

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Issaquah School District

Docket No. 07-2022-OSPI-01658

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

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2022-SE-0096

A due process hearing was held before Administrative Law Judge (“ALJ”) Courtney Beebe on May 8, 9, 10, and 18, 2023. The Parent of the Student whose education is at issue¹ appeared and was represented by Ryan Ford, attorney at law. The Issaquah School District (“District”) was represented by Carlos Chavez, attorney at law. Also, present for the District was Sharine Carver, Executive Director of Special Services.

STATEMENT OF THE CASE

Procedural History

1. The Parent filed the initiating Due Process Hearing Request with the Office of Administrative Hearings (“OAH”) on July 27, 2022. The parties appeared for a prehearing conference on August 18, 2022. The First Prehearing Order was issued on August 19, 2022, and set forth a dispositive motion briefing schedule and gave the parties notice of the due process hearing for January 17, 18, 19, and 20, 2023.
2. The Parent submitted a Notice of Issues for Hearing on September 6, 2022, clarifying the issues presented for hearing.
3. On October 20, 2022, the ALJ issued the Second Prehearing Order, striking the prehearing dispositive motion briefing schedule at the request of the Parent.
4. The Parent filed an Amended Due Process Hearing Request on December 5, 2022. On December 8, 2022, the Third Prehearing Order was issued, setting forth the issues for hearing, a briefing schedule for a dispositive motion by the Parent, and confirming the due process hearing dates of January 17, 18, 19, and 20, 2023.

¹ To ensure confidentiality, names of parents and students are not used.

5. The Parent filed a Motion for Summary Judgment and accompanying declarations on December 19, 2022.

6. After a prehearing conference on January 5, 2023, the ALJ issued the Fourth Prehearing order striking the due process hearing dates based on the extensive nature of the Parent's Motion for Summary Judgment.

7. The District filed its Opposition to Parent's Motion for Summary Judgment and accompanying declarations on January 17, 2022. The parties appeared by telephone on January 24, 2023, to present oral argument.²

8. The Order on Parent's Motion for Summary Judgment was issued on February 21, 2023, granting the Parent partial summary judgment in regard to Issues (vi) and (vii), and denying summary judgment on all other issues.

9. The due process hearing was rescheduled as per the April 5, 2022, Fifth Prehearing Order, and the ALJ requested that the parties submit a stipulation of facts prior to the due process hearing. The parties filed a Stipulated Findings of Fact on April 21, 2023.

10. The due process hearing was conducted on May 8, 9, 10, and 18, 2023. Prior to the beginning of the due process hearing, the parties were provided with the opportunity to stipulate to additional facts and / or to resolve remaining issues. The parties did not make any further stipulations or resolve the remaining issues.

11. As per an agreement of the parties, closing briefs were scheduled for submission on July 19, 2023.

12. The record closed on July 19, 2023, and the decision in this matter was due thirty (30) days thereafter.

Due Date for Written Decision: August 18, 2022.

EVIDENCE RELIED UPON

Exhibits Admitted:

District's Exhibits: D1, D2, D3, D4, D5, D6, D7, D8, D9, D10, D11, D12, D13, D14, D15, D16, D17, D18, D19, D20, D21, D22, D23, D24, D25, D26, D27, D28, D29, D30, D31, D32, D33, D34, D35, D36, D37, D38, D39

² The Parent submitted in excess of 600 pages of documents on December 19, 2022. The District submitted in excess of 400 pages of documents on January 17, 2022.

Parent's Exhibits: PA1, PA2, PA3(a, b), PA4, PA5, PA6, PB1, PB2, PB3, PB4, PB5, PB6, PB7, PB8, PB9, PB10, PC1, PC2, PC3, PC4, PC5, PC6, PC7, PC8, PC9, PC10, PC11, PC12, PC13, PC14, PC15, PC16, PC17, PC18(a, b), PC19(a, b), PC20, PC21, PC22, PC23, PC24, PC25, PC26, PC27, PC28, PC29, PC30, PC31, PC32, PC33, PC34, PC35, PC36, PC37, PC38, PC39, PC40, PD1, PD2, PD3, PD4, PD5, PD6, PD7, PD8, PD9, PD10, PD11(a, b, c, d), PD12, PD13, PD14.

Exhibits Not Admitted: PC41,³ PE1, PE2, PE3, PE4, PE5, PE6, PE7.⁴

Witnesses Heard (in order of appearance): The Parent, Dr. Julie Davies, Sharine Carver, Paula Bilstein, Joan Lawson, Emily Marchewka, Elizabeth Villa, Anna Mottaz, Gretchan Mattila, Tammy Unruh, Allison Brooks, and Maia Richardson.

ISSUES

The Parent raised the following issues:

Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:

- i. Failing to timely initiate a reevaluation beginning in April 2021;*
- ii. Failing to meet IDEA's statutory timeline for completing Student's reevaluation during the 2020-2021 and / or 2021-2022 school years;*
- iii. Failing to timely communicate with Parent during April 2021, thus, denying Parent meaningful participation in her child's special education;*
- iv. Providing Parent with misinformation related to the District's obligation to evaluate Student;*

³ PC41 was offered for admission by the Parent. PC41 is the "Declaration of Ryan Ford," the Parent's legal representative. (Tr., pp.21-23.) The Parent's legal counsel also listed himself as a witness on the Parent's Witness List. (*Id.*; Parent's Witness List.) The District objected to the admission of PC41 because the declaration, if admitted, would make the Parent's legal representative a witness and subject to cross-examination. (*Id.*) The ALJ reserved ruling on the admission of PC41, citing concerns about Washington Rule of Professional Conduct 3.7. (*Id.*) The Parent did not refer to or seek admission of PC41 thereafter. Therefore, PC41 was not admitted into the record and the Parent's legal representative did not appear in the proceedings as a witness for the Parent.

⁴ Parent's Exhibit PE1 was offered on May 10, 2023, and PE2 through PE7 were offered on May 15, 2023, in support of the Parent's rebuttal testimony. These exhibits were excluded as irrelevant and not submitted in accordance with the five-day rule of WAC 392-172A-05100(2)(a). (Tr., pp.559-573.)

- v. *Failing to follow IDEA's timelines for when an Individualized Education Program ("IEP") must be in effect;*
- vi. *Failing to implement all components of Student's IEP during the 2021-22 school year by failing to provide speech services to Student;*
- vii. *Failing to implement all components of Student's IEP during the 2021-2022 school year by failing to provide occupational therapy services to Student;*
- viii. *Failing to implement all components of Student's IEP during the 2022-2023 school year by failing to provide occupational therapy services to the Student;*
- ix. *Failing to implement all components of Student's IEP during the 2022-2023 school year by failing to provide speech services to the Student;*
- x. *Failing to implement Student's IEP by providing a partial placement at IMS as is directed in Student's IEP for the 2022-2023 school year;*
- xi. *Failing to provide Student with a full-time class schedule during the 2022-2023 school year; and*

The Parent makes the following requests for relief:

- i. *Declaratory relief finding that the District violated the IDEA;*
- ii. *Declaratory relief finding that the Student was denied FAPE by the District's actions;*
- iii. *Compensatory education in the form of tuition reimbursement and other related costs for Parent placement of Student at Yellow Wood Academy, including transportation costs;*
- iv. *Reimbursement by the District for the services provided by Dr. Sacarin;*
- v. *Parent reserves the right to seek attorney fees and costs incurred in litigating this due process hearing and obtaining the equitable relief and all other relief they are entitled to;*
- vi. *An IEP and educational placement moving forward that is reasonably calculated to enable the Student to receive educational benefits, considering her unique needs;*

vii. *Additional compensatory education that the Court finds just and equitable;*

viii. *Or other equitable remedies, as appropriate.*

(Third Prehearing Order, December 8, 2022; Parent’s Motion to Dismiss Issues for Hearing, May 3, 2023.)

The Parent withdrew the following issue prior to the hearing:

xii. A finding that the Student’s current placement is a full-time placement at Yellow Wood Academy by virtue of the fact that the District has implemented an educational program in which the Student receives all of her academic instruction through Yellow Wood Academy during the 2022-23 school year.

(Parent’s Motion to Dismiss Issues for Hearing, May 3, 2023.)

The Parent withdrew the following request for relief prior to the hearing:

2. Reimbursement by the District for the private evaluation of the Student by Dr. Davies.

(Parent’s Motion to Dismiss Issues for Hearing, May 3, 2023.)

FINDINGS OF FACT⁵

The Student

1. The Student has been a resident of the District at all times relevant to this matter and has qualified for special education services under the categories of “developmental delay” and “intellectual disability” since 2008. (Stipulated Findings of Fact, p.1; D1, pp.5-6.) The Student was evaluated by the District in December 2008 for the “Birth-to-Three” program, and “subsequent to a Child Find screening in the Issaquah School District, [the Student] was initially determined to be eligible for special education services following an initial evaluation in April of 2011.” (D1, pp.5-6.) The Student was also reevaluated by the District in March 2013 and in March 2016. (*Id.*; Tr., pp. 35-39 (Parent).) The Student was evaluated by Dr. Gayle Fay in October 2015

⁵ The Findings of Fact are partially taken from the April 24, 2023 “Stipulated Findings of Fact” submitted by the parties, which reflect the Findings of Fact in the February 21, 2023, “Order on Parent’s Motion for Summary Judgment.” However, based on the evidence presented, the Stipulated Findings of Fact are not wholly adopted as Findings of Fact in this order.

as well. (*Id.*) The Student attended Cougar Ridge Elementary at the District beginning in April 2016, and was placed in the “LRC-II” program. (*Id.*)

2017-2018 Academic Year

2. During the 2017-2018 academic year, the Student enrolled in the District part-time as a fourth grader at Cougar Ridge Elementary. (Stipulated Findings of Fact, p.1; Tr., pp.36-39 (Parent).) The Student also received private instruction paid for by the Parent at the Yellow Wood Academy (“YWA”), a private, nonprofit educational institution and nonpublic agency (“NPA”). (*Id.*)

3. The Student was evaluated by Dr. Julie Davies⁶ in November 2017. (D1, p.6; Tr., pp.37-39 (Parent); 205 (Davies).) The District and private provider Dr. Allison Brooks⁷ also completed a reevaluation of the Student on March 11, 2018. (D1, pp.1-56; Tr., pp.87 (Carver); 420-422 (Brooks).) The reevaluation team concluded that the Student was eligible for special education services under the category of “intellectual disability.” (Stipulated Findings of Fact, p.2; D1, p.6.) The reevaluation team recommended specially designed instruction (“SDI”) in the areas of reading, math, writing, adaptive, social / emotional and behavior, as well as related services of occupational therapy (“OT”) and speech language pathology (“SLP”). (*Id.*)

4. The IEP team, including the Parent, developed an Individualized Education Program (“IEP”) for the Student on April 5, 2018. (Stipulated Findings of Fact, p.2.) Sharine Carver,⁸ then Director of the District’s LRC-II program, attended the April 5, 2018, IEP meeting as the District representative. (D2, p.1; Tr., pp.245-246 (Carver).)

⁶ Dr. Julie Davies received a B.A. in Psychology, Law & Society in 1999 from the University of Washington, and Ph.D. in Clinical Psychology from Seattle Pacific University in 2002. (D4, pp.1-4; Tr., p.205 (Davies).) Dr. Davies has worked as a neurodevelopmental psychologist from 2003 to the present. (*Id.*)

⁷ Dr. Allison Brooks is a licensed Psychologist and co-owner of the Brook Powers Group. (D39, pp.1-10; Tr., pp.418-422 (Brooks).) Dr. Brooks earned a B.A. in Psychology from Carleton College, and a Master of Education in School Psychology from the University of Washington. (*Id.*) Dr. Brooks also earned a Doctor of Philosophy from the University of Washington. (*Id.*)

⁸ Sharine Carver received a B.A. in elementary education and a B.A. in special education in 1999 from the University of Wyoming. (Tr., pp.238-239 (Carver).) Ms. Carver earned a Master of Arts degree in school psychology in 2005 from Trinity University in San Antonio and is currently pursuing a doctoral program at City University of Seattle. (*Id.*) Ms. Carver is a certificated special education teacher and has worked as a teacher and administrator for over twenty years. Ms. Carver has worked for the District since 2017. (*Id.*)

5. The April 5, 2018, IEP provided for the following specially designed instruction:

Concurrent	Services	Service Provider	Monitor	Frequency	Location	Start Date	End Date
Special Education							
No	Adaptive	Special Education Teacher	Special Education Teacher	60 Minutes/ Weekly	Special Education	04/20/2018	04/19/2019
No	Behavior	Special Education Teacher	Special Education Teacher	60 Minutes/ Weekly	Special Education	04/20/2018	04/19/2019
No	Math	Special Education Teacher	Special Education Teacher	45 Minutes/ Daily	Special Education	04/20/2018	04/19/2019
No	Reading	Special Education Teacher	Special Education Teacher	45 Minutes/ Daily	Special Education	04/20/2018	04/19/2019
No	Writing	Special Education Teacher	Special Education Teacher	45 Minutes/ Daily	Special Education	04/20/2018	04/19/2019
No	Social	Special Education Teacher	Special Education Teacher	50 Minutes/ Daily	Special Education	04/20/2018	04/19/2019
Related Services							
Yes	Speech Language Pathology	Speech & Language Pathologist	Speech & Language Pathologist	45 Minutes/ Weekly	Special Education	04/20/2018	04/19/2019
Yes	Occupational Therapy	Occupational Therapist	Occupational Therapist	120 Minutes/ Monthly	Special Education	04/20/2018	04/19/2019

(D2, pp.41-42.)

6. The April 5, 2018, IEP places the Student at the District in special education 61.65% of the time, and general education 38.35% of the time. (D2, pp.41-42.) The April 5, 2018, IEP also provides for 45 minutes per week of OT services and 120 minutes per month of SLP services. (*Id.*)

7. The District proposed delivering the Student’s special education and related services through a blended program that included “LRC-I” and “LRC-II” at Cougar Ridge Elementary. (D2, pp.50-51; Tr., pp.248-250 (Carver).)

8. Dr. Davies and Dr. Brooks both attended and participated in the April 5, 2018, IEP meeting. (D2, pp.44-52; Tr., pp.205 (Davies); 426-429 (Brooks).) Dr. Davies disagreed with the recommendation that the Student be placed in the LRC-I and LRC-II blended program. (Tr., pp.210-212 (Davies).) Dr. Brooks recommended that the LRC-II program was appropriate for the Student, but that the Student needed opportunities beyond a one-to-one instructional atmosphere. (Tr., pp.248-250 (Carver); 428-432 (Brooks).)

9. The Parent disagreed with the April 5, 2018, IEP and stated that she would withdraw the Student from the District. (C9, p.1; Tr., pp.117-118 (Parent).) After the April 5, 2018, IEP meeting, District personnel met with the Parent and reviewed the

Special Education Procedural Safeguards. The Parent was represented by legal counsel during the March and April IEP development process. (*Id.*)

10. The Parent, “via email and through written correspondence delivered (sic) the Cougar Ridge Elementary front office,” communicated that she was unilaterally placing the Student full time a private, nonpublic agency school and no longer consented to the Student receiving special education services from the District. (D3, p.1; Tr., pp.119-120 (Parent).) The Parent withdrew the Student from the District on May 7, 2018. (*Id.*)

2018-2019, 2019-2020, and 2020-2021 Academic Years

11. The Student was not enrolled at a District public school during the 2018-2019, 2019-2020, and 2020-2021 school years. (Stipulated Findings of Fact, p.2; Tr., pp.118-123 (Parent).) The Student attended a variety of private schools including YWA. (*Id.*) During the 2020-2021 academic year the Student was unilaterally enrolled by the Parent at Academy School in Tukwila, WA. (Stipulated Findings of Fact, p.2.)

12. The Student did not enroll at the District or receive special education services from the District during the 2020-2021 academic year. (Stipulated Findings of Fact, p.4.) The Parent did not consent to the Student to receiving special education services from the District during the 2020-2021 academic year. (Tr., pp.118-123 (Parent).)

13. YWA and The Academy school did not provide the Student with OT or SLP services at school during the 2018-2019, 2019-2020, and 2020-2021, academic years. (Tr., pp.119-121 (Parent).)

Parent’s Reevaluation Request – April 6, 2021, through May 13, 2021

14. The Parent began to plan for the Student’s eighth grade year (2021-2022) and in April 2021 she began contacting private schools. (Tr., pp.59-60, 131 (Parent).) The Parent contacted Brightmont, Dartmoor, Fusion Academy, as well as YWA. (*Id.*)

15. The Parent also considered reenrolling the Student at the District, and decided to inquire about the status of the Student’s reevaluation and IEP. (Tr., pp.42-43 (Parent).)

16. In April 2021, Ms. Carver was listed on the District’s special services webpage as the Executive Director of Special Services, and Joan Lawson⁹ was listed as the

⁹ Joan Lawson received her B.A. in elementary education with a focus on special education from Washington State University. (Tr., pp.313-315 (Lawson).) Ms. Lawson received a M.A. from Lesley University in 2003, and a Program Administration and Principal Certificate from the University of

Director of Secondary Education. (Tr., pp.43-44, 130 (Parent); 263-265 (Carver); 315-316 (Lawson).)

17. Ms. Carver and the Parent the Student were familiar with each other because Ms. Carver was “one of the primary people that [the Parent] was in connection with back in 2017, 2018, as it related to [the Student] and the LRC-II program.” (Tr., pp.45-46 (Parent); 245 (Carver).) Also, [REDACTED] and similar interests, and Ms. Carver had “donated some art supplies [to the Student] that had coloring books and such, so [Ms. Carver has] a fond memory of this Student.” (Tr., p.245 (Carver).)

18. Based on her job title, as it was most closely associated with the Student’s current grade and age, the Parent chose to contact Ms. Lawson instead of Ms. Carver, regarding the Student’s reevaluation and IEP status. (Tr., pp.45-46, 122-129 (Parent).) On April 6, 2021, the Parent sent the following email to Ms. Lawson:

We are considering Issaquah public school as a potential option for our daughter [Student] for the next school year. [The Student] is currently in 7th grade and is attending a private school. Can you advise of next steps? Would this be a reevaluation?

(Stipulated Findings of Fact, p.2; B2, p.3: Tr., pp.46-47 (Parent).)

19. The Parent’s email address begins with [REDACTED] and does not include the Parent’s name or any personal identifying information. (D4, p.3; Tr., pp.332-334 (Lawson).) The Parent sent this email in order to prompt either the reevaluation process or the IEP development process, depending on what the Student required based on previous reevaluations and IEPs. (Tr., pp.122-124 (Parent).)

20. Ms. Lawson was out of the office due to the District’s spring break, and the Parent received an automatic reply email from Ms. Lawson stating, “I am out of the office and will return April 12, 2021.” (Stipulated Findings of Fact, p.2; Tr., pp.43-44 (Parent); 324-326 (Lawson).)

21. Ms. Lawson responded to the Parent via email on April 12, 2021, as follows:

“I am happy to help advise on next steps! The first thing is to register the [Student] at her home middle school here is [sic] ISD. If you do not know which one that is, I am more than happy to assist in finding that out for

Washington in 2012. (*Id.*) Ms. Lawson has been a certificated special education teacher since 1998 and has worked as an administrator for the District since 2017. (*Id.*)

you, and would need your current address. Or you can call the middle school nearest you and they would be able to assist as well. Our registration is online which you can find a link to on your home middle school website.

As for the school evaluation, I cannot tell you if a re-evaluation is necessary. The school psychologist would have to review the paperwork and determine whether a re-evaluation is needed or not. I assume since you have an evaluation, [the Student] also has an IEP?"

(Stipulated Findings of Fact, p.2; Tr., pp.326-327 (Lawson).)

22. Eight days later, and twelve days after her initial email of April 6, 2021, the Parent emailed Ms. Lawson on April 20, 2021, stating:

Hi Joan, Thanks for your email. I'm still in the process of deciding whether I want to reenroll [the Student] in public school. Part of my decision-making process is to see what specially designed instruction and services [the Student] qualifies for. [The Student] has been out of the District for a few years now. The last time [the Student] attended ISD was during the 2017-2018 school year. [The Student] did have an IEP when she was enrolled in public school. My understanding is that it is not necessary for me to enroll [the Student] in your school district to obtain an evaluation and an offer of FAPE since I am a resident within the Issaquah School District and [the Student] lives in my home. I assume that an evaluation would be needed since it has been a few years but please advise if you believe I am mistaken and we can jump to an IEP team meeting for [the Student].

(Stipulated Findings of Fact, p.3; B2, p.4; Tr., pp.46-47, 124 (Parent).)

23. The Parent sent this email in order to prompt Ms. Lawson to begin determining whether the reevaluation process or the IEP development process was appropriate. (Tr., pp.46-47 (Parent.) The Parent retained legal representation at approximately this time. (Tr., pp.125-126 (Parent).)

24. Ms. Lawson did not respond to the Parent's April 20, 2021, email. (Stipulated Findings of Fact, p.3; Tr., pp.46-47 (Parent).)

25. The Parent sent follow up emails to Ms. Lawson on April 23, 2021, and April 27, 2021. (Stipulated Findings of Fact, p.3; B2, pp.5-10; Tr., pp.46-48 (Parent).) The Parent sought a response to her April 20, 2021, email. (Tr., pp.46-49 (Parent).) Ms.

Lawson did not respond to the Parent's April 23 and 27, 2021, emails. (Stipulated Findings for Fact, p.3.)

26. On April 30, 2021, the Parent emailed Ms. Lawson the following:

I have not received a reply from you to my most recent emails. I am formally requesting that the Issaquah School District evaluate my child, [the Student]. She was last evaluated in March of 2018 . . . If Issaquah School District is declining to evaluate [the Student], please provide a prior written notice. Otherwise please provide me with dates the District is available to meet to discuss my child's evaluation and our next step."

(Stipulated Findings of Fact, p.3; B2, p.10; Tr., pp.48-50 (Parent).)

27. To the best of her recollection, Ms. Lawson believed the emails from the Parent came from an advertising company, and based on the email address, she moved the Parent's April 20, April 23, April 27, and April 30, 2021, emails to her spam folder within one to two days after each email was received. (Stipulated Findings of Fact, p.3; Tr., pp.49-50 (Parent); 317-319, 332-333 (Lawson).)

28. After discovering her error regarding the Parent's emails, Ms. Lawson contacted the Parent by phone on May 13, 2021, and agreed to conduct a reevaluation of the Student, referring the matter to Emily Marchewka,¹⁰ District School Psychologist. (Stipulated Findings of Fact, p.3; B5, p.5; Tr., pp. 48-51 (Parent); 326-327 (Lawson).) Ms. Marchewka contacted the Parent to begin the reevaluation process. (Tr., pp.343-344 (Marchewka).)

29. The Parent did not contact other District personnel, including Ms. Carver, during April or May 2021. (Tr., pp.45-48 (Parent); 265-266 (Carver).)

30. During April, May, and June 2021, the Parent "did not request a meeting to review" the April 5, 2018, IEP, or request that the District develop an IEP for the Student. (Tr., pp.200-201 (Parent).)

Reevaluation Period – May 17, 2021, to September 22, 2021

31. On May 17, 2021, Ms. Marchewka mailed the Parent a prior written notice ("PWN"), as well as a "Consent for Reevaluation" form. (Stipulated Findings of Fact,

¹⁰ Emily Marchewka received a B.A. in sociology and a B.A. in public health in 2013 from the University of Washington. (Tr., pp.341-343 (Marchewka).) In 2018 Ms. Marchewka received an educational specialist's degree in school psychology from Seattle University. (*Id.*)

p.3; D11, p.1; Tr., pp.344-345, 351-352 (Marchewka).) The May 17, 2021, PWN stated that the District “is proposing to initiate a reevaluation” of the Student. (*Id.*) The PWN also stated that if the Student chose to enroll at the District before the reevaluation was complete and a new IEP developed, then the District would implement the Student’s most recent IEP dated April 5, 2018. (*Id.*; D12, p.1; B6, p.3; Tr., pp.51-52 (Parent); 265-268 (Carver); 344-345 (Marchewka).) Ms. Marchewka sent the two documents to Parent through the mail and the Parent received the documents on May 23, 2021. (*Id.*)

32. Ms. Marchewka characterized the evaluation as a “reevaluation” of the Student because the Student had already been found eligible for special education purposes. (Tr., p.352 (Marchewka).) Ms. Marchewka also confirmed that the Student’s previous reevaluation dated March 11, 2018, had “expired” because it was more than three years old. (Tr. pp.352-353 (Marchewka).)

33. On May 23, 2021, Ms. Marchewka emailed the Parent a copy of the “Consent for Reevaluation” form and a copy of the May 17, 2021, PWN. (D13, p.2; B3,p.3; Tr., pp.52-54 (Parent); 346-347 (Marchewka).)

34. On May 24, 2021, the Parent emailed Ms. Marchewka a signed copy of the “Consent for Reevaluation” form. (Stipulated Findings of Fact, p.3; D13, pp.1-2; Tr., pp.53-55 (Parent).)

35. The next day, via email, the Parent asked to expand the areas of reevaluation to include the area of sensory. (B3, pp.5-6; B6, pp.8-9; Tr., pp.53-58 (Parent); 346-350 (Marchewka).) Ms. Marchewka revised the “Consent for Reevaluation” form to include the area of sensory, and sent it to the Parent on May 24, 2021. (*Id.*) The Parent signed the second “Consent for Reevaluation” form and on May 26, 2021, emailed it to Ms. Marchewka. (*Id.*)¹¹

36. The Parent signed and personally delivered the revised “Consent for Reevaluation” form on June 8, 2021, along with a number of other documents that

¹¹ The Parent testified that the parties did not stipulate prior to the due process hearing that the Parent signed and returned the consent form on May 26, 2021. (Stipulated Findings of Fact, paragraph 12; Tr., pp.56-58 (Parent).) The Parent did not submit the May 26, 2021, “Consent for Reevaluation” form within the Declaration of David Weafer or the Declaration of Parent filed in support of the Parent’s Motion for Summary Judgment. However, in Exhibit I to the Declaration of David Weafer is included the May 26, 2021, email that is admitted as Exhibit B3, pp.5-6. This email is one of three emails on the page and amounts to one line of text that reads: “Please see attached for updated consent form,” and is dated May 26, 2021, at 1:18 p.m.

Ms. Marchewska had mailed the Parent and asked her and the Student to complete. (D21, p.93; Tr., pp.57-59 (Parent).)

37. The Parent believed that a reevaluation of the Student would be completed before the end of the school year in June 2021. (*Id.*)

38. However, in June 2021, Ms. Marchewka informed the Parent that the District had thirty-five (35) school days to complete the reevaluation and that the District would complete the Student's evaluation in the fall after the 2021-2022 academic year began. (Tr., pp.139-140 (Parent).)

39. The District's academic year for 2020-2021 ended on Friday, June 17, 2021. (Stipulated Findings of Fact, p.4; D38, pp.1-6.) The District's academic year for 2021-2022 began on August 31, 2021. (D38, pp.1-6.) Both May 31, 2021, and September 6, 2021, were holidays and considered non-school days. (*Id.*) The number of school days from May 24, 2021, to September 22, 2021, is thirty-four (34) days. (D38, pp.1-2.) The number of school days from May 26, 2021, to September 22, 2021, is thirty-two (32) school days. (*Id.*)

40. The District emailed the Parent the reevaluation report on September 17, 2021, and held a reevaluation team meeting on September 22, 2021. (Stipulated Findings of Fact, p.4; D21, pp.1-99; D20, p.1; P13, pp.1-99; Tr., pp.64-65 (Parent); 356 (Marchewka).) The reevaluation team concluded that the Student was eligible for special education services under the category of Intellectual Disability. (*Id.*) The reevaluation team also recommended SDI in the areas of reading, math, writing, adaptive, social / emotional, and behavior, as well as related services in the areas of SLP and OT. (*Id.*)

41. The Parent attended the September 22, 2021, Reevaluation meeting with her legal counsel and did not raise any disagreements with the September 22, 2021, Reevaluation. (Tr., pp.141-142 (Parent); 357-358 (Marchewka).) The District issued a PWN on September 28, 2021, and emailed the Parent a copy of the Special Education Procedural Safeguards. (C12, p.1; P13, p.1.)

42. At the end of the meeting on September 22, 2021, the Parent informed Ms. Marchewka that Dr. Davies was conducting an evaluation of the Student. (Tr., p.358 (Marchewka).)

Student's Enrollment, Attendance, and Receipt of Services– August 10, 2021, through January 20, 2022

43. The Student attended YWA during the summer of 2021. (D17, p.1; PC1, p.1; Tr., pp.132-133 (Parent).)

44. At YWA the number of classes a student takes each day and each quarter “depends on the student and on their plan of study and how old they are and what else they’re doing outside of school.” (Tr., pp.308-310 (Bilstein).) Class sessions are fifty (50) minutes, and there are a variety of other classes like clubs, homeroom, lunch periods, passing periods, and nesting periods. (*Id.*)

45. During the Summer of 2021, the Parent noticed the Student’s increasing stress about where she would attend school, and therefore the Parent decided to place the Student at YWA. (Tr., pp.59-60 (Parent).) The Parent did not enroll the Student at the District because:

...my understanding of the placement was that it would be in an LRC-II program, and also that there was no review. There was no evaluation that had been completed at that point. We had only gotten partially through it. There was no –there were no options that were discussed in terms of programs for me to review and consider.

(Tr., pp.60-61 (Parent).)

46. The Parent enrolled the Student at YWA on July 22, 2021, for the 2021-2022 academic year. (D16, pp.1-2; Tr., pp.133-134 (Parent).)

47. The Student’s schedule at YWA consisted of 6 classes for the quarter, with 3 to 4 classes from 8:00 a.m. to 12:00 p.m., Monday, Tuesday, Wednesday, and Friday, and 5 classes on Thursday from 8:00 a.m. through 1:20 p.m. (C8, p.1.) The first day of school at YWA was September 8, 2021. (D18, pp.1-2; C2, pp.1-2; C7, pp.1-5; C8, p.1.)

48. On August 6, 2021, the Parent received an email notice from the District that “open enrollment was going on,” and the Parent used a link in the email to fill out an on-line enrollment form. (Tr., pp.574-577 (Parent).) The Parent has “gone through” the District’s enrollment process “at least 20 times” because she has enrolled her other daughter at the District in the past. (Tr., pp.574-580 (Parent).) However, the Parent did not provide the District with the required documentation regarding the Student’s vaccination status or vaccination waivers (*Id.*)

49. On August 16, 2021, the Parent’s attorney sent the District a letter stating that the Parent chose to unilaterally place the Student at YWA until the District “makes an offer of a special education program for the Student.” (Stipulated Findings of Fact, p.4; C3, pp.1-6.)

50. At the request and expense of the Parent, Dr. Davies began an independent evaluation of the Student in August 2021. (D22, pp.1-2; Tr., pp.65-69, 151 (Parent); 223 (Davies).)

51. On August 24, 2021, via email to Ms. Marchewka, the Parent stated: “As for enrollment for this school year, we enrolled [the Student] in YWA while we are trying to figure out special education.” (C5, p.1; Tr., pp.60-65 (Parent).)

52. The District’s academic year for 2021-2022 began on Tuesday, August 31, 2021. (Stipulated Findings of Fact, p.4.) The Student did not attend school and did not receive any services from the District between August 31, 2021, and September 7, 2021. (Tr., pp.65-67 (Parent); 270-271 (Carver); 503-505 (Unruh).)

53. On September 1, 2021, the Parent received an email from the District to complete the check-in process for the Student to attend school. (Tr., pp.577-583 (Parent).) The Parent completed the check-in process for the Student (*Id.*) Between September 2, 2021, and September 14, 2021, the Parent received “unexcused absence notifications from the district that [the Student] was not attending school. (*Id.*)

54. To enroll a student means that the student has “a schedule, and they’re ready to go, and [the District is] counting them in terms of [reports] P223 and P223h. They’re attending and enrolled.” (Tr., pp.269-270 (Carver).) P223 and P223h are “reporting mechanisms for counting students that are accessing services.” (*Id.*)

55. The Student began attending YWA on September 8, 2021. (Tr., pp.65-67(Parent).)

56. The Student did not receive SLP or OT services, either from private providers or from YWA, while she attended YWA during the period of September 8, 2021, through January 20, 2022. (Tr., pp.148-149 (Parent).)

Development of Student’s IEP September 22, 2021, through April 5, 2022

57. On September 29, 2021, Elizabeth Villa,¹² Special Education Teacher in the LRC-II program at Issaquah Middle School (“IMS”) and member of the Student’s IEP team, emailed the Parent an invitation to attend an IEP team meeting on October 21, 2021. (D23, p.1; C13, pp.1-3; Tr., pp.386-387 (Villa).) October 21, 2021, is thirty (30) days after September 22, 2021. (D38, pp.1-6.)

¹² Elizabeth Villa earned a B.A. in special education from Longwood University, and she attended other higher educational institutions for postgraduate work. (Tr., pp.383-384 (Villa).) Ms. Villa worked as a certificated special education teacher for the District during the 2021-2022 academic year. (*Id.*)

58. Ms. Villa was supervised by Tammy Unruh,¹³ the Director of Secondary Special Education, who had recently replaced Ms. Lawson in the same position. (Tr., pp.485-488, 490-491 (Unruh).) Ms. Unruh became familiar with the September 22, 2021, Reevaluation and the Student during the IEP development process in the Fall of 2021. (Tr., pp.490-491 (Unruh).)

59. On October 16, 2021, via email, the District provided the Parent with a draft of the proposed IEP. (D25, pp.1-2; Tr., pp.151 (Parent).)

60. On October 19, 2021, via email, the Parent requested to reschedule the IEP team meeting to a later date:

Apologies for the late notice but was hoping to reschedule the IEP meeting to late next week or the following to allow for time for Dr. Julie Davies, the neuropsychologist to receive feedback from [the Student's] former teacher at the Academy. Julie hasn't been able to complete her evaluation due to this teacher's health and she thinks it is important. Our preference is to meet with the IEP team to make IEP team decisions after we've all had a chance to review Julie's evaluation.

(D25, pp.1-2; Tr., pp.65-66 (Parent); 386-388 (Villa).)

61. Dr. Davies had almost completed her report on October 15, 2021, except for receiving input from one of the Student's teachers, Ms. Older, at Academy Schools. (C15, pp.1-5; Tr., pp.215-220 (Davies).)

62. Ms. Villa responded to the Parent's email as follows:

We can see when the next possible meeting can be scheduled. We need to take into account that other meetings are also scheduled and it may take up to a month to reschedule. We can meet tomorrow and request a second meeting at a later date and have Dr. Davies' input put into the IEP or delay the meeting. If we choose to delay, the 30-day timeline that we generally have to meet to develop the IEP can be set aside in favor of your request to reschedule. Please let me know as soon as possible what your decision is so we can either go ahead with the meeting or reschedule to a different time.

¹³ Tammy Unruh received her B.A. in secondary science education from UNLV in 2002, and a master's in educational administration from Washington State University in 2008. (Tr., pp.485-488 (Unruh).) Ms. Unruh is a certificated special education teacher and has worked at the District since 2018. (*Id.*)

(C16, pp.1-2; Tr., pp.388-390 (Villa).) The Parent responded that she would prefer to have one meeting and “I understand that the 30-day timeframe will not be met.” (*Id.*)

63. The District rescheduled the IEP team meeting for November 18, 2021, at 3:30 p.m. for a period of one hour. (Stipulated Findings of Fact, p.4; D27, p.1; C17, pp.1-3; Tr., pp.78-79 (Parent); 390-391 (Villa).) Ms. Villa provided the Parent with an updated copy of the proposed IEP draft on November 15, 2021. (C23, p.1; Tr., pp.152 (Parent); 396-397 (Villa).) Ms. Villa also emailed the Parent a link to participate via on-line meeting and stated that the IEP team was prepared to present a power point presentation of the IEP. (C23, p.1; C24, pp.1-43; Tr., pp.153-154 (Parent); 396-397 (Villa).)

64. On November 16, 2021, at 11:10 p.m., the Parent emailed the District a copy of Dr. Davies twenty-eight-page report, but it was not a final report, and subsequently emailed the report twice more on November 17, 2021. (Stipulated Findings of Fact, p.4; D27, pp.1-2; D28, p.1; C19a, pp.1-30; Tr., pp.76-78 (Parent).)

65. On November 15, 2021, the Parent also emailed the District a copy of a sleep study performed by Dr. Liliana Sacarin. (C22, pp.1-10; Tr., pp.76-78 (Parent).)

66. On November 18, 2021, Dr. Davies, the Parent, and the Parent’s legal representative attended the IEP team meeting. (C25, pp.1-2; Tr., pp.75-90 (Parent); 204 (Davies); 397-398 (Villa).) The Parent’s legal representative and Parent requested that Dr. Davies be allowed to present her report first instead of the District presenting the IEP. (C25, p.2; Tr., pp.75-90 (Parent).)

67. The District members of the IEP team agreed to allow Dr. Davies to present her report, but due to time constraints the District personnel did not present the IEP or the power point presentation about the IEP, and the IEP team was not able to collaborate regarding Dr. Davies’ report and the District’s proposed IEP. (C25, p.2; Tr., pp.396-398 (Villa).)

68. The District issued a PWN on November 22, 2021, proposing to continue the IEP meeting to allow the IEP team to review Dr. Davies report in its final form, and to allow the IEP team to present the IEP and collaborate with the Parent. (C25, pp.1- 3; Tr., pp.68-71 (Parent).) The Parent received the PWN, and a week later on November 29, 2021, emailed Ms. Villa stating that she did not agree to the reason for the continuance of the IEP team meeting (“to allow for Dr. Davies to complete and present her report to the team”) and that she did not further agree to extend the “due date for the IEP.” (*Id.*)

69. The Parent emailed the District the final version of Dr. Davies’ report on November 30, 2021. (D28, p.1; C19b, pp.1-31.)

70. The parties rescheduled the Student’s IEP meeting for December 9, 2021, but due to conflicting schedules and the unavailability of the participating OT, the meeting was rescheduled to January 6, 2022, at 3:00 p.m. (Stipulated Findings of Fact, p.4; D29, p.4; C27, pp.1-2; Tr., pp.155-156 (Parent); 393-394, 397-399 (Villa).)

71. On December 1, 2021, the Parent agreed to reschedule the IEP team meeting for a time in December, and when the District’s OT could participate along with potentially some educators from YWA. (*Id.*) However, the next meeting was scheduled for January 6, 2022, to accommodate the schedules of all IEP team members. (*Id.*)

72. At the January 6, 2022, IEP team meeting, the members discussed the Student’s current circumstances at YWA and the potential disruption of moving her from YWA to IMS during the middle of the academic year. (Tr., pp.74-75 (Parent).)

73. The proposed IEP presented at the January 6, 2022; meeting contained the following specially designed instruction:

Educational Services				
Services	Monitor	Provider	Minutes	Location
Math	Special Education Teacher	Special Education Teacher	270 Minutes / Weekly	Special Education
Reading	Special Education Teacher	Special Education Teacher	270 Minutes / Weekly	Special Education
Writing	Special Education Teacher	Special Education Teacher	270 Minutes / Weekly	Special Education
Social / Emotional	Special Education Teacher	Special Education Teacher	230 Minutes / Daily	Special Education
Adaptive	Special Education Teacher	Special Education Teacher	235 Minutes / Daily	Special Education
Behavior	Special Education Teacher	Special Education Teacher	230 Minutes / Daily	Special Education

(D29, p.39; Tr., pp.394-396 (Villa).) The IEP also provided for related services of 120 minutes per month of SLP and 60 minutes per month of OT. (D29, pp.39-40; Tr., pp.406-409 (Mottaz).) The IEP placed the Student in special education for 1505 minutes per week (84%) and general education 295 minutes per week (16%). (*Id.*)

74. The IEP team, however, agreed to partially place the Student at YWA at District expense for all SDI, and partially place the Student at IMS for one general education class per day. (D29, pp.39-41; Tr., pp.491-494 (Unruh).) Thus, at the January 6, 2022, IEP meeting, the District agreed to fund the Student’s “split placement” effective January 21, 2022. (Stipulated Findings of Fact, p.4; D29, p.41)

75. Regarding transportation, the IEP included a provision that “special transportation is required to and from schools and/or between schools . . . [the Student] is eligible to have special transportation (door to door) provided by the district.” (D29, p.41.)

76. The IEP’s implementation date was January 21, 2022. (D29, pp.39-40.)

77. The IEP Team agreed that the Student would be placed at YWA for core classes, receive homeschooling, and that she would be placed at IMS for one elective art class, four days per week. (Stipulated Findings of Fact, p.4.) On February 11, 2022, the Parent met with Ms. Unruh to discuss the Student’s schedule. (D29, p.4.)

78. The IEP meeting was continued to March 15, 2022, to discuss details of the placement of the Student. (Stipulated Findings of Fact, p.4.) The District issued a PWN on March 15, 2022, stating that the action would be initiated on April 5, 2022. (Stipulated Findings of Fact, p.4.)

Student’s Enrollment and Attendance January 21, 2022, through June 17, 2022

79. The Parent completed enrolling the Student at the District by providing necessary information regarding vaccination status, and the Student attended an IMS elective art class on April 19, 2022, with transition assistance from a Board Certified Behavioral Analyst (“BCBA”). (Stipulated Findings of Fact, p.5; Tr., pp.94-95, 591-593 (Parent).) The Student sporadically attended the art class because it conflicted with her art club at YWA on some days, as well as some personal appointments, and the Student underwent a dental procedure in May 2021. (Tr., pp.95-97 (Parent); 496-498 (Unruh).) Sometimes the Parent’s schedule interfered with her ability to transport the Student from YWA to IMS. (*Id.*)

80. Between January 21, 2022, and June 17, 2022, the Student attended six classes per quarter, amounting to three or four classes per day, at YWA. (C38, pp.1-2.)

81. The Parent paid YWA tuition in the amount of \$5,259.18 on January 5, 2022, February 5, 2022, and March 7, 2022. (C40, pp.6-7; Tr., pp.96-115 (Parent).) However, the invoices show that the Parent was credited three payments of \$5,259.18 on March 16, 2022. (C40, pp.6-7.)

82. There is no evidence in the record that the Parent paid YWA tuition during the 2022-2023 academic year.

Provision of SDI and Related Services January 21, 2022, to June 17, 2022

83. During the period of January 21, 2022, through June 17, 2022, the District did not provide the Student with SDI because the District funded the Student’s attendance at YWA. (Stipulated Findings of Fact, p.5.)

84. Ms. Unruh believed that YWA would provide the Student with SLP and OT related services and “no concerns were raised to [Ms. Unruh] by the family that this service was not being provided.” (Tr., pp.505-506 (Unruh).) The District did not communicate or contract with YWA for SLP and OT related services. (*Id.*)

85. On June 10, 2022, the Parent emailed YWA staff the following:

“ [Parent’s legal representative] asked me to check in with you regarding how OT and SLP are being handled, can you confirm that the district is not providing services on your campus?”

(C37, p.1; Tr., pp.100-103, 158-159 (Parent).) Mr. Bennett confirmed that neither YWA nor the District were providing OT and SLP services for the Student. (C37, p.2; Tr., pp.100-103 (Parent).)

86. During the 2021-2022, academic year, neither the District nor YWA provided the Student with 600 minutes of SLP and 300 minutes of OT services. (Stipulated Findings of Fact, p.5; Tr., pp.101-103 (Parent) .)

87. The Student received “Tomatis Effect Listening Education Program Phase I” SLP services from Dr. Sacarin Listening Center, P.S.I., in the Fall of 2021. (C40, p.3; Tr., pp.108-111 (Parent).) The Student received “Tomatis Effect Listening Education Program Phase II” SLP services from Dr. Sacarin between January 24, 2022, through February 2, 2022. (C40, p.5; Tr., pp. 108-111 (Parent).) The Student received “Tomatis Effect Listening Education Program Phase III” SLP services from Dr. Sacarin in April and May 2022. (C40, p.4; Tr., pp.109-111 (Parent).) The Parent paid costs of \$1,589.00, \$989.00, and \$989.00, respectively for each phase. (*Id.*)

Student’s Enrollment and Attendance August 30, 2022, through January 20, 2023

88. Andrew Bennett prepared a “full schedule” Academic Plan for the Student for the YWA 2022-2023 academic year and emailed the document to the Parent on June 1, 2022. (D1, pp,1-3.) For the Fall of 2022, the Student was scheduled to take six classes per day between 9:25 a.m. to 3:30 p.m., Monday through Friday. (*Id.*)

89. In anticipation of the Student taking a class at Issaquah High School (“IHS”) as a ninth grader during the 2022-2023 academic year, Ms. Unruh sent an email to the Parent on July 20, 2022, seeking to “get a meeting on the books regarding a schedule for [the Student] in the fall.” (D35, p.1; Tr., pp.161 (Parent); 494, 503 (Unruh).)

90. The Parent filed her initial due process hearing request on July 27, 2022.

91. The Parent did not respond to Ms. Unruh until August 9, 2022, and requested a meeting with the IEP team on August 10, 2022. (Tr., pp. 503-505 (Unruh).) Ms. Unruh could not schedule a meeting that quickly. (*Id.*) During August 2022, Ms. Unruh made additional attempts to schedule a meeting and schedule an elective class for the Student at IMS, but the Parent did not respond. (*Id.*)

92. On August 30, 2022, the first day of school for the 2022-2023 academic year, Ms. Unruh emailed the Parent about scheduling an elective class. (*Id.*) Parent responded on August 31, 2022, and agreed to a meeting on September 9, 2022. (*Id.*) As of the meeting on September 9, 2022, all the elective classes at IHS were at full capacity. (Tr., pp.494-495 (Unruh).)

93. The Student did not attend an elective class at Issaquah High School between August 30, 2022, and December 31, 2022. (*Id.*)

Provision of SDI and Related Services – August 30, 2022, through January 20, 2023 (Issues (viii) and (ix).)

94. On July 25, 2022, Ms. Unruh spoke with Shannon Kennedy, a representative of YWA, and she informed Ms. Unruh that YWA would provide the Student with OT and SLP services during the 2022-2023 academic year. (Tr., pp.508-509, 517-158 (Unruh).)

95. On September 30, 2022, Ms. Unruh spoke with Beth Williams, a representative of YWA, and was informed that YWA would provide the Student with OT and SLP services but had not begun to provide those services. (*Id.*)

96. Neither the District nor YWA provided the Student with 300 minutes of OT and 600 minutes of SLP services from August 30, 2022, through December 16, 2022, the end of the first semester of the 2022-2023 academic year. (Stipulated Findings of Fact, p.5; D38, pp.1-6; Order on Parent’s Motion for Summary Judgment, p.4.)

97. On November 17, 2022, Ms. Unruh and the Parent discussed compensatory education for missed OT and SLP services, and on November 21, 2022, Ms. Unruh emailed the Parent and stated that the District owed the Student 6 hours of SLP and 3 hours of OT services for September, October, and November 2022. (Parent’s D5, p.2; Tr. pp.103-105 (Parent); 516-518 (Unruh).) Ms. Unruh proposed that the Parent could select a private provider like Dr. Sacarin for 6 hours of SLP services and submit an invoice or estimate to the District for payment. (*Id.*) Ms. Unruh proposed that the District would give the Student 3 hours of compensatory OT services during the second semester of school beginning in January 2023. (*Id.*)

98. The Parent proposed scheduling the Student for 8 sessions of combined OT and SLP with a private provider that the Parent selected at a cost of \$995.00. (*Id.*) The District agreed and issued a PWN on December 8, 2022, that stated the District would pay \$1000.00 for compensatory SLP and OT education services for the period of September, October, and November 2022. (*Id.*)

99. The Parent declined the District's offer of \$1,000.00 for privately provided 3 hours of OT and 6 hours of SLP services. (Parent's D5, pp.1-10; Tr., pp. 103-105, 166-167, 197 (Parent);

100. On December 5, 2023, the Parent amended her due process hearing request to include a request for compensatory OT and SLP services for the 2022-2023, academic year.¹⁴

Transportation Expenses January 21, 2022, through January 20, 2023.

101. The Parent transported the Student between YWA, the District, and the Student's home during the period of January 21, 2022, through May 10, 2022. (Tr., pp.96-98 (Parent).) The Parent emailed Ms. Unruh on May 10, 2022, and requested that the District transport the Student from YWA to IMS. (C36, pp.1-3 ; Tr., pp.96-99 (Parent).) The District and the Parent completed the process for transportation services for the Student between YWA and the District for the times of 1:00 p.m. to 1:50 p.m. Monday, Tuesday, and Friday, and from 2:15-2:50 p.m. on Wednesday. (*Id.*)

102. The Parent traveled 11.3 miles one way to drive the Student to YWA. (C40, p.10-13; Tr., pp.96-115 (Parent).)

103. During the period of January 21, 2022, and June 17, 2022, the Parent transported the Student 22.6 miles per day on a total of 79 days. (*Id.*) The Parent, then, transported the Student 1,761 miles between January 21, 2022, and June 17, 2022.

104. During the period of August 30, 2022, through April 30, 2023, the Parent transported the Student 22.3 miles per day on a total of 18 days. (*Id.*) The Parent, then, transported the Student 401.4 miles between August 30, 2022, through April 20, 2023. (*Id.*)

105. The District's mileage reimbursement rate is unknown.

¹⁴In the February 21, 2023, Order on Parent's Motion for Summary Judgment, it was concluded that there was no genuine issue of material fact that the District did not provide the Student with 240 minutes (4 hours) of OT and 480 minutes (8 hours) of SLP related services between August 31, 2022, and December 16, 2023. (Order on Parent's Motion for Summary Judgment, pp-19-20.)

CONCLUSIONS OF LAW

A. Jurisdiction

1. The 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 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).

B. IDEA

2. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities and condition such funding upon a state's compliance with extensive goals and procedures. School Districts are required to "provide every student who is eligible for special education between the ages of three and twenty-one years, a free appropriate public education program ("FAPE")." WAC 392-172A-02000; 34 C.F.R. Part 300.

3. In *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the 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, supra, 458 U.S. at 206-207 (footnotes omitted).

C. Procedural Violations

4. The Parent has alleged multiple "timeliness" procedural violations of the IDEA in Issues (i), (ii), (iii), and (v). There is a "general consensus that a failure to comply with the timeliness requirements imposed by the IDEA are typically procedural, not substantive, violations of the act. See *Leggett v. District of Columbia*, 793 F.3d 59, 67 (D.C. Cir. 2015) (classifying a school district's failure to provide an IEP by the beginning of the school year' as a procedural violation); see also *Jackson-Johnson v. District of Columbia*, No. 13-CV-528, 2015 WL 1862127, at *1 (D. D.C. Apr. 23, 2015) ("[D]elays

in evaluations and reevaluations are typically deemed procedural, and not substantive, violations of the IDEA.”).

5. In Issue (iv), the Parent has also alleged that the District engaged in a procedural violation by providing the Parent with misinformation regarding whether the Student needed to register or enroll at the District in April 2021, before the Student could be reevaluated.

6. The procedural violations alleged in Issues (i), (ii), (iii), (iv), and (v), are individually addressed sections C.2, C.3, C.4, C.5, and C.6 below.¹⁵ However, proving a procedural violation of the IDEA does not automatically entitle the Parent to relief. As per WAC 392-172A-05105(2), the Parent must also show that the Student was denied a FAPE:

(1) An administrative law judge’s determination of whether a student received FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, an administrative law judge may find that a student did not receive a FAPE only if the procedural inadequacies:

(a) Impeded the student’s right to a FAPE;

(b) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent’s child; or

(c) Caused a deprivation of educational benefit

WAC 392-172A-05105. Rowley, 458 U.S. at 206-07.

7. “Procedural inadequacies that result in the loss of educational opportunity, *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir. 1990), or seriously infringe the parents' opportunity to participate in the IEP formulation process, clearly result in the denial of a FAPE.” *W.G. v. Bd. of Trustees of Target Range School Dist.*, 960 F.2d 1479, 8 IDELR 1019 (9th Cir. 1992.)

¹⁵ Under the APA, final orders “shall include a statement of findings and conclusions, and the reasons and basis therefore, on all the material issues of fact, law or discretion presented on the record, including the remedy or sanction” RCW 34.05.461. “Every final order shall dispose of all contested issues.” WAC 10-08-210.

1. The Parent Has Not Shown that the District Was Obligated Make a FAPE Available, or Otherwise Denied the Student a FAPE, between May 7, 2018, and January 20, 2022. (Issues (i), (ii), (iii), (iv), and (v))

8. Regardless of whether the Parent proves any procedural violations occurred, she has not shown by a preponderance of the evidence that the District was required to make a FAPE available, or otherwise denied the Student a FAPE, between May 7, 2018, through January 20, 2022, because the Student was a parentally placed private school student and the District did not have consent to provide the Student with special education services.

9. A student that is “eligible for special education services [and] enrolled by their parents in [an] approved, nonprofit private, including religious, elementary or secondary schools,” is classified as a “parentally placed private school student.” WAC 392-172A-04000.

10. According to WAC 392-172A-02000(2)(d), the District’s obligation to provide FAPE and special education services ceases when “the student stops receiving special education services based upon a parent’s written revocation to a school district pursuant to WAC 392-172A-03000(2)(e).” WAC 392-172A-02000(2)(d). Importantly, WAC 392-172A-03000(2)(e) provides:

If at any time after the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services, the school district:

(i) Must provide prior written notice to the parent in accordance with WAC 392-1702A-05010 before ceasing to provide special education and related services and may not continue to provide special education and related services after the effective date of the prior written notice;

(ii) May not use mediation or the due process procedures in order to obtain an agreement or ruling that the services may be provided to the student;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services; and

(iv) Is not required to convene an IEP team meeting or develop an IEP for the student for further provision of special education services.

(Emphasis added.)

11. As found above, the Student was eligible to receive special education and related services from the District as a result of the March 11, 2018, reevaluation and the April 5, 2018, IEP. However, the Student attended private, nonpublic agency, schools at the Parent's expense from May 7, 2018, through January 20, 2022. Therefore, the Student meets the definition of a parentally placed private school student from May 7, 2018, to January 20, 2022.

12. Further, the Parent provided a written revocation of consent for special education services pursuant to WAC 392-172A-02000(2)(d) and WAC 392-172A-03000(2)(e) when she emailed and delivered written correspondence to the District on April 19, 2018, stating that the Student would be withdrawn from the District on May 7, 2018. The Parent confirmed the written revocation of consent for special education services pursuant to WAC 392-172A-02000(2)(d) on August 16, 2021, when her legal representative issued a letter to the District stating that the "Parent is notifying the District of the Parent's intent to unilaterally place the Student at YWA and to seek reimbursement from the District for the Private Placement," until the Parent consented to the District's offer of special education services.

13. Given that the Student was a parentally placed private school student and the District lacked consent to provide special education services, it is concluded that as per WAC 392-172A-03000(2)(e), the District was not obligated to make a FAPE available, and did not otherwise deny the Student a FAPE, between May 7, 2018, and January 20, 2022. Therefore, regardless of whether any procedural violations occurred as alleged in Issues (i), (ii), (iii), (iv), and (v) below, the Parent has not met her burden and has not shown the District denied the Student a FAPE. As a result, the Parent is not entitled to any relief in regard to Issues (i), (ii), (iii), (iv), and (v).¹⁶

¹⁶ The Parent moved for summary judgment regarding the procedural violations in Issues (i), (ii), (iii), (iv), and (v), but the Parent specifically stated she was not moving for summary judgment regarding whether the Student was denied a FAPE. However, as concluded in the February 21, 2023, Order on Parent's Motion for Summary Judgment, the parties did not dispute that the Student was a parentally placed private school student during the 2018-2019, 2019-2020, and 2020-2021 school years, or that the Student did not attend school or receive services from the District between May 7, 2018, and January 20, 2022. (Order on Parent's Motion for Summary Judgment, pp.2-3.) On April 24, 2023, prior to the due process hearing the parties also stipulated that "The Student was not enrolled at a District public school during the 2018-2019, 2019-2020, and 2020-2021 school years." (Stipulated Findings of Fact, p.3.) The parties also stipulated that the Parent revoked written consent for special education services and that the Student did not receive special education services from the District from May 7, 2018, through January 20, 2022. (Stipulated Findings of Fact, pp.2-4.)

2. The Parent Has Not Shown By a Preponderance of the Evidence that the District Failed to Timely Initiate a Reevaluation (Issue (i))

14. School districts must “(1) ensure that a reevaluation of each student eligible for special education services is conducted . . . when . . . (a) The school district determines that the educational or related service’s needs, including improved academic achievement and functional performance of the student warrant a reevaluation.” A reevaluation “must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary.” WAC 392-172A-03015(2)(b).

15. Also, school districts must conduct a reevaluation of a student “if the child’s parent . . . requests a reevaluation.” WAC 392-172A-03015(1)(b). However, a reevaluation upon request of a parent “may occur not more than once a year, unless the parent and the school district agree otherwise . . .” WAC 392-172A-03015(2)(a). The Department of Education’s regulations implementing the IDEA specifically contemplate that, upon a parent’s request, a school district must evaluate a child residing in its district for purposes of making a FAPE available to her, even if she is enrolled in a private school. *Bellflower Unified Sch. Dist. v. Lua*, 832 F. App’x 493, 495-96 (9th Cir. 2020) (unpublished).

16. It is not disputed that the District had an obligation to reevaluate the Student if the Parent made a request or every three years. The parties disagree as to 1) whether the September 22, 2021, Reevaluation of the Student is an initial evaluation or a reevaluation, and 2) whether the District timely decided whether to reevaluate the Student.

a. The September 22, 2021, Reevaluation is a Reevaluation, Not an Initial Evaluation

17. The terms “initial evaluation” and “reevaluation” are not defined by the IDEA, but WAC 392-172A-03005 and 03015 are instructive. An initial evaluation occurs as the result of a written referral to initially determine if the student is eligible for special education services, and “within twenty-five school days of receipt of a request for an *initial evaluation*,” a district must determine whether or not to conduct an initial evaluate a student. WAC 392-172A-03005. (*Emphasis added.*)

18. A reevaluation is used to confirm a student’s continued eligibility for special education services, to determine whether a Student’s needs have changed, or to inform an annual IEP, and therefore must be conducted “at least every three years unless the parent and the district agree that a reevaluation is unnecessary.” WAC 392-172A-03015(2)(b). A reevaluation is also required when “a district determines that the educational or related service’s needs, including improved academic achievement and

functional performance of the student warrant a reevaluation, or if the child's parent or teacher requests a reevaluation." WAC 392-172A-03015(1).

19. The Parent argues that because the Student's March 11, 2018, reevaluation was over three years old as of March 11, 2021, then the September 22, 2021, Reevaluation of the Student is an "initial evaluation." The Parent also argues that the Parent's April 6, 2021, email amounts to a written referral for an initial evaluation. In the Parent's closing brief, the Parent has not presented any statute, rule, or case law that supports the argument that the September 22, 2021, Reevaluation should be classified as an "initial evaluation."

20. On the other hand, the language of WAC 392-172A-03015 supports a conclusion that any evaluation conducted after the first, or "initial," evaluation is considered a "reevaluation." Here, the Student received an initial evaluation in April 2011. The District performed reevaluations in March 2013 and March 2018. It follows that a subsequent, or reevaluation, is conducted to confirm that eligibility for special education services and address any changes to the Student's ability to access her education. Therefore, was per WAC 392-172A-03015, the September 22, 2021, Reevaluation is a reevaluation.

21. The evidentiary record also supports this conclusion. In the September 22, 2021, Reevaluation report, all the participants, including the Parent, refer to it as a "reevaluation." A comparison between the March 11, 2018, reevaluation and the September 22, 2021, Reevaluation shows the scope of the evaluations are essentially the same.¹⁷ Further, the May 24, 2021, May 26, 2021, and June 8, 2021, documents the Parent signed are titled "Consent for Reevaluation." The parties, as well as the private providers, used the term "reevaluation" throughout the September 22, 2021, Reevaluation process. Thus, the evidentiary record reflects a consensus that the September 22, 2021, Reevaluation was a reevaluation of the Student, not an initial evaluation.

22. The case record also shows that throughout the proceedings, the parties have considered the September 22, 2021, Reevaluation to be a reevaluation, not an initial evaluation. In the Parent's July 27, 2022, due process hearing complaint, the Parent refers to the September 22, 2021, Reevaluation as a "re-evaluation." (Due Process Hearing Request, pp.1-8.) The Parent was given an opportunity to file a refined statement of issues, and on September 6, 2022, the Parent filed a "Notice of Statement of Issues" referring to the September 22, 2021, Reevaluation as a

¹⁷ The Parent, however, requested to add sensory to the scope of the September 22, 2021, Reevaluation but the Parent does not offer any statute, rule, or case law that demonstrates adding an area of concern entirely transforms a reevaluation to an initial evaluation.

“reevaluation.” (Notice of Statement of Issues, pp.2-4.) The Parent was allowed to file a “First Amended Due Process Hearing Request,” and again referred to the September 22, 2021, Reevaluation as a “reevaluation.” (First Amended Due Process Hearing Request, pp.1-8.) During a prehearing conference on December 7, 2022, the Parent confirmed that the issues for hearing in this matter involve a “reevaluation” of the Student, and the issue statements set forth in the December 8, 2022, Third Prehearing Order characterize the September 22, 2021, Reevaluation is a “reevaluation.” (Prehearing Conference Audio, December 7, 2022; Third Prehearing Order, pp.5-6.) The Parent filed a Motion for Summary Judgment, Declaration of David Weafer, and Declaration of Parent on December 19, 2022, and referred throughout the documents to the September 22, 2021, Reevaluation as a “reevaluation.”¹⁸

23. Finally, and most notably, in the Stipulated Findings of Fact submitted by the parties on April 21, 2023, the Parent stipulated that the September 22, 2021, Reevaluation is a “reevaluation.” (Stipulated Findings of Fact, pp. 1-5.)

24. Based on WAC 392-172A-03015, and the lack of any statute or case law to the contrary, as well as the orders, exhibits, and pleadings in this case, it is concluded that the September 22, 2021, Reevaluation is a reevaluation, not an initial evaluation, and WAC 392-172A-03015 applies.

b. The District Timely Initiated the September 22, 2021, Reevaluation

25. The Parent argues that the District did not timely initiate the Reevaluation within twenty-five (25) days and therefore violated WAC 392-172A-03005. The Parent also generally argues that the District acted unreasonably by waiting until May 13, 2021, to make a decision to conduct the Reevaluation.

26. The District argues that the twenty-five (25) day period of WAC 392-172A-03005 does not apply and that the District acted reasonably when it agreed to perform the reevaluation on May 13, 2021. As concluded above, the September 22, 2021, Reevaluation is not an initial evaluation and therefore it is concluded that the twenty-five-day requirement for initial evaluations in WAC 392-172A-03005 does not apply.

27. Instead, WAC 392-172A-03015 applies and that section specifically excludes the twenty-five (25) day rule of WAC 392-172A-03005: “[a] school district must ensure that a reevaluation of each student eligible for special education services is conducted in accordance with WAC 392-172A-03020 through 392-172A-03080.” Further, WAC

¹⁸ The Parent did not argue as part of the summary judgment proceedings that the September 22, 2021, Reevaluation was an initial evaluation.

392-172A-03015 does not designate a time period during which a District must initiate a reevaluation in response to a parent's request.¹⁹

28. Even though there is not a designated timeframe for starting a reevaluation, a school district cannot simply ignore a parent's request for a reevaluation or fail to conduct a triennial evaluation. Case law is instructive and reflects that school districts may take weeks, or even months, to start a reevaluation of a student. In *Amanda P. and Casey P. ex rel. T.P. v. Copperas Cove Idep. Sch. Dist.*, 120 LRP 12872, (W.D. Texas 2020), the court concluded that eight months from the date of a parent's request for a dyslexia reevaluation of a transfer student was not unreasonable given the school district's policies, reevaluation requirements, and intervening school breaks. In *D.O. v. Excondido Union School District*, 123 LRP 3363 (9th Cir. 2023) the Ninth Circuit concluded that a school district's four-month delay in beginning a reevaluation of a student was justified because the parent did not provide the school district with a copy of a private evaluation despite the district's requests.

29. The issue, then, is whether the District failed to decide to reevaluate the Student in a reasonable amount of time after the Parent made the request to evaluate. The parties do not dispute that the Student's most recent evaluation was three years old as of March 11, 2021, or that the District decided to conduct a reevaluation of the Student on May 13, 2021. The parties, however, do dispute the date that the Parent requested a reevaluation of the Student.

30. Setting aside the parties' dispute about whether the Parent's April 6, 20, 23, 27, and 30, 2021, emails do or do not constitute a request for an evaluation, the Parent's email of April 6, 2021, shows the Parent was seeking information about the status of the Student's reevaluation such that the District should have investigated the status of the Student's prior evaluations, and decided whether to reevaluate the Student. Certainly Ms. Lawson's absence due to spring break and her mistaken, and somewhat incomplete email response on April 12, 2021, delayed the decision-making process. Also, Ms. Lawson admittedly mishandled the Parent's emails and further delayed the decision to reevaluate the Student by not inquiring about the status of the Student's most current evaluation and IEP.

31. On the other hand, the Parent knew that Ms. Lawson was out of the office until April 12, 2021, and the Parent did not contact any other person at the District, including Ms. Carver with whom she had a previous relationship and was listed on the

¹⁹ In the February 21, 2023, Order on Summary Judgment, page 12, it was concluded: "There is no statute or rule that required the District to act on the Parent's request [for a reevaluation] within a certain time frame."

District's webpage. Also, it appears that the Parent did not respond to Ms. Lawson's April 12, 2021, email for 8 days, thus adding time to the overall delay.

32. The combined actions of the parties over a period of approximately five weeks between the Parent's first email of April 6, 2021, and the District's decision to reevaluate the Student on May 13, 2021, resulted in a less than ideal series of events that delayed the decision to reevaluate the Student. However, it cannot be said that the five-week period is an unreasonable period of time given the circumstances presented. Therefore, it is concluded that the District agreed to reevaluate the Student within a reasonable period of time after the Parent's initial email of April 6, 2021.

33. Alternatively, the Parent asserts that the District was tardy in its decision to reevaluate the Student after the March 11, 2018, reevaluation came due for a triennial review on March 11, 2021. It is understandable that the Parent could expect that a school district would decide whether to conduct a reevaluation of the Student at the end of the required three-year period. However, there is nothing in WAC 392-172A-03015, and the Parent presents no case law, that requires the District to immediately decide to conduct a triennial reevaluation of a parentally placed private school student that it was not serving through enrollment at the District.

34. This is because WAC 392-172A-03015 specifically contemplates a school district obtaining information about a student's status and conferring with the parent about whether a reevaluation is necessary based on a student's current circumstances. It follows, then that the District in this case would need information about the Student's current circumstances and time to confer with the Parent about whether a reevaluation is necessary. It is concluded, then, that WAC 392-172A-03015 does not require the District here to immediately decide to reevaluate the Student after March 11, 2021.

35. Further, the Parent has not presented evidence that demonstrates the District acted unreasonably by deciding to conduct a reevaluation of the Student on May 13, 2021, approximately eight weeks after March 11, 2021. Given the parties' collectively caused delays, as well as the District's lack of information about the Student's current school attendance and circumstances, the record shows that eight weeks is not an unreasonable period of time for the District to decide whether to conduct a triennial reevaluation of the Student. Therefore, it is concluded that the Parent has not carried her burden and shown that the District acted unreasonably when it made the decision on May 13, 2021, to reevaluate the Student.

36. Even if the Parent had shown that the District's delay in making the decision to reevaluate the Student was violative of the IDEA, as concluded above, the Parent

cannot prove that the District was obligated to provide the Student with FAPE between May 7, 2018, and January 20, 2022. As a result, the District cannot be held responsible for denying the Student a FAPE, and the Parent has also failed to meet her burden as required by WAC 392-172A-05105(2) as to Issue (i).

3. The Parent Has Not Shown By a Preponderance of the Evidence that the District Failed to Meet the IDEA's Statutory Timeline for Completing Student's Reevaluation Within Thirty-Five (35) Days (Issue ii.)

37. A school district is required to complete a reevaluation "(a) within thirty-five school days of receipt of written consent from the Parent." WAC 392-172A-03015(3) (*emphasis added*.) When a parent imposes conditions on a reevaluation, or selectively consents to portions of the evaluation, or increases the scope of an evaluation, the parent has not consented to the full scope of the reevaluation and the District must make efforts to obtain the parent's full consent before proceeding. See, *G.J. v. Muscogee County School District*, 668 F.3d.1258 (11th Cir. 2021); *Federal Way School District*, 107 LRP 11238 (SEA WA 2007); and *San Juan Bd. of Coop. Ed. Servs.*, 56 IDELR 29 (SEA CO 2010).

38. The Parent argues that the District had the Parent's signed "Consent to Reevaluate" form as of May 24, 2021, or May 26, 2021, and therefore the District was required to complete the September 22, 2021, Reevaluation within thirty-five school days.²⁰ The District argues that it completed the September 22, 2021, Reevaluation timely, but did not have full consent to begin the September 22, 2021, Reevaluation until May 26, 2021, when the Parent emailed Ms. Marchewka the "Consent to Reevaluate" form giving consent to all areas of concern, including the area of sensory.

39. As found above, the District's school year ended on June 17, 2021, and there were no school days until August 31, 2021. Also as found above, according to the District's academic calendars both May 31, 2021, and September 6, 2021, were holidays and therefore non-school days.

40. Setting aside the parties arguments regarding whether the May 24 or May 26, 2021, "Consent to Reevaluate" forms provided full consent to begin the September 22, 2021, Reevaluation, it is concluded that the District completed the September 22, 2021, Reevaluation on September 22, 2021, which is within thirty-four (34) school days of the earliest date, May 24, 2021, and within thirty-two (32) school days of

²⁰ The February 21, 2023, Order on Parent's Motion for Summary Judgment concludes that the District had completed the September 22, 2021, Reevaluation within less than thirty-five (35) days of June 8, 2021. Neither party argued that the Parent provided full consent to evaluate the Student on May 24, 2021, or May 26, 2021.

receipt of full consent, May 26, 2021. Therefore, the Parent has not carried her burden and has not shown that the District violated WAC 392-172A-03015(3).

41. Even if the Parent had shown that the District's delay in making the decision to reevaluate the Student was violative of the IDEA, as concluded above the Parent cannot prove that the District was obligated to provide the Student with FAPE between May 7, 2018, and January 20, 2022. As a result, the District cannot be held responsible for denying the Student a FAPE, and the Parent has also failed to meet her burden as required by WAC 392-172A-05105(2) as to Issue (ii).

4. The Parent has Not Shown By a Preponderance of the Evidence the District Violated the IDEA by Failing to Timely Communicate During April 2021, Thus Denying the Parent Meaningful Participation in her Child's Special Education. (Issue iii.)

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

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

Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 882 (9th Cir. 2001). The IDEA requires that parents have the opportunity to "participate in meetings with respect to the identification, evaluation, and educational placement of the child." WAC 392-172A-03100; 34 CFR §300.322.

43. The Parent asserts that because Ms. Lawson did not immediately respond to the Parent's April 20, April 23, April 27, and April 30, 2021, emails the Parent was generally denied the right to participate in the Student's special education. The District argues that the Parent has not identified any meeting or IEP process that she was excluded from participating in during April 2021.

44. First, it is important to note that the Parent specifically limits the time period of the violation in Issue (iii) to "April 2021," and therefore this tribunal will only consider the events of that month. Also, WAC 392-172A-03100 specifically limits meaningful parental participation to "meetings," not "special education" in general.

45. During April 2021, the evidence shows that the District was not evaluating the Student, the Student was not receiving special education services through enrollment at the District, and the Parent had not consented to the District providing the Student with special education services. Further, the record does not show that the District held any “meetings with respect to the identification, evaluation, and educational placement” of the Student. Also, the Parent admitted in her testimony that in April 2021 she had not requested an IEP team meeting or the development of an IEP for the Student.

46. While the Parent’s frustration with Ms. Lawson is understandable, the record does not reflect that the District violated WAC 392-172A-03100 during April 2021. The Parent, then, has not met her burden as to Issue (iii).²¹

47. Again, even if the Parent had shown that Ms. Lawson’s failure to communicate with the Parent was violative of the IDEA, as concluded above the Parent cannot prove that the District was obligated to provide the Student with FAPE between May 7, 2018, and January 20, 2022. As a result, the District cannot be held responsible for denying the Student a FAPE, and the Parent has failed to meet her burden as required by WAC 392-172A-05105(2) as to Issue (iii).

5. The Parent has Shown that on April 12, 2021, Ms. Lawson Provided the Parent with Incorrect Information About Enrollment and Reevaluation Processes, but the Parent has Not Shown a Violation of the IDEA Occurred. (Issue iv.)

48. The Parent asserts that Ms. Lawson’s April 12, 2021, email communicated misinformation that the Parent was required to register or enroll the Student at the District in order to receive a reevaluation. The Parent argues that the District engaged in a procedural violation of WAC 392-172A-02000 and WAC 392-172A-03015 because the District was obligated to reevaluate the Student regardless of whether the Student was registered or enrolled at the District.

49. The District admits that Ms. Lawson mistakenly communicated in her April 12, 2021, email that the Student was required to register or enroll at the District before

²¹ In the February 21, 2023, Order on Parent’s Motion for Summary Judgment, it was concluded: “If Issue (a)(iii) is a claim that the Parent was ‘generally’ not able to participate in the Student’s special education during the month of April 2021, then the issue as presented is confusing, lacks a detailed argument with citations to supporting evidence as well as specific statutes, rules, and case law. The vagueness of the Parent’s motion for summary judgment in regard to Issue (a)(iii) presents too many obstacles to making any determination of whether there is a genuine issue of material fact, or that the Parent is entitled to judgement as a matter of law. Therefore, the Parent’s motion for summary judgment must be denied as to Issue (a)(iii).”

Ms. Lawson could assign a school psychologist to reevaluate the Student. Regardless, the District argues that the Parent did not identify the provision of the IDEA that Ms. Lawson allegedly violated, and therefore it is concluded that the Parent has not met her burden.

50. Ms. Lawson made an incorrect statement, but Ms. Lawson's April 12, 2021, email as a whole reflects a lack of knowledge about the Student's circumstances: "[a]s for the school evaluation, I cannot tell you if a re-evaluation is necessary. The school psychologist would have to review the paperwork and determine whether or not a re-evaluation is needed or not." (D4, p.3.) (*Emphasis added.*) Ms. Lawson's miscommunication about enrollment cannot be read to mean that the District made any decisions that were averse to the Parent's or the Student's interests, only that Ms. Lawson did not know what the Student's circumstances were at the time of the email.

51. Even if Ms. Lawson's email is further interpreted to mean that the District was taking action that was averse to the Student's interests, the remedy would be to order a reevaluation of the Student. Such a remedy would be moot in this case, as Ms. Lawson corrected her error on May 13, 2021, and communicated to the Parent that the District would reevaluate the Student even if the Student was not enrolled or registered at the District.

52. The Parent also asserts that the misinformation from Ms. Lawson's April 12, 2021, email inconvenienced the Parent's decision-making process regarding whether to enroll the Student at the District for the 2021-2022 academic year. Specifically, the Parent claims that if Ms. Lawson had responded correctly then the reevaluation would have been completed by May 28, 2021, and the Parent would have been able to decide whether to send the Student to the District or a private school for the 2021-2022 academic year.

53. The Parent's personal inconvenience is unfortunate and certainly her hypothesis presents an ideal situation for her and the Student. But ultimately, the District is correct that the Parent has not identified a statute or rule that was violated. Further, the Parent's hypothesis ignores the fact that the Parent could have enrolled the Student, requested an IEP team meeting, and consented to special education services at any given time. Based on the evidentiary record and the applicable law, then, it is concluded that, while Ms. Lawson provided the Parent with incorrect information, the Parent has not met her burden and has not shown a violation of the IDEA occurred.

54. Even so, as concluded above, the District was not obligated to provide the Student with a FAPE from May 7, 2018, through January 20, 2022. Thus, the Parent has failed to carry her burden as to Issue (iv) and no relief is warranted.

6. The Parent has Not Shown that the District Failed to Follow the IDEA's Timelines for when an IEP must be in effect during the 2021-2022 or 2022-2023 Academic Years. (Issue v.)

55. At the beginning of each academic year, a school district is obligated to have an IEP in effect for students that the school district is “*servicing through enrollment at the district.*” WAC 392-172A-03105(1) (*Emphasis added.*).

56. The obligation to have an IEP in place at the beginning of each school year does not apply to a parentally placed private school student. As set forth above, the District's obligation to provide FAPE and special education services ceases when “the student stops receiving special education services based upon a parent's written revocation to a school district pursuant to WAC 392-172A-03000(2)(e).” Further, WAC 392-172A-3000(2)(e) provides:

If at any time after the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services, the school district:

. . . .

(v) Is not required to convene an IEP team meeting or develop an IEP for the student for further provision of special education services.

57. In *Capistrano Unified Sch. Dist. v. S.W.*, 2021 U.S. App. LEXIS 38565, 21 F.4th 1125, 2021 WL 6141122 (9th Cir. Dec 30, 2021), the court held that a school district is obligated to provide a parentally placed private school student with an IEP if the Parent requests that the IEP be developed. *Capistrano* appears to be in conflict with WAC 392-172A-2000 and WAC 392-172A-03000(2)(e)(v) as to when a District must hold an IEP meeting or develop an IEP for a parentally placed private school student. It is unclear from the *Capistrano* opinion whether California's IDEA implementation statutes and rules include a provision similar to Washington's WAC 392-172A-03000(2)(e)(v).

58. Also, parentally placed private school students:

(1) . . . are entitled to enroll their children part-time in their resident district for any course, activity or ancillary service, not provided by the

private school under 392-134 WAC and pursuant to WAC 392-172A-01135. Parent's who elect to enroll part-time in their resident district in order to receive special education and/or related services are served through an IEP and counted for federal and state special education reimbursement.

. . . .

(3) . . . a services plan must be developed and implemented for each nonprofit private school student eligible for special education services who has been designated by the school district to receive special education and related services.

(4) Each school district must maintain in its records, and provide to the OSPI, the following information related to parentally placed nonprofit private school students:

(a) The number of students evaluated, including initial evaluations and reevaluations;

(b) The number of students determined eligible for special education services; and

(c) The number of students served through a services plan.

WAC 392-172A-04010.

a. The District was Not Obligated to have an IEP in Place for the Student During April, May, and June 2021.

59. The Parent argues that the District violated the IDEA because 1) the District did not have an IEP in place during the period of April, May, and June 2021, 2) the District did not have an IEP in effect at the beginning of the 2021-2022 academic year, and 3) the Parent did not agree to a second extension of time to have an IEP meeting after the November 18, 2021, IEP meeting.

60. The District counters that 1) it was not obligated to have an IEP in place during the period of April, May, and June 2021, but it offered to implement the April 5, 2018, IEP if the Student enrolled at the District, 2) the District was not obligated to have an IEP in effect on the first day of the 2021-2022 academic year, and 3) the Parent's own actions required the second extension time for the IEP meeting.

61. The Parent's argument that the District was required to have an IEP in place during the period of April, May, and June 2021, is in contravention of WAC 392-172A-03105, WAC 392-172A-03000 and WAC 392-172A-04010. By its plain language

section 03105 only requires the District to have an IEP in place for students that the District is “serving through enrollment at the district.” As found and concluded above, it is undisputed that the Student was not enrolled and receiving services at the District during April, May, and June 2021. Further, the Parent had revoked consent for the District to provide the Student with services as of May 7, 2018. Finally, the Parent did not enroll the Student part-time at the school district as required by WAC 392-172A-04010. Because the Student was not enrolled full-time or part-time, or receiving services, and the Parent revoked consent for services on May 7, 2018, it is concluded that the District was not obligated to have an IEP in effect for the Student during April, May, and June of the 2020-2021 academic year.

62. Further, Parent specifically stated during her testimony that she did not ask the District to develop an IEP during the months of April, May, and June 2021. Therefore, if *Capistrano* does create an exception to WAC 392-172A-02000 and WAC 392-172A-3000(2)(e)(v), the exception would not apply here because Parent did not ask to develop an IEP or convene an IEP meeting in April, May, or June 2021.

63. Based on the foregoing, then, it is concluded that the Parent has not carried her burden and has not shown that a procedural violation occurred. Even so, as concluded above, the Parent cannot show that the District was obligated to make FAPE available, or otherwise denied the Student a FAPE. Thus, the Parent has failed to carry her burden as to Issue (v) and no relief is warranted.

b. The District was Not Obligated to Have an IEP in Effect at the Beginning of the 2021-2022 Academic Year because the Student was not Enrolled and Receiving Services.

64. The Parent argues that the District violated WAC 392-172A-03105(1) because the District did not have a new IEP in place for the Student as of August 31, 2021, when the 2021-2022 academic year began.

65. By its plain language, WAC 392-172A-03105(1) requires the Parent to prove by a preponderance of the evidence that the Student was “enrolled” at the District. An “enrolled student” is defined in WAC 392-121-106 as a student that is eligible to enroll because they reside in the district, and:

- (2) After the close of the prior school year has presented himself or herself, or has been presented, to the school district’s . . . appropriate official to be entered on the school district’s . . . rolls for the purpose of attending school in grades kindergarten through twelve;*
- (3) Is under twenty-one years of age at the beginning of the school year;*

(4) actually, participated on a school day during the first four school days of the current school term (semester or quarter), or on a school day during the current school year on or prior to the date being counted, in a course of study offered by the school district as defined in WAC 392-121-107; and

(5) Does not qualify for any of the enrollment exclusions set forth in WAC 392-172A-108.

66. One of the enrollment exclusions includes a “student who has transferred to a . . . private school and for whom the school district . . . has received notification of transfer from . . . the student’s parent or guardian shall not be counted as an enrolled student unless the student reenrolls in the school district” WAC 392-121-108(3).

67. It is undisputed that 1) the Student resided in the District and 2) the Student was under the age of 21. It is also undisputed that the Student did not participate on a school day during the first four days of the 2021-2022 academic year. Based solely on the fact that the Student did not attend classes in a course of study offered by the school district on August 31, 2021, and September 1, 2, and 3, 2021, the Student was not enrolled at the District.

68. The Parent testified that she filled out the on-line enrollment form on August 6, 2021, in order to “present [the Student] to the school district’s . . . appropriate official to be entered on the school district’s . . . rolls for the purpose of attending school” for the 2021-2022 academic year.” WAC 392-121-106(2). By the Parent’s understanding the Student was enrolled at the District for the 2021-2022 academic year as of August 6, 2021.

69. However, ten (10) days later on August 16, 2021, the Student qualified for an enrollment exclusion as per WAC 392-121-106(5) and WAC 392-121-108(3). This is because the Parent enrolled the Student at YWA on July 26, 2021, obtained a full schedule of classes on August 10, 2021, and on August 16, 2021, had her legal representative sent the District a written notification stating that the Student would be unilaterally enrolled at the Parent’s expense at YWA for the 2021-2022 academic year. Thus, the Student was not an enrolled student as of the first day of the 2021-2022 academic year.

70. The District is correct that the Parent also tried to “game the system” by filling out a second District on-line enrollment form on September 1, 2021. This action by the Parent does not negate the fact that the Student 1) did not attend classes on the first four days of school, and 2) was not enrolled at the District as of August 31, 2021, the first day of the academic year at the District.

71. Based on the foregoing, then, it is concluded that as of August 31, 2021, the beginning of the 2021-2022 academic year, the Student was not enrolled at the District. Therefore, under WAC 392-1712A-03105(1), the District was not obligated to have an IEP in effect at the beginning of the 2021-2022 academic year.

72. Even if the Student was enrolled at the District on August 31, 2021, WAC 392-172A-03105(1) only requires an IEP be in place at the beginning of the school year for students that a school district is actually “serving through the district.” It is undisputed that the District was not “serving” the Student or providing her with special education services during the period of April, May, or June 2021, or on August 31, 2021. Further, the District did not have Parental consent to provide the Student with special education services based on the May 7, 2018, and the August 16, 2021, letters. Therefore, even if the Student was enrolled, the District was not serving, and did not have consent to serve, the Student for the 2021-2022 academic year beginning August 31, 2021.

73. Because the Student was not enrolled and receiving services at the District as of August 31, 2021, it is concluded that the District did not have an obligation to have an IEP in place for the Student at the beginning of the 2021-2022 academic year as per WAC 392-172A-03105(1). Based on the foregoing, then, it is concluded that the Parent has not carried her burden.

74. Even so, as concluded above, the Parent cannot show that the District was obligated to make FAPE available, or otherwise denied the Student a FAPE. Thus, the Parent has failed to carry her burden as to Issue (v) and no relief is warranted.

c. Alternatively, the District Offered the April 5, 2018, IEP to Serve the Student between April 2021 and January 20, 2022.

75. The District argues in the alternative that even if the District had an obligation to provide the Student with an IEP between April 2021, and January 20, 2022, the April 5, 2018, IEP was in place and the District was ready to implement its provisions if the Student enrolled and consented to receive services. The District issued a PWN on May 17, 2021, stating that it would implement the April 5, 2018, IEP should the Student enroll and consent to receive services. Therefore, the District had an IEP in place for the Student if she enrolled and consented to receive services during the period of April 2021 through January 20, 2022.

76. The Parent, however, argues that the April 5, 2018, IEP was not appropriate and therefore the District did not have an IEP in place that would offer the Student a FAPE. The District responds that the Parent is attempting to challenge the appropriateness of the April 5, 2018, IEP beyond the two-year statute of limitations.

77. The Parent’s extensive and repetitive presentation of irrelevant evidence was an attempt to disguise a challenge to the appropriateness of the April 5, 2018, IEP as an issue regarding a denial of FAPE. Such an unnecessary exercise is puzzling given the findings and conclusions above that the District did not have an obligation to make FAPE available to the Student during the period of April 2021 to January 20, 2022, and the District never actually implemented the April 5, 2018, IEP.

78. Because the issue for decision is whether the District had an IEP in place as required, and not whether the IEP in place was appropriate, it is concluded that the District had the April 5, 2018, IEP in place for the Student during the period of April 2021 through January 20, 2022, should the Student decide to enroll and the Parent consented to the provision of special education services.

79. Based on the foregoing, then, it is concluded that the Parent has not carried her burden and has not shown that a procedural violation occurred. Even so, as concluded above, the Parent cannot show that the District was obligated to make FAPE available, or otherwise denied the Student a FAPE, based on the record presented. Thus, the Parent has failed to carry her burden as to Issue (v) and no relief is warranted.

d. The Parent Has Not Shown that the District Extended the IEP Meeting and IEP Development Process in Violation of WAC 392-172A-03105(2).

80. The Parent also argues that the District violated the thirty-day requirement to have an IEP meeting when it continued the November 18, 2021, IEP meeting to January 6, 2021.

81. After conducting an evaluation and making an eligibility determination, a school district must hold “*a meeting to develop the student’s IEP within thirty days of a determination that the student is eligible for special education and related services.*” WAC 392-172A-03105(2)(a)(Emphasis added.). After the thirty days elapses and an IEP meeting is held, a school district “must ensure that: . . . as soon as possible following development of the IEP, special education and related services are made available to the Student.”

82. The Parent has not met her burden for three reasons. First, the plain language of WAC 392-172A-03105(2)(a) simply required the District to hold an IEP meeting by October 21, 2021, which was within thirty (30) days of the September 22, 2021, eligibility determination. It is undisputed that the District scheduled the IEP meeting on October 21, 2021, and that the District was ready to proceed with developing the Student’s IEP. However, the Parent agreed to continue the thirty (30) day requirement via an email to Ms. Villa, though the Parent did not specify the length of time, only that Dr. Davies be involved in the meeting. It is also undisputed that the District held a

second IEP meeting on November 18, 2021, which is within thirty (30) days of October 21, 2021. Thus, the District fulfilled its obligation in WAC 392-172A-03105(2)(a) to hold an IEP meeting within thirty (30) days of the eligibility determination and again within thirty (30) days of the Parent's request to reschedule the October 21, 2021, IEP meeting.

83. The Parent did assert in a November 29, 2021, email that she did not agree to reason for continuing the November 18, 2021, IEP meeting. However, in that same email the Parent acknowledged that Dr. Davies report was not finalized as of the November 18, 2021, meeting and that she sought the development of an IEP for the Student. Thus, the Parent clearly agreed that the District needed to receive the final version of Dr. Davies report and that further development of the IEP was necessary.

84. Moreover, after transmitting Dr. Davies' final report to the District on November 30, 2021, the Parent agreed to another IEP team meeting via emails on December 1 and December 3, 2021. These emails show that the Parent did in fact agree to a subsequent IEP meeting after November 18, 2021.

85. The Parent's argument also fails because the District is only required by WAC 392-172A-03105(2)(a) to hold an IEP meeting, which the District did on November 18, 2021. The applicable law does not require the District to hold a meeting and immediately have a finalized IEP in place, particularly if information disclosed at the meeting may bring the appropriateness of the Student's proposed IEP into question or there is a lack of opportunity to collaborate amongst the IEP team members. Such is the case here because the Parent provided the District with Dr. Davies' draft report on November 17, 2021, one day before the November 18, 2021, IEP meeting, and then requested that the IEP team use the November 18, 2021, IEP meeting to review the report and listen to Dr. Davies. As a result of the late disclosed draft report from Dr. Davies, the appropriateness of the Student's IEP was in question at the end of the November 18, 2021, IEP meeting. It is understandable that the IEP team would need additional time to review Dr. Davies' report, collaborate as an IEP team, and produce an IEP that is appropriate for the Student.

86. Certainly, the law does not contemplate that the IEP team sacrifice the appropriateness of a student's special education services because a parent refuses a subsequent IEP team meeting and submits a draft independent educational evaluation at the last minute. For the benefit of the Student, the entire IEP team must have the opportunity to fulfill its statutory obligation and review all relevant information and collaboratively develop an appropriate IEP and, if required, meet with the entire IEP team a second time.

87. Because the Parent agreed to extend the time for the IEP meeting past October 21, 2021, the District actually held the IEP meeting on November 18, 2021, the Parent agreed to the January 6, 2021, IEP meeting, and because there is no requirement that an IEP team finalize an IEP at the first IEP meeting, it is concluded that the Parent has not met her burden and has not shown a procedural violation occurred. Even so, as concluded above, the District was not obligated to provide the Student with a FAPE from May 7, 2018, through January 20, 2022. Thus, the Parent has failed to carry her burden as to Issue (v) and no relief is warranted.

D. Procedural & Substantive Violations

88. Issues (vi), (vii), (viii), and (ix) allege a combined substantive and procedural violation: implementation of the SLP and OT services for the Student. The Parent has asserted that 1) the District failed to implement the OT and SLP services during the 2021-2022 academic year; 2) the District failed to implement the OT and SLP services during the 2022-2023 academic year; 3) the failures to implement were a material failure; and 3) the Student was denied a FAPE. The Parent seeks reimbursement for the services provided by Dr. Sacarin, as well as compensatory education.

89. The District argues that it was not obligated to provide SLP and OT services to the Student, or a FAPE, from August 31, 2021, through January 20, 2022, because the Student was a parentally placed private school student. The District also argues that after January 21, 2022, it believed YWA was providing the Student with SLP and OT services, and even so, the District offered the services but the Parent did not request or access the services.

90. Once an IEP is completed, the school district is obligated to implement the IEP in conformity with its provisions. WAC 392-172A-03105(2)(b). Only material failures to implement an IEP violate the IDEA. *Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811 (9th Cir. 2007). Minor discrepancies in the services required by the IEP do not violate the IDEA:

“[S]pecial education and related services” need only be provided “*in conformity with*” the IEP. [20 USC §1401(9).] There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education.

* * *

We hold that a *material* failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy

between the services a school provides to a disabled child and the services required by the child's IEP.

Id. at 821-22 (italics in original).

91. 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 Parent' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the Parent' child; or*
- (iii) caused a deprivation of educational benefits.*

WAC 392-172A-05105(2). An ALJ's "determination whether a student received FAPE must be based on substantive grounds." WAC 392-172A-05105(1).

1. The Parent Has Not Shown that the District Failed to Implement the SLP and OT Services from August 31, 2021, through January 20, 2022. (Issues iv and vii.)

92. It is undisputed that the District did not provide the Student with SLP and OT services between August 31, 2022, and January 20, 2022. The only IEP the District could have been obligated to implement between August 31, 2022, and January 20, 2022, was the April 5, 2018, IEP. However, under WAC 392-172A-2000 and WAC 392-172A-03000(2)(e), the Parent had revoked consent for special education services, including SLP and OT services as of May 7, 2018. Therefore, the District was not obligated to implement the April 5, 2018, IEP services in the areas of SLP and OT between August 31, 2022, and January 20, 2022. The Parent, then, has not shown that the District violated the IDEA procedurally, that the failure was material, or that the Student suffered a deprivation of benefits.

93. Even if the Parent did show that the District had an obligation to provide the Student with SLP and OT services from August 31, 2021, through January 20, 2022, as concluded above, the Student was not enrolled and receiving services from the District because she was a parentally placed private school student. Based on these facts, then, the Parent has not carried her burden and has not shown that the District was obligated to make available, or otherwise denied, the Student a FAPE.

94. Given the circumstances, it is concluded that the Parent is not entitled to compensatory education for SLP and OT services for the period of August 31, 2021, through January 20, 2022.²²

2. The Parent Has Shown that the District Failed to Implement SLP and OT Services from January 21, 2022, through June 17, 2022. (Issues vi and vii.)

95. When a student is eligible for special education services and a school district places the Student with a nonpublic agency for special education and related services, the school district must:

(1) . . . develop a written contract which must include but not be limited to the following elements:

. . . .

(c) The location(s) and setting(s) of the services to be provided;

(d) A description of services provided, program administration and supervision, including access to state learning standards;

. . . .

(g) a description of the district responsibility and process of data collection and reporting for the student(s), including the data required under IDEA . . .

(2) Each school district must ensure that a student eligible for special education services placed in or referred to a nonpublic agency under WAC 392-172A-04080(1) or with another private or public agency under WAC 392-172A-04080(2) is provided special education and related services:

(a) In conformance with an IEP developed by the school district that meets the requirements of [WAC392-172A]; and

²² In the February 21, 2023, Order on Parent’s Motion for Summary Judgment, page 18, it was concluded that: “There is no genuine issue of material fact that the Parent unilaterally enrolled the Student at YWA. As per WAC 392-172A-03105(2)(b), the Parent’s decision to unilaterally enroll the Student at YWA relieved the District of any obligation to provide the Student with OT or SLP services between August 31, 2021, through January 21, 2022. The Parent, then, is not entitled to judgment as a matter of law because the legal conclusion favors the non-moving party. As a result, the Parent’s motion for summary judgment is denied as to Issue (a)(vi) and Issue (a)(vii) in regard to SLP and OT services.”

(b) *At no cost to the parents.*

(3) *Each school district remains responsible for ensuring that the student is provided with FAPE.*

....

(5) *The student retains all of the rights of a student eligible for special education services who is served within the school district.*

WAC 392-172A-04085.

96. Regarding the period of January 21, 2022, through June 17, 2022, the January 21, 2022, IEP was in place and required the District to provide 60 minutes of OT per month and 120 minutes of SLP per month. Also, as of January 21, 2022, the Student was placed part-time at the District and part time at YWA. As a result, the District had an obligation to implement the January 21, 2022, IEP and offer the Student OT and SLP services. It is undisputed that the Student did not receive SLP and OT services from January 21, 2022 through June 17, 2022.

97. The District's argument that the Parent's disinterest in SLP and OT services from May 7, 2018, through June 17, 2022, is persuasive. However, the Parent's lack of interest in providing the Student with OT and SLP services is not determinative because WAC 392-172A-04085 clearly places the obligation on the District to ensure OT and SLP services are offered as per the January 21, 2022, IEP. Here, Ms. Unruh testified that the District did not take the required steps to ensure that the SLP and OT services were in place, and the IEP does not detail how the District will offer the related services.

98. The District's failure to provide SLP and OT related services amounts to a material failure because the District acted out of conformity with the January 21, 2022, IEP. Further, the District denied the Student a FAPE under WAC 392-172A-005105(2) because the Student was deprived of an educational benefit.

99. The record supports a conclusion that the District engaged in a procedural violation of the IDEA by failing to provide the Student with the related services of 60 minutes of OT per month and 120 minutes of SLP per month for five months during the period of January 21, 2022, through June 17, 2022. The Parent has also carried her burden and has shown a substantive denial of FAPE for this period. As a result, the Parent is entitled to compensatory education for SLP and OT related services. The compensatory education awarded is described below in the request for relief. (See Section E, *infra*.)

3. The Parent Has Shown that the District Failed to Implement the Student's IEP by Providing SLP and OT Services for the period of August 30, 2022, through January 20, 2023. (Issues viii and ix.)

100. The Parent also asserts that the District violated WAC 392-172A-03105(2)(b) by materially failing to implement the SLP and OT services provided for in the January 21, 2022, IEP for the period of August 30, 2022, through January 20, 2023. Specifically, the Parent asserts that the District failed to provide 60 minutes of OT services and 120 minutes of SLP services per month for five months. The District does not dispute that between August 30, 2022, and January 20, 2023, the District did not provide 60 minutes of OT services and 120 minutes of SLP services per month.

101. As set forth above, only material failures to implement an IEP violate the IDEA. *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9th Cir. 2007). Further, WAC 392-172A-05105(2) requires that the Parent show that the material failure deprived the Student of an educational benefit.

102. As previously concluded in the February 21, 2023, Order on Parent's Motion for Summary Judgment, the District failed to materially implement the Student's January 21, 2022, IEP and denied the Student a FAPE between August 30, 2022, and January 20, 2023, because the District did not provide 60 minutes of OT services and 120 minutes of SLP services per month. The District procedurally violated the IDEA (WAC 392-172A-03105(2)(b)) and denied the Student a FAPE as per WAC 392-172A-05105(2). As a result, the Parent is entitled to an award of compensatory education as described below in the request for relief. (See Section E, *infra*.)

103. The February 21, 2023, Order on Parent's Motion for Summary Judgment identified that there was a genuine issue of material fact regarding whether the Student has already been compensated for the period of August 30, 2022, and November 30, 2022, and whether the offer of compensation included the period of December 1, 2022, through January 20, 2023. The evidence presented shows that the District offered the Parent compensatory education for 3 hours of OT services and 6 hours of SLP services, and issued a PWN on December 8, 2022, setting forth their offer to pay \$1000.00 to the Parent for services provided by the Parent's provider of choice. The Parent clarified during her testimony that she did not accept the District's offer of the \$1,000 payment and that she did not receive an offer of compensatory education for the OT and SLP related services the Student did not receive between December 1, 2022, and January 20, 2023.

104. Because the Parent did not accept the \$1,000 offer from the District to compensate the Student for missed SLP and OT services between August 30, 2022,

to November 30, 2022, the compensatory education awarded below in the request for relief includes compensatory education for this period. (See Section E, *infra*.)

4. The Parent Has Not Shown that the District Materially Failed to Implement All Components of the Student's IEP by Providing a Partial Placement at IMS or Materially Failed to Provide the Student with a Full-Time Class Schedule for the period of August 30, 2022, through January 20, 2023. (Issues x and xi.)

105. The Parent asserts that the District failed to materially implement the January 21, 2022, IEP for the period of August 30, 2022, through January 20, 2023, because 1) the District did not provide a partial placement at the District for one class period, and 2) the District failed to provide the Student with a full-time class schedule. The Parent also argues that the Student was deprived of an educational benefit and therefore the District did not offer the Student a FAPE.

106. It is undisputed that the January 21, 2022, IEP requires the Student to spend 295 minutes, or one class period per day, five days per week, in a general education classroom at the District. It is also undisputed that the Student did not enroll in, register for, or attend a general education elective class at the District between August 30, 2022, and January 20, 2023.

107. The IDEA only requires that the District make FAPE available by offering SDI and related services through a partial placement in the January 21, 2022, IEP, but the District cannot force a Parent or Student to accept the offer. It is up to a Parent to access the offer of FAPE. Here, during July and August 2022, Ms. Unruh repeatedly contacted the Parent to register the Student for a general education class at the District so that the Student would be able to take advantage of the partial enrollment opportunity. The Parent took no action until September 2022 and ultimately never registered the Student for an elective general education class. The District, then, implemented the January 21, 2022, IEP and made an offer of FAPE. The Parent's decision to delay and ultimately not register the Student for a general education class cannot be imputed to the District. Based on the evidence in the record it is concluded that the Parent has not met her burden and has not shown that the District failed offer the Student a partial placement at the District from August 30, 2022, through January 20, 2023.

108. The Parent's claim that the District did not offer the Student a "full class schedule" also fails for the reasons given above. The Student received a class schedule for 6-7 classes at YWA. Notably, because the Parent's preferred class schedule at YWA required the Student's attendance from 9:25 a.m. to 3:30 p.m., it is

difficult to imagine how the Student would attend an elective class at IHS during the regular school day. Regardless, the Student was provided with the opportunity to register for an elective general education class at the District. Moreover, the Parent has not shown that there was any other obligation the District was required to meet to provide the Student with a “full class schedule” or how the Student’s YWA class schedule was otherwise deficient. Based on the evidence in the record it is concluded that the Parent has not met her burden and has not shown that the District failed offer the Student a FAPE from August 30, 2022, through January 20, 2023.

E. Requests for Relief

1. The Student is Awarded Compensatory Education of SLP and OT Related Services Provided by the District.

109. Reimbursement for related services such as SLP and OT services can be a form of compensatory education because these services are required to assist a student eligible for special education to benefit from special education. WAC 392-172A-01155(1). Compensatory education is a remedy designed “to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), *cited with approval in R.P. v. Prescott Unif’d Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011).

110. Compensatory education is not a contractual remedy, but an equitable one. “There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994). Flexibility rather than rigidity is called for. *Reid v. District of Columbia, supra*, 401 F.3d at 523-524. Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Reid v. District of Columbia, supra*, 401 F.3d at 524. Courts act in equity when remedying IDEA violations. *Reid v. District of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 2005). “The essence of equity jurisdiction is to do equity and . . . mold each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it.” *Id.*

111. As concluded above, the record reflects the District did not provide 300 minutes of OT and 600 minutes of SLP for the period of January 21, 2022, through June 17, 2022. The District also did not provide 300 minutes of OT and 600 minutes of SLP for the period of August 31, 2022, through January 20, 2023.

112. Regarding SLP related services, it is important to note that the services are related to the delivery of the Student's SDI and not direct services. Therefore, the related services include consultation amongst educators and the District's SLP, as well as actual recommendations and observations of the Student. This means that realistically, the Student could benefit from related SLP services without burdening the Student's time or impacting her educational experience. On the other hand, there is no showing by the Parent that the Student's current circumstances in the area of SLP requires a minute for minute award of 1200 minutes of SLP related services.

113. Notably, however, the Parent seeks not only compensatory education for SLP and OT services, but also reimbursement for the SLP services provided by Dr. Sacarin for the Tomatis Effect Listening Education Program in the amounts of \$1,589.00, \$989.00, and \$989.00. Importantly, only the services provided by Dr. Sacarin during the period that the IEP is in place would be appropriate, and therefore only the Phase II and Phase III services provided in January 2022, and February 2022 are considered eligible for reimbursement.

114. In balancing the equities here, it is concluded that it would be inequitable to reimburse the Parent for SLP services provided by Dr. Sacarin and award the Student 1200 minutes of related SLP services. It would be more appropriate to award compensatory education for SLP related services or reimburse the Parent for Dr. Sacarin's expenses. Further, given the lack of information about the Student's current circumstances in the area of SLP and the practical implications of implementing a minute for minute award of SLP related services, it is concluded that an award of 600 minutes of SLP related services would be more appropriate.

115. The Parent, then, is awarded either 600 minutes of SLP related services provided by the District, or reimbursement of SLP services provided by Dr. Sacarin in January 2022 and February 2022, in the amount of \$1978.00.

116. The Parent shall notify the District in writing of her decision within thirty (30) days of the date of service of this order. If the Parent does not notify the District within thirty (30) days of the date of the service of this order, then it will be presumed that the Parent elected to receive 600 minutes of SLP related services provided by the District.

117. Similar to the SLP related services, the 600 minutes of OT the District did not provide the Student were related services that were not necessarily anticipated to be provided directly to the Student but were related to the Student's specially designed instruction. This means that the Student could benefit from the 600 minutes of OT related services. However, again, there is little information about the Student's current

circumstances in the area of OT, and there is a concern of burdening the Student's educational experience with a significant amount of unnecessary OT services. In the case of OT related services then, the Student is awarded 300 minutes of OT related services provided by the District.

2. Reimbursement for Transportation Expenses

118. The Parent did not allege in her issue statements that the District violated the IDEA by failing to implement the transportation services, but the Parent presented testimony and a demonstrative exhibit in support of her request for reimbursement for transportation services. The District argues that the Parent did not properly raise the issue of whether the District failed to implement the related service of transportation as set forth in the January 21, 2022, IEP.

119. A party requesting a due process hearing may not raise issues during a due process hearing that were not raised in the due process hearing request, unless the other party agrees. WAC 392-172A-05100(3); 20 U.S.C. § 1415(f)(3)(B). This is consistent with Washington administrative law requiring that a notice of hearing include a statement of the issues (RCW 34.05.434) and that prehearing orders identify all issues and provide an opportunity to object. WAC 10-80-130. The federal district court in *L.C. v. Issaquah School District* recently held that: “[a]dministrative and judicial review in IDEA cases is specifically limited to the issues raised in the due process complaint, unless the parties agree otherwise.” 2019 U.S. Dist. LEXIS 77834 *34-35 (W.D. Wash. May 8, 2019) (upholding ALJ's refusal to address claims raised for first time in post-hearing brief where Parents cited no evidence that parties agreed to expand scope of due process hearing).

120. An exception to this rule is when an issue was actually tried by the parties at an administrative hearing. *M.C. v. Antelope Valley Union High School Dist.*, 858 F.3d at 1196; *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 *15-16 (E.D. Cal. Mar. 7, 2019), *aff'd* 810 Fed. Appx. 588 (9th Cir. 2020); see also *Issaquah Sch. Dist.*, at *37 (holding that parents failed to show any of claims not considered by ALJ were tried by consent, contrasting with *Antelope Valley*: “[b]oth sides in *Antelope Valley* ‘presented extensive evidence,’ including witness testimony, regarding the omitted claim”).

121. The District is correct that even though the Parent had three opportunities²³ to raise the issue of whether the District failed to implement the Student's IEP in regard to the related service of transportation, the Parent did not do so. As a result the District

²³ July 27, 2022, Due Process Hearing Request; September 6, 2022, Parent's Notice of Issues for Hearing; and December 5, 2022, Amended Due Process Hearing Request.

was not on notice of the issue and did not have an opportunity to defend against the Parent's claims. Further it appears the exception to the rule does not apply because the Parent has not shown that the District consented to trial of whether the District failed to implement the Student's IEP in regard to the related service of transportation, and the District did not put on any evidence or testimony regarding offering transportation services. Because the Parent did not raise the issue of whether the District implemented the Student's IEP in the area of transportation related services, it is concluded that the no findings of fact or conclusions of law are entered on this issue.

122. Even if the Parent did properly raise the issue for consideration, the Parent's testimony and evidence is extremely confusing. The Parent's testimony and demonstrative exhibit regarding mileage does not show whether the Parent is seeking reimbursement for mileage between the Student's home and YWA, the Student's home and the District, or the District and YWA. Further, the Parent's demonstrative exhibit and testimony includes months and a general reference to school days, but there is nothing to indicate what year the Parent's demonstrative exhibit and testimony applies to, and whether the time periods coincide with the implementation of the Student's January 21, 2022, IEP.

123. It is well established that a tribunal is not required to wade through the record to find evidence to support claims or identify claims that were not raised in the pleadings. *E.M. v Pajaro Valley Unified Sch. Dist.*, 652 F.3d 999, (9th Cir 2011), citing *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994); see *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs hunting for truffles buried in briefs"). Therefore, even if the issue of whether the District implemented the related service of transportation was properly raised, there is not sufficient evidence to support the Parent's claim or craft appropriate relief.

124. Moreover, reimbursement for transportation is typically awarded when the Student has lost instructional time. See *Prince George's County Public Schools*, 66 IDELR 203 (2015) and *Clark County School Dist.*, 12 ECLPR 62 (2014). However, if the District makes the related services available and the Parent fails to take advantage of the services, a student is not entitled to compensatory education, and the parent is not entitled to reimbursement. See *National Collegiate Preparatory Pub. Charter Sch.*, 114 LRP 11176 (2014). Even if the Parent had properly raised her claim and supported her claim, there is no evidence presented that the Student lost instructional time due to the District's failure to implement the related service of transportation.

125. These circumstances warrant denial of the Parent's request for reimbursement for transportation and no relief is granted.

3. Reimbursement for YWA Tuition

126. The Parent seeks reimbursement for the Student's tuition at YWA for the 2021-2022 academic year. Regarding the period of August 30, 2021, through January 20, 2022, as found and concluded above, the Parent unilaterally placed the Student at YWA for this period. Regarding the period of January 21, 2022, through June 17, 2022, as found and concluded above, the District placed the Student at YWA at public expense.

a. The Parent's Claim for YWA Tuition Reimbursement is Denied for the Period of August 30, 2022, through January 20, 2022.

127. "If a student eligible for special education services has a FAPE available and the parents choose to place the student in a private school or facility, the school district is not required . . . to pay for the student's education, including special education and related services, at the private school or facility." WAC 392-172A-04115(1). It is undisputed that the Parent unilaterally placed the Student at YWA from August 30, 2021, through January 20, 2022, and therefore the District is not obligated to reimburse the Parent's tuition payments under WAC 392-172A-04115(1).

However, the Parent seeks reimbursement as per WAC 392-172A-04115(3):

(3) If the parents of a student, who previously received special education and related services under the authority of a school district, enroll the student in a private preschool, elementary or secondary school, or other facility without the consent of or referral by a school district or other public agency, a court or an administrative law judge may require a school district or other public agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that a school district or other public agency had not made a free appropriate public education available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by a school district or other public agency.

128. Parents who unilaterally enroll a student in a private school are entitled to reimbursement only if 1) the district placement violated the IDEA, and 2) the parents' private school placement is proper under the IDEA. *Florence County Sch. Dist. v. Carter*, 510 U.S. 7 (1993). Thus, parents who unilaterally change their child's placement do so at their own financial risk. *Burlington v. Dep't of Ed. of Mass.*, 471 U.S. 359, 374 (1985). Claims for tuition reimbursement are governed by the

Burlington/Carter Test, which considers "(1) whether the school district's proposed plan will provide the child with a FAPE; (2) whether the private placement is appropriate to the child's needs; and (3) a consideration of the equities." *C.F. v. N.Y.C. Dep't of Educ.*, [746 F.3d 68](#), 76 (2d Cir. 2014); see generally *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. at 369; *Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 12, 114 S. Ct. 361, 126 L. Ed. 2d 284 (1993).

129. As found and concluded above, the Parent has not shown that the District violated the IDEA in regard to the claims actually asserted and during the period of August 30, 2021, through January 20, 2022. Therefore, the Parent has not met her burden in regard to the first prong of the *Burlington / Carter Test* in regard to the claims actually asserted for the period of August 30, 2021, through January 20, 2022.

130. However, the Parent creatively introduced evidence that the April 5, 2018, IEP is inappropriate and therefore the District violated the IDEA and denied the Student a FAPE when it offered the April 5, 2018, IEP should the Student enroll at IMS for the period of August 30, 2021, through January 20, 2022. Again, it appears that the Parent is attempting to challenge the appropriateness of the IEP more than four years after the District initially offered the April 5, 2018, IEP, thus disregarding the two-year statute of limitations in WAC 392-172A-05085. While WAC 392-172A-04115(3) may allow for a claim for reimbursement, this provision does not allow a Parent to circumvent the statute of limitations in WAC 392-172A-05085. As a result, it is concluded that the Parent has not met her burden as to the first prong of the *Burlington / Carter Test*.

131. Even so, the Parent has not shown that the District violated the IDEA in the development of the April 5, 2018, IEP or thereafter. The facts show that the Parent meaningfully participated in the IEP development process with Dr. Davies, was represented by counsel, received the procedural safeguards, and chose not to file a due process hearing request challenging the appropriateness of the April 5, 2018, IEP. Further, the Parent's evidence amounts to Dr. Davies disagreeing with the District and Dr. Brooks about the placement of the Student. This evidence is remote in time does not support a conclusion that the April 5, 2018, IEP was inappropriate and denied the Student a FAPE. Because the Parent has not met her burden as to the first prong of the *Burlington / Carter Test*, reimbursement for tuition at YWA for the period of August 30, 2021, through January 20, 2022, should be denied.

132. If a reviewing court disagrees and concludes that the Parent did demonstrate that the Parent met her burden as to the first prong of the *Burlington / Carter Test*, the second prong of the *Burlington / Carter Test* requires that the Parent show that the private placement at YWA was appropriate. Certainly, the placement of the Student at YWA is appropriate because YWA was able to provide the Student with specially

designed instruction, and it is persuasive that the District also ultimately concluded in January 20, 2022, that placement at YWA was appropriate. Therefore, the Parent has met her burden as to the second prong of the *Burlington / Carter Test*.

133. The third prong of the *Burlington / Carter Test*, and as allowed for by WAC 392-172A-04115(3), requires the tribunal to engage in a balancing of the equities before determining relief. It is extremely concerning that the Parent is making an end run around the two-year statute of limitations in WAC 392-172A-05085 and challenging the appropriateness of the April 5, 2018, IEP. Given that the Parent has not shown that the April 5, 2018, IEP was inappropriate or denied the Student a FAPE, and because it would be unfair to allow such a claim for reimbursement to proceed after the two-year statute of limitations, the equities lead to a conclusion that the Parent is not entitled to reimbursement for tuition paid to YWA for the period of August 30, 2021, through January 20, 2022. The Parents request for relief, then, is denied.

b. The Parent's Claim for YWA Tuition Reimbursement is Denied for the Period of January 21, 2022, through June 17, 2022.

134. For the period of January 21, 2022, through June 17, 2022, the District placed the Student at YWA for all specially designed instruction and agreed to pay the Student's tuition. The Parent's own evidence shows that the District paid the cost of the Student's YWA tuition beginning in January 2022, and thereafter. As a result, the Parent is not eligible for tuition reimbursement for the period of January 21, 2022, and thereafter. The Parent's claim for reimbursement is denied.

ORDER

Based on the above findings of fact and conclusions of law, it is THEREFORE HEREBY ORDERED:

1. The Parent has not shown that the District failed to timely initiate a reevaluation beginning in April 2021, or that the District denied the Student a FAPE as a result;
2. The Parent has not shown that the District failed to meet IDEA's statutory timeline for completing Student's reevaluation during the 2020-2021 and / or 2021-2022 school years, or that the District denied the Student a FAPE as a result;
3. The Parent has not shown that the District failed to timely communicate with Parent during April 2021, thus, denying Parent meaningful participation in her child's special education, or that the District denied the Student a FAPE as a result;

4. The Parent has not shown that the District violated the IDEA and denied the Student a FAPE by providing Parent with misinformation related to the District's obligation to evaluate Student, or that the District denied the Student a FAPE as a result;
5. The Parent has not shown that the District failed to follow IDEA's timelines for when an IEP must be in effect, or that the District denied the Student a FAPE as a result;
6. The Parent has not shown that the District failed to implement all components of Student's IEP during the period of August 30, 2021, through January 20, 2022, by failing to provide SLP related services to the Student;
7. The Parent has shown that the District failed to implement all components of Student's IEP during the period of January 21, 2022, through January 20, 2023, by failing to provide SLP related services to the Student;
8. The Parent has not shown that the District failed to implement all components of Student's IEP during the period of August 30, 2021, through January 20, 2022, by failing to provide OT related services to the Student;
9. The Parent has shown that the District failed to implement all components of Student's IEP during the period of January 21, 2022, through January 20, 2023, by failing to provide OT related services to the Student;
10. The Parent has not shown that the District failed to implement Student's IEP by providing a partial placement at IMS as is directed in Student's IEP for the 2022-2023 school year;
11. The Parent has not shown that the District failed to provide Student with a full-time class schedule during the 2022-2023 school year.

IT IS FURTHER ORDERED THAT:

1. The Parent's request for compensatory education for SLP related services for the period of January 21, 2022, through January 20, 2023, is GRANTED. The Parent is awarded compensatory education of 600 minutes of SLP related services from the District.
2. In the alternative, within thirty (30) days of service of this order the Parent may elect to accept reimbursement of Dr. Sacarin's expenses of \$1,978.00, instead of the compensatory education award of 1200 minutes of SLP related services. If the Parent does not elect to accept reimbursement of Dr. Sacarin's expenses of \$1,978.00, then

it will be presumed that the Parent elected to receive 600 minutes of SLP related services provided by the District.

3. The Parent's request for compensatory education for OT related services for the period of January 21, 2022, through January 20, 2023, is GRANTED. The Parent is awarded compensatory education of 300 minutes of OT related services provided by the District.

4. The Parent's request for reimbursement for transportation of the Student is DENIED.

5. The Parent's request for reimbursement for tuition paid to YWA for the 2021-2022 academic year is DENIED.

SERVED on the date of mailing.



Courtney Beebe
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Legal Services, PO Box 47200, Olympia, WA 98504-7200. To request the administrative record, contact OSPI at appeals@k12.wa.us.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that true copies of this document were served upon the following as indicated:

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Dated August 17, 2023, at Seattle, Washington.

Representative
Office of Administrative Hearings
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cc: Administrative Resource Services, OSPI