She perceived the Student had lost ground when he sounded out words phonetically. An example she provided at hearing was the word "blessed." Instead of the Student saying blessed and continuing on reading, he'd say "ba, la, eh, es, you know, he'd sound it." The Mother felt that sounding the word out meant the Student was forgetting and not remembering words that he previously knew. *Id.*, T137-139. It is not clear from the evidence that the Mother shared with the IEP team these examples or her concerns about tricky words or forgetting these two words specifically. Her description of the Student doing his schoolwork is consistent with examples on the Dolch lists of words that are used in high frequency and cannot be sounded out. Teachers want students to know that type of word automatically, by sight, without sounding them out. Wingfield T153, Rosales T189, D9. The Mother created a vivid image with her examples, an image that the District members of the IEP team would likely have remembered. It strains credulity that the Student's teachers, Ms. Wingfield particularly, would not have recalled the Parent sharing these or very similar examples at the IEP meeting. The Mother's descriptions are credible; however, she has not proven that she shared these examples at the June 2020 IEP team meeting.

79. The District staff had no information for the period after March 13, 2020, to contradict the Mother's reports to the June 2020 IEP team about the challenges at home with the Student. Wingfield T175, Rosales T214.

80. The Mother could not remember exactly everything she said at the June 2020 IEP meeting, but thought she had gone into detail. However, she felt from the beginning of the meeting that the District had already made a decision.

-- like they rehearsed it, like they already knew what they were going to do, like they had already talked to each other before we were added to the meeting, and

they already had a decision made up. It was clear that they already had a decision made up.

*Id.*, T129.

81. Asked if she told “the school staff that [the Student] always had a hard time after summer breaks and it took a long time for him to catch up,” the Mother responded that she had. *Id.*, T218-219. Further, the Mother recalled she told the other members of the June 2020 IEP team that the Student did not adjust well to change and that he had a difficult time regrouping for learning and behavior. The Mother claims the District staff reviewed everything she said but just disagreed with what she reported. *Id.*, T219. None of the District team members recalled the Mother shared with the IEP team the information in the finding above about the Student struggling after breaks and needing a long time to catch up. They could not recall some details about the meeting, which was held remotely more than four months prior to hearing. The ALJ observed how the Mother sometimes spoke her words rapidly. Even when asked about an academic matter, the Mother referenced the Student’s behavior. Mother T125, 128-129, 133-134. The Mother’s belief in her impression about the Student’s history was genuine. For these reasons, I find the Mother credible and find that she shared at the June 2020 IEP team meeting that the Student always had a hard time after summer breaks, that it took a long time for him to catch up, and that he did not adjust well to change.

#### ***District’s PWN Denying ESY***

82. The District issued a PWN that informed the Parent that effective June 22, 2020, it was refusing to provide ESY services for the Student. P7. The PWN stated the IEP team determined the Student was not in need of ESY Services. The reasons the District rejected adding ESY services to the Student’s IEP were:

Overall, the data did not show that [the Student] would experience unreasonable regression during a break and it would not take an unreasonable amount of time for him to recoup skills after returning from a break. Based on the professional judgment of the IEP team the nature and severity of [the Student’s] disability does not warrant ESY services. At this time, [the Student] has met or is close to meeting his IEP goals and he is not missing an opportunity to acquire emerging skills if he does not receive ESY services.

*Id.* Another factor relevant to the District’s action was that the Student’s October 2019 IEP did not provide for ESY services. *Id.*

83. The Parent did not offer any evidence to prove that in October 2019 the Yakima IEP team of which she was a member was planning to consider the Student’s eligibility for ESY services after considering his experiences after the winter 2019 and spring 2020 school breaks. District IEP team members did not recall such a plan being a topic of discussion at the June 2020 IEP team meeting. McGraw T118, Wingfield T173, Rosales T212.

## ***Relief Requested***

84. The Parent requested compensatory education and supplemental services for the Student to allow him to obtain the educational benefit that he would have received if the District had approved the request for ESY in summer 2020. In addition, the Parent requested reimbursement “for her obtaining any educational materials and services” due to the District’s failure to provide the Student with FAPE.

85. Through an email from her attorney, the Parent informed the District about the ESY services she wanted it to provide the Student in summer 2020. P6. Except for the email to the District’s attorney, the Parent offered no evidence about:

- a. the kind of “structured, intentional instruction” that the Student needed in relation to his four IEP goals,
- b. the amount of hours in ESY services the Student needed in each area of his IEP goals (basic reading, reading fluency, and behavior (social/emotional)), or
- c. a description of the educational materials or services she obtained for the Student, and the cost or expense she incurred to obtain them.

86. The email to the District’s attorney sought in-person instruction from District staff, or from third-party providers willing to provide in-person instruction. It identified Brock’s Academy as a potential third-party provider. *Id.* The Parent offered no evidence from Brock’s Academy or other third-party providers that they were willing and available in summer 2020 to provide the Student with in-person instruction in basic reading, reading fluency, and behavior (social/emotional).

87. The email to the District’s attorney asked for “all of the technology necessary” for the Student to access “whatever online learning” the District was offering. *Id.* Implied in the record from the references to the Student’s current 2020-2021 school year is that the parties resolved the issues related to technology and lack of online access. The Parent offered no evidence of the Student’s current needs for technology to access remote instruction or services to access compensatory education and supplemental services.

## **CONCLUSIONS OF LAW**

### ***Jurisdiction and Burden of Proof***

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

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Because the Parent is seeking relief, the Parent bears the burden of proof in this case. Neither the IDEA nor OSPI regulations specify the standard of proof required to meet a party’s burden of proof in special education hearings before OAH. Unless otherwise mandated by statute or due process of law, the U.S. Supreme

Court and Washington courts have generally held that the burden of proof to resolve a dispute in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 98-102, 101 S. Ct. 999 (1981); *Thompson v. Department of Licensing*, 138 Wn.2d 783, 797, 982 P.2d 601 (1999); *Hardee v. Department of Social & Health Services*, 172 Wn.2d 1, 4, 256 P.3d 339 (2011). Therefore, the Parent's burden of proof in this matter is preponderance of the evidence.

### ***The IDEA and FAPE***

3. Under the IDEA, a school district must provide "a free and appropriate public education" (FAPE) to all eligible children. In doing so, a school district is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 200-201, 102 S. Ct. 3034 (1982).

4. In *Rowley*, the United States Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA, as follows:

First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

*Rowley*, 458 U.S. at 206-07 (footnotes omitted).

5. The first inquiry is whether a District has complied with the procedures established by the IDEA. *Id.* at 206-07. Procedural safeguards are essential under the IDEA, particularly those that protect the parents' right to be involved in the development of their child's educational plan. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001). Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

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

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

6. Parental participation is essential under the IDEA. The procedural safeguards provide:

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.*, *supra*.

7. The next question is whether the District has violated the substantive requirements of the IDEA. The Supreme Court recently clarified the substantive portion of the *Rowley* test as 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.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999, 197 L.Ed.2d 335 (2017). Additionally, the Student’s “educational program must be appropriately ambitious in light of his circumstances . . . .” *Id.*, 1000.

8. The Ninth Circuit has explained the *Endrew F.* standard as follows:

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

*M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1201 (9th Cir.), *cert. denied*, 138 S. Ct. 556 (2017) (citations omitted; internal quotation marks omitted). The determination of reasonableness is made as of the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is “a snapshot, not a retrospective.” *Id.*

9. The Conclusions below analyze the four issues but not in the same sequence as they are set forth in the issue statement. The first issue is analyzed last.

***Did the District fail to comply with procedural requirements of the IDEA and in turn fail to provide the Student FAPE by predetermining that the Student would not be eligible for ESY for the summer of 2020 based on particular categories of disability?***

10. A school district may not limit extended school year services to particular categories of disability. WAC 392-172A-02020(4). The District’s policy provides that ESY services are not limited to categories of eligibility. D2p21.

11. A district violates a parent’s right to meaningfully participate in the IEP process if it predetermines a student’s placement, such as when it “independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification.” *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). Predetermination may also occur when a District makes a placement determination prior to an IEP meeting and is unwilling to consider other alternatives. *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007).

12. The evidence established that Ms. Patan recognized the records in Exhibit P1 as those presented at the June 2020 IEP meeting by the school psychologist. The only detail that Ms. Patan could recall from the presentation was the Student’s diagnosis. That fact alone does not support a conclusion that Ms. Patan predetermined that students with ADHD, and this Student in particular, were not eligible for ESY services. The evidence does not support a conclusion that any other District team member predetermined that students with ADHD or who were eligible under the Other Health Impaired category, and this Student in particular, were not eligible for ESY services. The evidence does not support a conclusion that the District had a policy that limited

ESY services to students with certain types of disabilities or disability categories. The Parent failed to prove the District violated the procedural requirements of the IDEA by predetermining the Student's eligibility for ESY based on his particular category of disability.

13. The Parent's closing brief, in a section entitled *The District Predetermined Student Would Not Receive ESY Services*, she argued that the combination of the matters summarized in a. to h. below prove the District predetermined the ESY decision:

- a. The District failed to convene an IEP team meeting to address ESY in April,
- b. The District members had not reviewed the Yakima initial evaluation and the IEEs before the IEP meeting,
- c. The District considered irrelevant data gathered prior to the school closure,
- d. That even if relevant, the pre-closure Camas data did not show Student progress toward goals but the opposite,
- e. The Mother felt the District members sounded rehearsed and had made up their minds without considering her post-closure observations,
- f. No students received ESY in summer 2020,
- g. When the meeting ended the District could have accepted the Mother's post-closure observations of the Student and approved ESY services or it could have gathered data on the Student's current educational needs, and
- h. That in denying the ESY request without assessing the Student before or after the meeting showed the District was never going to allow the Student to access ESY services.

These matters in a. to h. appear to involve bases for predetermination *other than the Student's disability category*, which is the issue alleged in the Parent's Complaint. Nevertheless, the ALJ has analyzed them for the sake of argument and in the interest of the appearance of fairness.

14. The District was not required under its policy or the IDEA to convene an ESY meeting in April 2020. The policy in pertinent part provides:

If the need for ESY services is not addressed in the IEP and ESY services may be appropriate for the student, the IEP team will meet by April to address the need for ESY.

D2p21. The Student's need for ESY services was addressed in his October 2019 IEP. The IEP stated the Student did not require ESY services. In addition, there is no evidence that in April 2020 the Student's Camas IEP team was considering that ESY services may be appropriate for the Student.

15. The Parent cited no authority and the ALJ found none to support the assertion that in advance of an IEP meeting the individual team members are responsible to read the evaluation reports. This argument does not support a conclusion that the District predetermined the outcome of the June 19, 2020, ESY decision.

16. The District's decision to consider pre-closure data, and its interpretation that the data showed progress toward the IEP goals, does not support a conclusion that the District predetermined the outcome of the June 19, 2020, ESY decision.



17. The District's decision to schedule the June 19, 2020 ESY meeting requested by the Parent, without data about progress toward IEP goals during the pandemic-related school closure, does not support a conclusion that the District predetermined the outcome of the June 19, 2020, ESY decision.

18. The Parent's perception that the District's team members had formed an agreement in advance of the IEP meeting is not supported by other objective evidence. The Parent's mere subjective belief does not amount to predetermination. *Virginia S. v. Dep't of Educ.*, 47 IDELR 42 (D. Haw. 2007). The District members professed going to the IEP meeting with open minds, and that they would have considered ESY services if they thought the Student needed ESY services. The Parent failed to prove District members met and agreed in advance about an outcome. The fact the District did not provide ESY services to any other students is not determinative here. The many reasons that other parents may have not requested ESY services or that other special education students were not eligible for ESY in summer 2020 are unknown. The Parent has not proved the District predetermined ESY decision for this Student or all special education students for summer 2020.

19. The Parent argues that predetermination by the District is demonstrated by its lack of effort to assess the Student's current performance (a) during the period of remote instruction, (b) in preparation for the June 2020 IEP meeting, or (c) following the meeting and before making the ESY decision. However, the District's ESY policy is permissive as the team determining ESY is given factors that "may include, but are not limited to" certain consideration. This argument does not support a conclusion that the District predetermined the outcome of the June 19, 2020, ESY decision. There is no merit to the Parent's arguments that matters in a. to h. above, alone or in combination, proved the District predetermined the outcome of the June 19, 2020, ESY decision.

20. *Summary.* For the above reasons, the Parent failed to prove the District violated the procedural requirements of the IDEA by predetermining the Student's eligibility for ESY based on his particular category of disability.

***Did the District fail to comply with procedural requirements of the IDEA and in turn fail to provide the Student FAPE by refusing to consider information from the Parent related to the Student's history of regression during the break in receipt of instruction and how he has struggled with recoument of skills after breaks?***

21. The premise of this allegation is that the Parent presented historical information of significance for the IEP team's consideration, which the District failed or refused to consider at the June 2020 IEP team meeting. The Mother proved she told the IEP team of her impression that the Student always had a hard time after summer breaks, that it took a long time for him to catch up, and that he did not adjust well to change. She did not claim or has she proved that she provided the team with more detailed historical information. Significantly, the preponderance of evidence contradicts the Mother's impressions and beliefs of the Student's history. Dr. Enns reviewed the Student's educational records from kindergarten, first grade, and the first few months of second grade at Whitney, during which time the Student experienced multiple school transfers and school break periods. Dr. Enns made no mention of any history of the Student experiencing regression or loss of skills, or having a history of struggles recouping skills after an interruption in educational services. Dr. Enns determined the records showed the Student's successes were

substantial. Dr. Enns noted that the Student developed adequate academic skills and showed more capable social behaviors at school. P1p73. The Camas staff had not found any historical record of the Student having regressed after breaks and then struggled recouping lost skills.

22. The District did not violate the procedural requirements of the IDEA to the extent it considered but did not give significant weight to the Parent's impressions and beliefs in deciding the Student's eligibility for ESY services. The Parent failed to prove the District violated the procedural requirements of the IDEA on this issue.

***Did the District fail to comply with procedural requirements of the IDEA and in turn fail to provide the Student FAPE by refusing to consider information from the Parent related to the Student's regression between March 17, 2020, and June 18, 2020, when he had gone three months without the receipt of any in-person instruction and no instruction in social and emotional skills?***

23. *Parent's information about regression on behavior (social/emotional) goals.* The Mother's perception that the District did not agree with or accept her observational data about the Student's at-home behaviors is understandable. The evidence does not support her perception, however. To the contrary, nearly every District witness remembered that at the June 2020 IEP team meeting, the Mother talked about the Student's behavior at home. However, the evidence supports a conclusion the District considered the Mother's information but gave greater weight to information that more meaningful and relevant *to the progress measurements for the Student's IEP goal for behavior (social/emotional) skills*. The Student's IEP goal did not measure types of inappropriate behaviors or the number or frequency of incidents of inappropriate behaviors. The IEP goal measured the Student's awareness of his emotions and moods when engaging in the behaviors.

24. The District considered the Mother's information but gave greater weight to information that was meaningful to the progress measurements for the Student's IEP goal for behavior (social/emotional) skills. On this point, the Parent's argument is not persuasive..

25. *Parent's information about regression on basic reading and reading fluency goals.* The Parent proved she informed the District about her observations of the Student's struggles with academic instruction at home, including reading. Most of the information the Mother provided to the IEP team was general. She probably shared a few examples of reading schoolwork at the IEP team meeting, but not daily examples or even weekly examples that would have informed the IEP team covering the entire period. More probably than not, she shared with the IEP team in a manner similar to how she shared at the hearing, with even academic matters being overshadowed by her concerns about Student's behaviors. She did not provide the June 2020 IEP team with his schoolwork packets to support her general observations that he had regressed in reading.

26. The evidence supports a conclusion that the District considered but did not give significant weight to the Mother's observational information because it was not meaningful in context of proving the Student had regressed from the progress he had made through March 13, 2020, toward his three IEP academic goals. On this point, the Parent's argument is not persuasive.

27. *Summary.* For the reasons stated above, the Parent failed to prove the District violated the procedural requirements of the IDEA when it considered but did not give significant weight to the limited to the information from the Parent that related to the Student's regression from progress made on his four IEP goals between March 17, 2020, and June 18, 2020.

***Did the District fail to offer the Student individualized and appropriate Extended School Year (ESY) services for the summer of 2020 consistent with WAC 392-172A-02020?***

28. WAC 392-172A-02020 provides for ESY services:

(1) Extended school year services means services meeting state standards contained in this chapter that are provided to a student eligible for special education:

- (a) Beyond the normal school year;
- (b) In accordance with the student's IEP; and
- (c) Are provided at no cost to the parents of the student.

(2) School districts must ensure that extended school year services are available when necessary to provide a FAPE to a student eligible for special education services.

(3) Extended school year services must be provided only if the student's IEP team determines on an individual basis that the services are necessary for the provision of FAPE to the student.

(4) A school district may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount or duration of those services.

(5) The purpose of extended school year services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors.

(6) School districts must develop criteria for determining the need for extended school year services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based upon the professional judgment of the team and consideration of factors including the nature and severity of the student's disability, rate of progress, and emerging skills, with evidence to support the need.

(7) For the purposes of subsection (6) of this section:

- (a) Regression means significant loss of skills or behaviors if educational services are interrupted in any area specified on the IEP;
- (b) Recoupment means the recovery of skills or behaviors to a level demonstrated before interruption of services specified on the IEP.

29. In the Ninth Circuit, the Parent must prove that ESY services in summer 2020 were necessary to permit the Student to benefit from his instruction.

Under the IDEA, schools are required to provide ESY services as necessary in order to provide a child a FAPE. 34 C.F.R. § 300.309(a). A school must provide these services, however, only if the child’s IEP team determines that such services are necessary “for the provision of FAPE to the child.” *Id.* “[A] claimant seeking an ESY must satisfy an even stricter test, because ‘providing an ESY is the exception and not the rule under the regulatory scheme.’” *Bd. of Educ. of Fayette County v. L.M.*, 478 F.3d 307, 315 (6th Cir. [2007]) (quoting *Cordrey v. Euckert*, 917 F.2d 1460, 1473 (6th Cir. 1990) *cert. denied*, 552 U.S. 1042, 128 S.Ct. 693, 169 L.E.d.2d 513 (2007)). “ESY services are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided an educational program during the summer months.” *M.M. ex rel. D.M. v. Sch. Dist. of Greenville County*, 303 F.3d 523, 537–38 (4th Cir. 2002).

*N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202, 1211 (9th Cir. 2008).

30. The lack of a regular education summer school program does not relieve a district from having to comply with LRE requirements when providing ESY. To provide individual students with a least restrictive environment, the focus must be on the individual student rather than on the district's ability to provide an appropriate program, the district’s budgetary constraints or its lack of staffing as an excuse for not considering a continuum of ESY placements. *In re: Student with a Disability*, 64 IDELR 292 (SEA MS 2014).

31. Students are entitled to receive ESY services regardless of school closures related to the COVID-19 pandemic, according to the U.S. Education Department (ED). *COVID-19 Questions & Answers: Implementation of IDEA Part B Provision of Services*, 77 IDELR 138 (OSEP 2020). Some ESY services -- particularly those requiring direct, in-person contact -- may not have been able to be delivered during the summer. In these cases, the ED guidance is that districts should consider providing ESY services to students throughout the regular school year, during school breaks or vacations where appropriate to the child's needs and consistent with applicable standards.

32. As required by WAC 392-172A-02020(6), the District developed criteria for determining the need for ESY. The District’s criteria are in its board policies. D2p21. The Parent argues the District’s criteria are more generous than the criteria in WAC 392-172A-02020(6). The arguments primarily focus on “or” rather than “an” and “documented determination,” noted in **bold** as follows:

WAC 392-172A-02020(6)	District ESY criteria (D2p21)
<p>...criteria for determining the need for extended school year services that include regression <b>and</b> recoupment time based on documented evidence, or on the determinations of the IEP team, based upon the professional judgment of the team and consideration of factors including the nature and severity of the student's disability, rate of progress, and emerging skills, with evidence to support the need</p>	<p>Factors for the team to consider when determining the need for ESY may include, but are not limited to: 1) Evidence of regression <b>or</b> recoupment time based on documented evidence; or 2) A <b>documented determination</b> based on the professional judgment of the IEP team including consideration of the nature and severity of the student’s disability, the rate of progress and emerging skills.</p>

33. The Parent argues the District's ESY policy allowed the team to have considered either regression or recoupment in determining the Student's eligibility for ESY services. She argues the District's policy, unlike WAC 392-172A-02020(6), did not require evidence of both regression and recoupment for the team's decision-making.

34. *Yakima evaluation and IEEs.* The District policy provides that ESY is a team decision "based on information provided in the evaluation report and based on the individual needs of a student." D2p21. The Parent argues that the District failed to consider the Yakima initial evaluation and the IEEs when it denied the request for ESY services for summer 2020. The claim is contrary to the PWN issued after the meeting that stated the team considered the Yakima evaluation and the IEEs. The claim is contrary to Ms. Patan's recollection that Ms. Hamlin presented information about the Student's records received from Yakima, which records included Dr. Enns' report. However, the Parent proved that the team did not review the evaluation reports in detail and that most of the District's focus was on the data collected by the Camas team. D8, D9, D10. However, the Parent has not proven that failure to consider the evaluation reports from Yakima and the two IEEs in detail violates either the District policy or the IDEA. She failed to prove she or others on her behalf brought to the June 2020 IEP team's attention information from the Yakima evaluation or the IEEs that supported the request for ESY. At hearing, she did not point to any evaluative data that supported the need for ESY and the ALJ's review of the evaluative data in Exhibits P1 and P3 found no data in support of a need for ESY. Here, District staff familiar with the Yakima evaluation and the IEEs might have considered limited review sufficient as they saw no details relevant or supportive to the ESY decision. On this point, the Parent's argument is not persuasive.

35. *Pre-March 13, 2020 data.* For the reasons stated in earlier conclusions, the pre-closure data was relevant to the June 19, 2020, ESY decision. The District has the responsibility to assess and gather data to measure a student's progress toward the student's IEP goals. However, the District is not obligated under the IDEA or the District's own policy to assess and collect data for every special education student before and after every interruption in educational services. The Parent has not provided evidence to prove that the District knew or should have known the Student may be needing ESY services and the plan for measure before and after the spring 2020 break. When the Parent made the ESY request because of her concerns about the remote instruction using the materials received in the weekly packets, it was not a violation of the policy or the IDEA for the District to consider the pre-March 2020, data. It was relevant to considering the individual needs of a student. It was relevant to the team's decision-making about whether the Student needed ESY for maintenance of his learning skills or behavior. It was also relevant to the exercise of professional judgment of the team and consideration of the Student's rate of progress and for emerging skills. On this point, the Parent's argument is not persuasive.

36. The Parent argues that far from making progress in his IEP goals, the data showed the Student was struggling and had decreased in his abilities. Therefore, she argues it was error for the District to rely on that data from enrollment until school closure to deny the ESY request. The evidence does not support this argument. The data gathered by District staff from enrollment at Camas through the school closure showed the Student was meeting and exceeding three of his four IEP goals. On five tests of oral reading fluency, the Student exceeded his IEP goal of 52 correct words per minute at second grade level. On tests of second grade high frequency words in isolation, the Student's scores of 97% and 100% far exceeded his IEP goals of 83% by October

2020. The Parent correctly notes the District gave only two tests and no tests on that goal after February 5, 2020. *However, the two tests administered by the District included third grade words.* The IEP goal on behavior (social/emotional) did not measure the number or frequency of behavior or discipline incidents at school. The IEP behavior goal measured the Student's ability to identify accurately his mood or emotion using the zones of regulation curriculum matching his teachers' assessments at 80% accuracy. The preponderance of credible evidence showed that the Student was nearly always aware of his alertness and mood even when in red zones and even when his behavior at school worsened. On this point, the Parent's argument is not persuasive.

37. *The Parent's Unrebutted Observational Data about Student Regression.* The Parent proved that only she had observations about the Student's at-home remote instruction experience. However, as addressed in the conclusions above, the Parent failed to provide sufficient meaningful observation data to prove regression as defined by a significant loss of skills or behaviors addressed in the Student's IEP goals. For example, she proved she called the Student's doctor and obtained a referral to a counselor because his misbehavior increased at home. She did not prove the Student received counseling services, or prove information about regression in the behavior (social/emotional) IEP goal regarding awareness of his moods and emotions. On this point, the Parent's argument is not persuasive.

38. *The District Failed to Apply its Own Policy Regarding Extended School Year Services.* The District argued the Parent must prove regression and recoupment under the IDEA. The Parent argues that to the extent the District claims the denial of ESY services was based on lack of documented evidence of regression **and** recoupment time, that claim is an admission the District violated its own ESY policy. The Parent argues the team should have considered either regression **or** recoupment – both of which under the policy may be sufficient but not necessary. Arguably, it is possible for an IEP team to make an ESY decision based only on evidence of regression. However, it is not possible for an IEP team to make an ESY decision based only on evidence or recoupment since recoupment of skills is meaningless without regression. However, having failed to prove regression in any of the four IEP goals, the argument about recoupment of skills in a reasonable period of time is moot.

39. The Parent did not argue or prove that ESY services were necessary based on (a) the nature and severity of the Student's disability, (b) the rate of the Student's progress. The Parent has not proven that the Student had emerging skills that would be unattainable if he did not receive ESY services. The Parent did not prove that the Student was developing critical skills that would be jeopardized if he did not receive ESY services.

40. The Mother's information about the Student's inappropriate behaviors, the types of behaviors, number and frequency of behaviors and at-home challenges are of concern and importance. This ALJ is not unmoved or dismissive of the Mother's genuine concerns. However, those important concerns are outside the authority of the ALJ to address. The ALJ's authority is limited to the considering ESY issues in context of the October 2019 IEP goals without considering the District's actions in relation to the IEEs, reevaluation and development of a new IEP.

41. *Summary.* The Parent failed to prove that the District failed to offer the Student individualized and appropriate ESY services for summer 2020 consistent with WAC 392-172A-02020.

42. *Failure to provide the Student FAPE.* For the sake of argument, even if the Parent had proven the District violated WAC 392-172A-02020 and the IDEA, or any of the three alleged procedural violations, she failed to show such violations denied the Student FAPE. The Parent did not prove that the Student's gains toward his IEP goals as documented through March 13, 2020, would be significantly jeopardized if he were not provided with ESY in summer 2020. *Hellgate, supra.*

43. 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.

### **Remedies**

44. When a parent proves a violation of the IDEA, a tribunal may "grant such relief as the court determines is appropriate." 20 U.S.C. § 1415(i)(2)(C)(iii). The Parent has not proven a violation of the IDEA that denied the Student FAPE, and is not entitled to the remedies requested or other equitable relief.

### **ORDER**

1. The Parent has not proven that the District violated the Individuals with Disabilities Education Act and denied the Student a free appropriate public education as set forth in connection with the District's denial of request for Extended School Year services for summer 2020.

2. The Parent is not entitled to relief and the requested remedies are denied.

Served 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 this final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI–Administrative Resource Services, PO Box 47200, Olympia, WA 98504 and/or emailed to: [appeals@k12.wa.us](mailto:appeals@k12.wa.us).

DECLARATION OF SERVICE

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

Parent



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Dated February 11, 2021, at Seattle, Washington.

*lan*

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Representative  
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cc: Administrative Resource Services, OSPI