



STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS

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JAN 18 2019
SEATTLE-OAH

January 18, 2019

Parents



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In re: Lake Stevens School District
OSPI Cause No. 2018-SE-0101
OAH Docket No. 10-2018-OSPI-00605

Dear Parties:

Enclosed please find the Findings of Fact, Conclusions of Law, and Order in the above-referenced matter. This completes the administrative process regarding this case. Pursuant to 20 USC 1415(i) (Individuals with Disabilities Education Act) this matter may be further appealed to either a federal or state court of law.

After mailing of this Order, the file (including the exhibits) will be closed and sent to the Office of Superintendent of Public Instruction (OSPI). If you have any questions regarding this process, please contact Administrative Resource Services at OSPI at (360) 725-6133.

Sincerely,

Courtney E. Beebe
Administrative Law Judge

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

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

MAILED
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IN THE MATTER OF

OSPI CAUSE NO. 2018-SE-0101

LAKE STEVENS SCHOOL DISTRICT

OAH DOCKET NO. 10-2018-OSPI-00605

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

A due process hearing in the above-entitled matter was held before Administrative Law Judge ("ALJ") Courtney E. Beebe at the Lake Stevens School District on November 27, 2018. The Parents of the Student whose education is at issue¹ appeared and were represented by Katherine George and Scot Johnston, Johnston George LLP. The Lake Stevens School District ("District") was represented by Carlos Chavez, Pacifica Law Group LLP. Also present was Dr. Miriam Tencate, Executive Director Special Education Services. The following is hereby entered:

STATEMENT OF THE CASE

The Parents filed a Due Process Hearing Request on October 9, 2018. A prehearing conference was held on November 8, 2018. A First Prehearing Conference Order was issued on November 9, 2018.

At the due process hearing, the due date for the written decision was continued to thirty (30) days after close of record based on the motion of the District and the agreement of the parties. The record closed in this case on December 21, 2018. The due date for the written decision in this case is January 20, 2019.

MOTION IN LIMINE

The Parents filed a motion in limine on November 20, 2018 and the District filed a response on November 26, 2018. At the due process hearing, the parties presented oral argument on the motion in limine and response. After hearing from the parties, ALJ denied the Parents' motion in limine on the record.

¹ In the interest of preserving family privacy, the names of all family members of the Student are omitted from this decision. Instead, they are identified as, e.g., "Parents," "Mother," "Father," or "Student."

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

District's Exhibits: Exhibits D-1 through D-13.

Parents' Exhibits: Exhibits P-1 through P-43. The Declaration of Melissa West was admitted as Exhibit 44.

The District presented testimony from the following witnesses: Mother of the Student; Lyla Hippie, Special Education Teacher; Debra Hay, Associate Principal; Keri Joseph, Director of Special Services; Dr. Miriam Tencate, Executive Director of Special Education Services; and Jayme Glover, School Psychologist.

The Parents presented testimony from the following witnesses: Mother of the Student; Lyla Hippie, Special Education Teacher; Debra Hay, Associate Principal; Dr. Christi Kasa, University of Colorado; and the Student.

ISSUES

1. Whether the District violated the IDEA and denied the Student a free appropriate public education by failing to have an Individualized Education Program in effect for the Student at the beginning of the 2018-19 school year; and
2. Whether the District violated the IDEA and denied the Student a free appropriate public education by failing to offer appropriate transition services that take into account the Student's strengths, preferences and interests, as reflected by placing the Student in "life skills" classes rather than academic classes consistent with her goal to attend college; and
3. Whether the District violated the IDEA and denied the Student a free appropriate public education by failing to offer an education that is appropriately ambitious in light of the Student's circumstances; and
4. Whether the District violated the IDEA and denied the Student a free appropriate public education by failing to place the Student in the least restrictive environment; and
5. Whether the District violated the IDEA and denied the Student a free appropriate public education by denying meaningful opportunities for parental participation, including failing to discuss Parents' proposals at the September 2018 IEP meeting, failing to provide an IEP reflecting team discussion in August and September 2018, and offering only an incomplete draft IEP that does not reflect the August and September discussions.

FINDINGS OF FACT

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

1. The Student is a sixteen-year-old female who is interested in pursuing a post-secondary education in art and early childhood development after completing high school at the District. (P-25, pp.1-2; Tr., p.41, L.25 – p.42, L.2.) The Student is also intellectually disabled with a diagnosis of Down's Syndrome. (D-2, pp.1 and 5; Tr., p.41, L.25 – p.42, L.2.) The District performed an initial evaluation of the Student on April 18, 2016. (D-2, p.1.) The Student was found eligible for special education services. (D-1, p.1.)

2. On September 21, 2017, the Parents submitted a Declaration of Intent to Provide Home-Based Instruction form to the District (*Id.* at p.1.) The Parents also submitted a Part-Time Attendance for Ancillary Services request, seeking part-time attendance of the Student to Cavelero Mid-High at the District. (*Id.* at p.2.) The Parents intended to educate the Student at home, but would enroll the Student in an art class and communication services at Cavelero Mid-High. (*Id.* at pp.1-2.)

3. On February 14, 2018, the District scheduled a meeting with the Parents to review a proposed Individualized Education Program ("IEP") for the Student. (P-22, p.1; Tr., p.222, Ls.3-20.) The District also informed the Parents that because the Student may transition to high school, the District would perform a "reevaluation [of the Student] closer to June [2018] and redo[] the IEP at the same time." (P-22, p.1.)

4. The District met with the Parents on March 27, 2018, for purposes of conducting an IEP meeting. (D-2, pp.1-22; P-1, pp.1-24.) The District presented the Parents with an IEP that provided the Student with the opportunity to attend the Design 9 Art Class five days per week and Specially Designed Instruction ("SDI") in communication services three (3) days per month at Cavelero Mid-High. (*Id.*) The IEP team determined that SDI in communication was necessary because the Student's "expressive-receptive communication delay impacts her ability to follow multi-step directions, provide open ended written responses, or express her ideas consistently without a combination of visual, verbal or print cues. (D-2, p.4.) These factors affect [the Student's] ability to access the general education curriculum." (*Id.*)

5. The IEP also identified the Student's desire to transition to Lake Stevens High School ("LSHS") for the 2018-2019 academic year. (*Id.* at pp.6-8.) Specifically, the IEP team identified the Student's goal of completing high school graduation requirements "modified to meet her individual education needs" such that the Student could attend

college and obtain post-secondary education in early childhood education and art. (*Id.* at p.7.) The District provided the Parents with information about a Washington State University inclusive college program for young adults with disabilities called "ROAR." (P-26, p.1.)

6. The District issued a prior written notice and an IEP to the Parents on March 27, 2018, after a meeting with the Parents on the same date. (D-2, pp.1-22; P-1, pp.1-24.)

7. In April 2018, the Parents contacted the District to seek assistance with registering the Student for full-time attendance and classes for the 2018-2019 school year at Lake Stevens High School. (Tr., p.234, L.19 – p.235, L.1.) The District sent to the Parents a "Reevaluation Notification / Consent Form"² on April 9, 2018. (P-2, pp.1-5). The District sought to reevaluate the Student for purposes of attending LSHS full-time. (*Id.*)

8. The District's LSHS 2018-2019 Planning Handbook became available on the District's website and through the District in late April 2018. (P-29, pp.1-17.) The Planning Handbook lists the classes available to students. (*Id.*; Tr., p.186, Ls.5-23.) LSHS students registered for Fall 2018 classes during May of 2018 in order to obtain necessary classes; if a student did not register during May of 2018, the students risked missing the opportunity to take elective classes because the classes would fill to capacity. (Tr., p.113, L.9 – p.119, L.14; Tr., p.124, L.25 – p.125, L.22; Tr., p.142, L.3 – p.143, L.9; Tr., p.185, Ls.15-20.)

9. The District began its reevaluation of the Student in May 2018. (P-4, pp.1-25.) Between May 23, 2018 and May 29, 2018, the District and the Parents engaged in email correspondence in an attempt to schedule an IEP meeting and conduct a reevaluation and review of the Student. (D-3, pp.1-3; P-12, pp.1-10; P-23, pp.1-15; Tr., p.165, Ls.15-23; Tr., p.223, Ls.18-25.) The District and the Parents agreed to meet to review the reevaluation on June 4, 2018 and to review the IEP on June 6, 2018. (*Ids.*) The District requested transcripts and records from the Parents' homeschooling program and informed the Parents that the District was assessing the scope of the reevaluation. (D-3, pp.1-3; P-12, pp.1-10.)

10. On May 28, 2018, the Mother informed the District that she was not able to compile necessary information about the Student and that the Mother needed surgery in the imminent future. (D-3, p.1; P-23, p.1; Tr., p.225, L.22 – p.226, L.2; Tr., p.235, Ls.5-19.) The Mother requested that the IEP meeting and reevaluation be rescheduled. (*Ids.*) The District agreed that the IEP meeting and reevaluation could be rescheduled to August 2018. (D-4, p.1; Tr., p.125, L.23 – p.126, L.22; Tr., p.235, L.25 – p.236, L.9.)

² This form is not signed by the Parents. However, there is no evidence that the Parents did not consent to the reevaluation of the Student and to the contrary, the evidence shows that the Parents requested reevaluation of the Student by the District.

11. The District's 2017-2018 school year ended on June 15, 2018. (D-4, p.1.) The Parents and the District agreed to an extension of the reevaluation and the IEP meeting until August 2018 when the District's personnel returned for the 2018-2019 school year and the Mother recovered from surgery. (D-4, p.1; Tr., p.235, L.25 – p.236, L.9; Tr., p.125, L.23 – p. 126, L.22; Tr., p.188, Ls.16-23.) On June 1, 2018, the District issued a prior written notice documenting the extension of the reevaluation and IEP process to allow for full participation by the Parents. (D-5, p.1.)

12. On August 13, 2018, the Parents emailed Associate Principal Hay, Lyla Hippie, Special Education Teacher, and Jayme Glover, District School Psychologist. (P-6, pp.1-2; Tr., p.225, L.14 – p.226, L.2.) The Parents asked to schedule the reevaluation and IEP meeting and informed the District that the Student would attend the District's "Viking Launch" on August 28, 2018. (*Ids.*) Ms. Hippie responded the same day and suggested meeting to review the reevaluation and IEP on August 31, 2018. (P-6, p.2; Tr., p.166, L.21 – p.167, L.14; Tr., p.190, Ls.7-13.) Ms. Hippie also provided the Parents with a copy of a draft IEP for the Student with a Prior Written Notice dated August 14, 2018, and Invitation to Review setting forth that the IEP meeting and reevaluation review would take place on August 31, 2018. (P-6, pp.4-28; Tr., p.166, L.21 – p.167, L.14; Tr., p.188, L.24 – p.189, L.10.)

13. The Parents agreed to meet with the District on August 31, 2018 and did not request time to meet prior to August 31, 2018. (Tr., p.190, Ls.11-19; Tr, p.226, Ls.6-11.) The Mother expressed concern about the creation of the IEP without her input via email on August 15, 2018, and Ms. Hippie informed the Parents on August 16, 2018, that the IEP "I started writing is 100% still a draft. It won't be finalized until our meeting where we review [the Student's] evaluation and schedules." (P-6, p.1; Tr., p.166, Ls.2-4; Tr., p.240, Ls.4-9; Tr., p.241, Ls.1-20.) Ms. Hippie also attached another draft of the IEP to her email response dated August 16, 2018. (P-6, pp.4-28.) The IEP drafts specifically state that the IEP goals support the Student's future pursuit of a post-secondary education. (P-6, pp.4-28.)

14. Between August 19, 2018 and August 21, 2018, the Parents and the District, via email, continued to communicate about the review of the reevaluation and the IEP. (D-6, pp.1-3.)

15. The District's personnel returned to work on August 22, 2018. (Tr., p.121, L.10 – p.124, L.23; Tr., p.134, Ls.9-21.) The first day of school of the 2018-2019 LSHS school year began on September 5, 2018. (D-13, p.1; P-42, p.1.)

16. On August 17, 2018, Jayme Glover, District School Psychologist, emailed the Parents and informed them that she would return to work on August 22, 2018 and planned to review the reevaluation information left by her predecessor Brenda Gessaman.³ (P-3,

³ Ms. Glover is a National Certified School Psychologist who is contracted to provide psychology services at Lake Stevens High School. (Tr., p.270, L.16 – p.271, L.13.) Ms. Glover took over the Student's

p.2; Tr., p.271, L.19 – p.272, L.21.) Ms. Glover emailed the Parents a second time on August 22, 2018, seeking additional information regarding the Student's health diagnoses. (P-3, p.1; Tr., p.271, L.19 – p.272, L.21.) The Parents responded to Ms. Glover via email on August 26, 2018, providing information about the Student's recent diagnosis of Grave's disease in June 2018. (*Id.*)

17. The following day, on August 27, 2018, Ms. Glover attached a "draft" copy of the reevaluation of the Student to an email and emailed it to the Parents and Associate Principal Hay. (P-3, p.1 and pp.3-25; Tr., p.271, L.19 – p.272, L.21.) The Parents reviewed the reevaluation and responded with suggestions and requests for changes via email on August 29, 2018. (P-4, pp.1-2.)

18. The District responded on August 30, 2018, by accepting some of the requests from the Parents and responding to other suggestions. (P-4, p.1; Tr., p.272, L.22 – p.273, L.6.) The District revised the draft reevaluation report and emailed a copy of the "updated draft of the reevaluation report with many of the edits you suggested" to the Parents on August 30, 2018. (P-4, pp.1 and 3-25; Tr., p.272, L.22 – p.273, L.6.)

19. The Parents reviewed the draft IEP and provided feedback regarding the Student's goals to Ms. Hippie via email on August 29, 2018. (P-7, pp.2-3.) Specifically, the Parents identified concerns with the baseline percentages for goals in reading, writing, math and adaptive functions. (P-7, pp.2-3.) Ms. Hippie clarified the assigned baseline percentages via email on August 29, 2018, stating that because of the information from the reevaluation and the Student's past non-attendance in public school general classes prior to the 2018-2019 year, Ms. Hippie assigned low baseline percentages as "a generalized main idea goal we could use to help development in all classes." (P-7, pp.1-2; Tr., p.167, L.2 – p.168, L.3; Tr., p.178, L.1 – p.179, L.22; Tr., p.189, Ls.2-23.)

20. The IEP team, including the Mother, met on August 31, 2018. (D-7, p.4; Tr., p.135, Ls.16-17; Tr., p.190, Ls.2-6; Tr., p.273, Ls.4-8; Tr., p.282, Ls.20-24; Tr., p.241, Ls.15-16.) The IEP team consisted of: the Mother, Ms. Glover, Ms. Hippie, Speech Language Pathologist Darlene Flanagan, Associate Principal Hay, the District's nurse, the general education teachers for the Student, Director of Special Services Keri Joseph, Special Education Teacher Tami Armsbarger, and School Counselor Tzel Hernandez. (D-7, p.4) The Student also attended. (Tr., p.241, L.25 – p.242, L.25.)

21. The IEP team determined that as a result of standardized test data, as well as the staff's interactions when evaluating the Student, the Student continued to be eligible for special education services in the area of reading, written expression, math, and adaptive/self-help skills, with the related service of communication. (D-7, p.13; Tr., p.193, Ls.13-25; Tr., p.273, Ls.14-21.) Regarding the Student's ability to write, the evaluator

reevaluation from Ms. Gessaman because Ms. Gessaman became employed by another school district after the 2017-2018 academic year. (Tr., p.136, Ls.4-11.)

concluded that the Student performed well at the first and second grade level, and below average at higher grade levels. (D-7, p.11.) The evaluator concluded that the Student read at approximately a fifth or sixth grade level. (*Id.*) In the area of mathematics, the evaluator concluded that the Student performed below average at the third grade level. (*Id.*) In the area of adaptive behavior, the evaluator identified that the Student demonstrated borderline skills in the practical composite and that her conceptual skills were below average, which negatively impacted her ability to be independent. (*Id.* at p.8.) The evaluators considered the reevaluation complete on August 31, 2018, in terms of the needed information and the eligibility determination. (Tr., p.273, Ls.16-21.)

22. The Parents participated in the eligibility determination on August 31, 2018, and did not challenge the eligibility determination, the evaluations performed, or the evaluators' conclusions regarding the Student's capabilities. (Tr., p.237, Ls.11-13; Tr., p.237, Ls.5-17.)

23. The Parents, however, identified some "outstanding issues" with the reevaluation report. (Tr., p.237, Ls.16-19; Tr., p.273, Ls.16-23.) The Parents requested removal of the Student's IQ score. (D-8, p.2.) The Parents also 1) wanted to ensure that the reevaluation language did not impact the Student's developmental disability assistance ("DDA") eligibility, 2) requested clarification regarding the Student's ability to type, 3) requested inclusion of the Student's career goals under Age Appropriate Transition Assessment, and 4) sought modification of the list of potential sensory tools. (D-8⁴, p.2; Tr., p.237, Ls.5-23.)

24. The District's evaluators agreed to 1) include the vision statements provided by the Student about her career goals; 2) add the phrasing "multiple means of expression" to the Student's written expression goal to provide the Student with a variety of formats to express her writing; 3) add the goal of "navigating the cafeteria during lunch time"; 4) explore removing the IQ scores from the reevaluation report; 5) clarify the statement that the Student cannot type by providing context; 6) edit the accommodations list to include appropriate sensory tools and written instructions; and 7) allow the Parents to confirm the impact of the reevaluation on the Student's DDA eligibility. (D-10, p.1; Tr., p.274, L. 24 – p.275, L.8; Tr., p.277, L.3 – p.278, L.4.)

25. The IEP developed by the District's IEP team members provided for SDI in the areas of communication, math, reading, written expression and adaptive / self-help skills, five times per week for varying class periods. (D-10, pp.1-2; D-12, p.25; Tr., p.140, L.6 – p.141, L.9; Tr., p.146, L.19 – p.147, L.11; Tr., p.192, L.2 – p.193, p.7; Tr., p.191, Ls.3-14; Tr., p.284, L.19 – p.285, L.9.) The IEP included three general education academic classes, art, biology and modern history, with modifications and academic support from

⁴ The District's Exhibit D-8 is substantially the same as the Parents' Exhibit P-24, with differing page numbers. As a result, the citations in this Final Order are to the District's Exhibit D-8 only to avoid repetitive citations and confusion regarding page number citations.

a para-educator five days per week. (*Ids.*) The District's IEP team members developed this class schedule in order to provide transition services in light of the Student's desire to obtain a post-secondary education. (D-12, pp.12-14; Tr., p.296, Ls.1-22.)

26. The Parents did not challenge the inclusion of general education classes with modifications and paraeducator support in art, biology and modern history in the IEP. (D-8, p.2; Tr., p.138, L.23 – p.139, L.4.) The Parents' "main points of disagreement [with the IEP] were around English and math classes," because the Parents desired the Student to attend general education classes with modifications and supports instead of special education classes. (D-8, p.2; Tr., p.138, L.23 – p.139, L.4; Tr., p.212, L.14 – p.214, L.3.) The Parents provided information to the District about the Mother's experience homeschooling the Student, and the Parents' belief that placing the Student in general education classes with her general education peers was the best option for the Student. (Tr., p.212, L.14 – p.214, L.3.)

27. The IEP included special education classes Functional English or Basic English (ELA) instead of the general education sophomore level class English 10 accompanied by a Developmental Reading class. (D-10, p.2; Tr., p.192, Ls.8-13.) The District's IEP team members based the decision on the need to provide the Student with special education in the areas of reading and writing because the reevaluation placed the Student at a 5th to 6th grade reading level, and a below average first grade writing level. (*Ids.*) The special education classes were designed to allow the Student access to the curriculum. (D-7, pp.11-12; P-31, pp.12-15 and 20-21; Tr., p.192, Ls.8-13; Tr., p. 288, L.13 – p.289, L.5.) In contrast, the general education classes English 10 and Developmental Reading (P-31, pp.1-5 and 23-25) are classes generally taken in conjunction, and the District's IEP team members identified that a high level of modification and significant paraeducator support would be needed for the Student to access the curriculum. (D-10, p.1; Tr., p. 288, L.13 – p.289, L.5.) As a result, the IEP provided for Functional English given the Student's need for SDI in the areas of reading and writing. (Tr., p.193, Ls.13-25; Tr., p.289, Ls.14-19.)

28. The IEP also provided for the special education Functional Math class instead of general education math class. (Tr., p.191, Ls.3-4; Tr., p. 288, L.13 – p.289, L.5.) The District's IEP team members concluded that this class was appropriate because of the Student's significant math skill deficits in mathematical reasoning. (D, 7, pp.11-12.) Also, the District's IEP team members noted the availability of a Functional Math teacher with experience in assisting students in special education math classes with exposure to general education math curriculum. (D-10, pp.1-2; Tr., p.193, Ls.13-25; Tr., p.288, L.13 – p.289, L.5.) In contrast, the math general education classes would need a high-level of modification for the Student to access the curriculum. (Tr., p.288, L.13 – p.289, L.5.) As a result, the District's IEP team members included Functional Math class given the Student's need for special education in the area of math. (Tr., p.288, Ls.3-10.)

29. The Parents also expressed disagreement with placement of the Student in the Life Skills class instead of a general education resource study hour. (D-8, p.3.) The District's IEP team members based its recommendation of the special education Life Skills class on the availability of special education support staff dedicated to working with students with IEPs and the opportunity the course provided to strengthen adaptive deficits. (D-10, p.2; Tr., p.192, Ls.14-17; Tr., p.193, Ls.13-25; Tr., p.294, L.10 – p.295, L.25.) In contrast, the standard resource study hour used by general education students did not provide the opportunity to strengthen adaptive deficits. (*Ids*).

30. The IEP also included either Art 1 or Painting 1 as an elective for the Student given her interest in art and a goal of a post-secondary art education. (D-10, p.2; Tr., p.192, Ls.4-7.) The Parents wanted the Student to attend the Painting 1 class instead of Art 1 because the Student had completed a similar Art 1 class at Cavelero Mid-High. (D-8, p.3; Tr., p.218, L.23 – p.219, L.24.) However, enrollment in general education electives is based on the availability of the class at the time of registration. (Tr., p.113, L.9 – p.119, L.14; Tr., p.124, L.25 – p.125, L.22; Tr., p.142, L.3 – p.143, L.9.) Because the Student was registering for classes later than the other general education students, the Painting 1 class with the single art teacher (Ms. Panamaroff) was filled to maximum student capacity as of August 31, 2018. (P-32, p.5; Tr., p.113, L.9 – p.119, L.14; Tr., p.124, L.25 – p.125, L.22.) Therefore, the District's only available elective to the Student at that time was the Art 1 class. (D-8, p.5; Tr., p.113, L.9 – p.119, L.14; Tr., p.124, L.25 – p.125, L.22.)

31. The IEP team, including the Parents, met for approximately 2.5 to 3 hours and then agreed to adjourn the meeting on August 31, 2018, to provide the Parents with an opportunity to select the class schedule for the Student and respond to the District prior to the first day of school on September 5, 2018. (Tr., p.144, L.18 – p.145, L.2; Tr., p.194, Ls.1-10; Tr., p.196, L.24 – p.197, L.5; Tr., p.241, L.25 – p.242, L.25; Tr., p.274, Ls.5-12; Tr., p.283, Ls.11-13; Tr., p.285, Ls.10-23;.) The District's IEP team members signed the IEP on August 31, 2018. (D-7, p.4; Tr., p.274, L.24 – p.275, L.8.) The Parents did not sign the IEP. (D-7, p.4.) Associate Principal Hay emailed the Parents two class schedules for the Student to choose from on August 31, 2018 at 3:56 p.m. (D-8, p.8; Tr., p.243, Ls.20-21.)

32. On September 1, 2018, the Parents responded to the District via email. (D-8, pp.1-4.) The Parents did not select a class schedule for the Student, but instead outlined their concerns with the IEP. (*Id.*) Associate Principal Hay responded on September 2, 2018, providing further explanation of the District's obligation to provide a free appropriate public education ("FAPE") and providing the Parents with a choice of two class schedules for the Student. (D-8, pp.5-6; Tr., p.139, L.10 – p.140, L.5; Tr., p.141, L.20 – p.143, L.11)

33. On September 4, 2018, the Parents consulted with Dr. Christi Kasa of the University of Colorado about the IEP and whether it was appropriate for the Student given her post-secondary education goals. (P-36, P-37, P-38, P-39; Tr., p.245, Ls.5-12.) Dr.

Kasa concluded after evaluating the reevaluation and IEP that the IEP was inappropriate because it: 1) did not provide an ideal environment for the Student to interact with general education peers on a more regular basis, 2) did not provide technology to assist the Student, and 3) did not meet the Student's aspirational post-secondary goals. (Tr., p.73, L.9 – p.76, L.6.) The Parents also retained legal representation and a letter to the District on September 4, 2018, setting forth the Parents' objections to the IEP. (D-9, pp.1-2.) Dr. Kasa did not perform an evaluation of the Student. (Tr., p.87, Ls.7-11.)

34. The Parents and Student attended "LINK" day, the first day of school, on September 5, 2018. (Tr., p.143, L.12 - p.144, L.8.) The District's IEP team members chose the following class schedule for the Student because the Parents had not responded to the request for a class schedule selection: Art 1, Modern World History, Study Skills Period through Life Skills, Basic English – Resource, Biology, and Functional Math. (D-10, p.2; D-11, p.4; Tr., p.143, L.12 - p.144, L.8) The District issued a prior written notice to the Parents on September 5, 2018 stating that the IEP was in effect. (D-10, pp.1-3; P-28, pp.1-3; Tr., p.143, Ls.12-15; Tr., p.190, Ls.20-24; Tr., p.194, L. 14 – p.195, L.7.) The District implemented the IEP and provided the Student with all the necessary services on September 5, 2018. (D-11, pp.1-4; Tr., p.143, Ls.12-15; Tr., p.171, L.25 – p.172, L.25; Tr., p.195, Ls.10-13.) The Student did not attend school at the District from September 6, 2018 through November 6, 2018. (Tr., p.144, Ls.9-13; Tr., p.249, Ls.2-8.) The District held open the Student's class reservations in the event the Student attended school at the District. (D-11, p.4.)

35. The IEP team agreed to meet regarding the IEP on September 19, 2018, to provide an additional opportunity for the Parents to provide input and select a class schedule for the Student. (Tr, p.118, Ls.17-25; Tr., p.159, Ls.19-22; Tr., p.194, L.11 – p.195, L.9; Tr., p.243, Ls.1-16; Tr., p.285, Ls.2-24.) The District's IEP team members and legal counsel met with the Parents and the Parents' legal representation on September 19, 2018. (Tr., p.285, L.24 – p.286, L.24.) The meeting did not resolve the Parents' concerns regarding the class schedule recommendations. The Parents informed the District that the Student would be having surgery the week of September 23, 2018 and would need a recovery period. (D-11, p.3.) The District asked the Parents and their legal counsel to inform the District of any "next steps in regards to potential meeting dates once [the Student] has recovered from surgery." (D-11, p.3.)

36. On September 26, 2018, the District issued the Parents a prior written notice about the September 19, 2018 meeting. (D-11, pp.1-4; P-8, pp.1-4; Tr., p.168, Ls.4-12; Tr., p.176, L.20 – Tr., p.177, L.1; Tr., p.195, Ls.14-17; Tr., p.194, Ls.14-17) The District also emailed and mailed the Parents a "finalized reevaluation" on September 26, 2018, reflecting the edits requested by the Parents. (P-5, pp.1-29; Tr., p.275, L.25 – p.278, L.4.) The edits in this document accommodated the Parents' requests and did not change the District's August 31, 2018, conclusion that the Student was eligible for special education or any of the District's evaluation summaries or conclusions. (*Ids.*)

37. On October 2, 2018, via email and after the Student's surgery, the Parents requested an additional meeting with the District because the Student had recovered from her surgery. (P-16, p.1; Tr., p.168, L.25 – p.169, L.14.)

38. Beginning October 17, 2018, the Parents obtained private tutoring services from Melissa West, a certificated special education teacher. (P-35, pp.1-4 and P-43, pp.1-2.) Ms. West provided one-on-one tutoring and assessments for the Student in math and English. (*Id.*) Specifically, Ms. West instructed the Student in pre-algebra through the Khan Academy and assisted her with reading the book "The Joy Luck Club" by Amy Tan. (Tr., pp.101, Ls. 23-25.) Ms. West, however, did not tutor the Student in the specific math program the District provided to general education sophomore students, though the reading assignment was the same assigned reading as the District's Developmental Reading class. (Tr., p.102, L. 16 – p.103, L.9; Tr., p.104, Ls.2-23.) Ms. West concluded that the Student was capable of accessing pre-algebra and Developmental Reading with one-on-one instruction, modifications and tutoring in the home. (P-43, pp.1-2; Tr., p.105, L.23 – p.106, L.14.) The Parents have never requested reimbursement from the District for tutoring services. (Tr., p.250, L.24 – p.251, L.3.)

39. The IEP team, including the Parents, met on October 26, 2018 (D-12, p.27; Tr., p.195, Ls.18-20; Tr., p.288, Ls.3-17.) The District issued the Parents a Prior Written Notice and a copy of the "most up-to-date IEP" on November 2, 2018 and November 9, 2018, regarding the October 26, 2018, meeting. (D-12, pp.1-29; P-9, pp.1-36; P-10, pp.1-32; Tr., p.168, Ls.13-24; Tr., p.173, Ls.1-16.) The IEP is dated August 31, 2018 and is the same as the IEP in the prior written notice issued September 5, 2018. (*Ids.*)

40. The Student began attending LSHS in the District on November 6, 2018. (Tr, p.145, Ls.20-23; Tr., p.169, L.15 – p.171, L.11.) The Student attends classes per the August 31, 2018, IEP and prior written notice dated September 5, 2018. (P-18, pp.1-3; Tr., p.146, Ls.5-15.)

41. During the period of September 6, 2018 to November 6, 2018, the District's internal special education funding compliance program reflected that the IEP was not completed because the Student had not attended school during the period. (P-15, and P-17; Tr., p.174 L.5 – p.175, L.11; Tr., p.301, L.12 – p.304. L.4.)

CONCLUSIONS OF LAW

A. Jurisdiction

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

Code (WAC).

B. Burden of Proof

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

3. The party must prove their claim by a preponderance of the evidence. *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 206, 102 S. Ct. 3034 (1982) (*Rowley*)

C. The IDEA and FAPE

4. 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. Accordingly, school districts must provide "every student who is eligible for special education between the age of three and twenty-one years, a free appropriate public education program" ("FAPE"). RCW 28A.155.090; 34 C.F.R. Part 300; WAC 392-172A-2000(1).

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

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

Rowley, supra, 458 U.S. at 206-207 (footnotes omitted).

6. Washington Administrative Code 392-172A-05105(1) provides that an ALJ's "determination of whether a student received FAPE must be based on substantive grounds." Further, in "matters alleging a procedural violation, an [ALJ] may find that a student did not receive FAPE only if the procedural inadequacies" actually occurred, and:

- (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(2).

7. In this case, the Parents raise two procedural challenges and three substantive challenges to the District's IEP. In order to prevail, the Parents must meet their burden and show by a preponderance of the evidence that 1) at least one procedural violation occurred and that the violation resulted in a denial of FAPE, or 2) that the District's IEP does not meet the requirements of the IDEA such that the Student was denied FAPE.

D. The District Followed Procedural Requirements for Parental Participation in the Reevaluation Team Meeting and IEP Team Meeting

8. The first issue the Parents raise is whether the District followed procedural requirements for meaningful parental participation in the reevaluation team meeting and IEP team meeting. The Parents argue that the District did not provide the Parents a meaningful opportunity to participate in the reevaluation team meeting and development of the Student's IEP, the District disregarded the Parents' proposals, and the District's draft IEPs were confusing. The District counters that the District provided multiple meaningful opportunities for the Parents to participate in the team meeting and IEP development, that the District considered the Parents' general education class attendance proposals, and that the District's IEPs conveyed all necessary information for the Parents to review.

9. Upon completion of a reevaluation, "(a) a group of qualified professionals and the parent of the student determine whether the student is eligible for special education and the educational needs of the student; and (b) the school district must provide a copy of the reevaluation report and the documentation of determination of eligibility at no cost to the parent." WAC 392-172A-03040(1). Once a determination of eligibility for special education is made by the school district and the parents, "an IEP must be developed for the student in accordance with WAC 392-172A-03090 through 392-172A-03135." WAC 392-172A-03040.

10. An IEP team for "each student eligible for special education includes: (a) The parents of the student." WAC 392-172A-03095. When the meeting will consider the post-secondary goals for the student and the transition services needed to assist the student in reaching those goals, the student must be invited to the IEP team meeting. WAC 392-172A-03095(2)(a) and WAC 392-172A-03100(4)(a). A school district must notify parents of the IEP meeting early enough to ensure they will have an opportunity to attend and schedule the meeting at a "mutually agreed on time and place." WAC 392-172A-03100.

11. "The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student." WAC 392-172A-05001. Informal or unscheduled conversations between school district personnel or preparatory activities by IEP team members do not constitute an "IEP meeting." WAC 392-172A-05001.

12. "A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification." *Ms. S. v. Vashon Island School District*, 337 F.3d 1115, 1131 (9th Cir. 2003), citing *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479, 1484 (9th Cir. 1992). "Parents not only represent the best interests of their child in the IEP development process, they 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 School District*, 267 F.3d 877, 882 (9th Cir. 2001). Thus, "procedural inadequacies that seriously infringe the parents' opportunity to participate in the IEP formulation process clearly result in a denial of FAPE." *Amanda J.*, 267 F.3d at 892.

13. A school district cannot enter an IEP meeting with a "take it or leave it" position, but a school district does not have to grant a parent absolute veto power over any IEP provision. See *Ms. S.*, 337 F.3d at 1132, citing *W.G.*, 960 F.2d at 1484 and 1486. If the school district provides the parent with a meaningful opportunity to participate in an IEP meeting and the parties are unable to reach a consensus regarding the IEP provisions, then the school district has satisfied its obligation and must afford the parents a due process hearing opportunity in regards to the IEP. See *Doe v. Maher*, 793 F.2d 1470, 1490 (9th Cir. 1985).

14. The evidence presented shows the District met the requirements of WAC 392-172A-03040. The District completed the reevaluation, convened the professionals involved, and met with the Parents on August 31, 2018. The District also provided the Parents with a copy of the reevaluation via email on August 27, 2018 at no cost.

15. The record also demonstrates that the District provided the Parents with a meaningful opportunity to participate in the eligibility determination and that the Parents did not challenge either the substance of the reevaluation or the ultimate eligibility determination. The Parents responded to the District's initial reevaluation draft with suggested edits on August 29, 2018 and the District accepted a number of the Parents' suggested edits. The District then provided the Parents with a copy of the reevaluation with the Parents' edits on August 30, 2018. After meeting with the Parents on both August 31, 2018 and September 19, 2018, the District largely included the Parents' edits in the reevaluation and provided the Parents a second copy of the reevaluation on September 26, 2018. It is concluded, then, that the Parents have not met their burden and that District provided the Parents with a meaningful opportunity to participate in the reevaluation process.

16. The record contains substantial evidence that the District complied with WAC 392-172A-03090 and 03095 by holding an IEP team meeting that included the Parents, the Student and the District's IEP team members on August 31, 2018. The meeting included a discussion of the Student's post-secondary goals as required by WAC 392-172A-03095(2)(a) and WAC 392-172A-03100(4)(a). Further, the District scheduled the August 31, 2018, meeting at an early enough time (seventeen days prior on August 14, 2018)

such that the Parents had an opportunity to prepare and attend. WAC 392-172A-03100. Notably, the Parents did not inform the District at any time between August 14, 2018 and August 31, 2018 that the Parents did not have time to review the IEP or needed more time prior to the meeting.

17. The Parents have also not met their burden and shown that the District denied them meaningful parental participation in the IEP meeting. Ms. Glover sent the Parents copies of a draft IEP and invitations to review and comment on August 14, 2018, August 16, 2018, and August 30, 2018. The Parents provided comment on the IEP on August 29, 2018, August 31, 2018 and September 1, 2018. The District met with the Parents for 2.5-3 hours on August 31, 2018, and considered all proposals and suggestions and allowed the Mother to present information about her experience teaching the Student at home and the Student's capabilities. Importantly, the Mother ended the August 31, 2018 meeting, not the District, and the District agreed to allow the Parents additional time prior to the first day of school to review the IEP. Notably the District's IEP team members met with the Parents on September 19, 2018 and October 26, 2018 and issued prior written notices on November 2, 2018 and November 9, 2018, allowing the Parents additional opportunities to present proposals and suggestions based on Dr. Kasa's review of the reevaluation.

18. Given the multiple meetings and opportunities via email that the Parents utilized to present information and proposals to the District, it must be concluded that the District fulfilled its procedural obligations and provided the Parents with a meaningful opportunity to participate in the development of the IEP and in the IEP meeting. The Parents have not met their burden and have not shown by a preponderance of the evidence that the District violated any procedural requirements.

E. The District Met the Procedural Requirements of WAC 392-172A-03405 Because the District had an IEP in Effect on September 5, 2018 and November 6, 2018

19. The next issue raised by the Parents is whether the District had an IEP in effect for the Student at the start of the 2018-2019 academic year. The Parents argue that because the Parents did not sign the IEP and choose a class schedule for the Student at the end of the meeting on August 31, 2018, the District did not have an IEP in place on the first day of school September 5, 2018. The Parents also imply that because the Parents objected to the class schedule and because the District had not completed the requested edits of the reevaluation, the IEP was not in effect on September 5, 2018 or on November 6, 2018 when the Student attended school. The District, however, argues that there was an IEP in effect on September 5, 2018, regardless of the Parents' objections to the class schedule or the completion of edits to the reevaluation.

20. Washington Administrative Code 392-172A-03405(1) requires that school districts "have an IEP in effect for each student eligible for special education that it is serving

through enrollment in the district” at the beginning of the school year. A student is “enrolled” if the student:

(1) *Is eligible to enroll in the school district’s education programs because he or she: (a) resides in the school district . . .*

(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 or charter school’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 . . . in a course of study offered by the school district*

. . .

(5) *does not qualify for any of the enrollment exclusions set forth in WAC 392-121-108.*

WAC 392-121-106. A student is excluded from enrollment if the student is absent more than twenty (20) consecutive school days, until attendance is resumed. WAC 392-121-108(1)(a).

21. A school district must provide special education and related services as soon as possible in accordance with the IEP. WAC 392-172A-03105. Failure to have an IEP in effect by the start of the school year is a procedural violation, but the Parents must show that the alleged violation resulted in the denial of FAPE. WAC 392-172A-05105(2).

22. Assuming *arguendo* that the Student was considered enrolled on September 5, 2018, because the Student attended the District’s “Link Day,” i.e. the first day of school for the 2018-2019 academic year, then it is concluded that there is sufficient evidence that the District had an IEP in effect for the Student. The District completed its reevaluation and held the IEP team meeting on August 31, 2018. Notably Associate Principal Hay, via email, presented the Parents with two class schedules for the Student the same day and again on September 2, 2018. On September 5, 2018, the first day of the academic year, the District provided the Student a class schedule that met the requirements of the IEP and issued a prior written notice. (See Section H *supra*.) The District’s witnesses, Associate Principle Hay, Jayme Glover and Lyla Hippie, all credibly testified that the District was prepared to implement the IEP and provide all related services to the Student on September 5, 2018.⁵ There is no evidence presented that the District did not provide

⁵ It was undisputed at the hearing that the District issued an IEP on March 27, 2018 and that it was valid until March 27, 2019. The District argues that this IEP meets the requirements of WAC 392-172A-03405. However, the March 27, 2018 IEP provided only for part-time attendance at Cavelero Mid-High School for communication services and art class. Thus, while the District technically had the March 27, 2018 IEP in place, that IEP did not address transitioning the Student to Lake Stevens High School for full-time attendance.

special education services as per the IEP on September 5, 2018. Importantly, simply because the Parents declined to sign the IEP does not mean it was not in effect.

23. It is important, however, to consider that the Student was absent from the District between September 6, 2018 and November 5, 2018. The Student voluntarily did not attend school between September 6, 2018 and September 23, 2018 when she had surgery, but the Student was recovered by October 2, 2018. The period of time between October 2, 2018 and November 6, 2018 is more than twenty consecutive school days. Alternatively, the record shows that the Student was not enrolled in the District until November 6, 2018, when she attended school. The District properly issued prior written notices on November 2, 2018, and November 9, 2018. The District's personnel all credibly testified that the District was prepared to provide the Student with special education and related services as per the IEP when the Student chose to attend school at Lake Stevens High School on November 6, 2018. When the Student appeared for class on November 6, 2018, all supports and services were in place as per the IEP and there is no evidence presented to the contrary.

24. Given the evidence presented and the credible testimony of the District's personnel, it is concluded that the District met the procedural requirements of WAC 392-172A-03405 and had an IEP in effect and was capable of providing the Student with special education and related services on September 5, 2018, and alternatively on November 6, 2018. As such, the Parents have not shown by a preponderance of the evidence that a procedural violation occurred.

F. The District Provided Transition Services in the IEP to Account for the Student's Post-secondary Education Goals

25. Parents also claim that the District failed to provide an IEP that accounted for the Student's post-secondary transition goal of attending college. The District counters that the IEP provides transition services that account for the Student's post-secondary goals, as well as her strengths, preferences and interests.

26. "Beginning not later than the first IEP to be in effect when the student turns sixteen . . . and updated annually, thereafter, the IEP must include: (i) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (ii) the transition services including courses of study needed to assist the student in reaching those goals." WAC 392-172A-03090.

27. Transition services are "a coordinated set of activities . . . that: (a) are designed to be within a result oriented process, that is focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to

post-school activities, including postsecondary education . . .; (b) is based on the individual student's needs, taking into account the student's strengths, preferences and interests" WAC 392-172A-01190.

28. The testimonial and documentary evidence provided is replete with references to the Student's desire to obtain a post-secondary education and how the District's IEP accounts for the Student's goals, as well as strengths, preferences, and interests. The District reviewed and included the Student's vision statement in the reevaluation, the District included a section on Secondary Transition in the IEP, and the IEP team discussed the Student's post-secondary education goal with the Parents at the IEP meeting. The District's witness Keri Joseph credibly testified that the IEP accounts for the Student's desire for a post-secondary education goal. Moreover, the District's witnesses and the documentary evidence in the record all show that the Student has an opportunity to strengthen her reading, writing and math skills during the 2018-2019 academic year in order to potentially transition into general education courses in these areas in the future so that she may achieve her goal of attending a post-secondary institution. Additionally, the District's witnesses credibly testified that the classes offered, including the elective Art 1, all account for the Student's interests and preferences of obtaining a post-secondary art education.

29. The Parents have only presented the testimony of the Mother and Dr. Kasa on this issue. The Mother, however, does not have training and education in the area of special education and therefore her opinion that the IEP does not provide appropriate transition services for the Student is more a reflection of her genuine desire for her daughter to obtain a high quality education experience than an informed opinion on the provision of transition services. Such testimony has less weight than the credible testimony of the District's witnesses who have knowledge, training, and expertise in the special education field.

30. While Dr. Kasa is certainly an expert in the field of special education, Dr. Kasa performed only a cursory review of the reevaluation and IEP and did not evaluate the Student. Dr. Kasa's criticism of the IEP in regards to transition services is that the IEP does not provide a highly aspirational educational program of only general education class attendance such that the Student may benefit from general education class interaction with her peers. While Dr. Kasa's testimony certainly garners some weight, given its aspirational nature, as well as a limited familiarity with either the Student or the classes offered, Dr. Kasa's opinion on the provision of transition services is given less weight than the testimony offered by the District's personnel and documentary evidence.

31. Because the District's personnel all credibly testified that the IEP would adequately prepare the Student to achieve her post-secondary education goals and the Parents did not present sufficient evidence to the contrary, it must be concluded that the Parents have not carried their burden and has not shown that the IEP fails to provide appropriate transition services.

G. The IEP is Appropriately Ambitious in Light of the Student's Circumstances

32. The fourth issue raised by the Parents is whether the IEP is appropriately ambitious in light of the Student's circumstances. The Parents argue that the IEP is not appropriately ambitious because it does not challenge the Student's skills and abilities and simply requires her to continue to perform tasks she is capable of performing. The District argues that the IEP is appropriately ambitious and provides the Student with the opportunity to improve her skills and abilities.

33. Whether an IEP is appropriately ambitious must be judged by reviewing the goals and services offered at the time it was developed and whether the IEP was reasonably calculated at that time to confer an educational benefit on the student. *Anchorage Sch. Dist. v. M.P.*, 689 F.3d 1047 (9th Cir. 2012); *B.S. ex rel R.S. v. Placentia-Yorba Unified Sch. Dist.*, 306 F. App'x 397, 399 (9th Cir. 2009); *Adams v. State of Oregon*, 195 F.3d 1141, 1149-50 (9th Cir. 1999) ("Instead of asking whether the [IEP] was adequate in light of [the student's] progress . . . the more pertinent question [is] whether the [IEP] was appropriately designed and implemented so as to convey a meaningful benefit [to the student].")

34. The Supreme Court recently clarified the substantive portion of the *Rowley* test:

To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. . . [H]is educational program must be appropriately ambitious in light of his circumstances . . .

Andrew F. v. Douglas County Sch. Dist. RE-1, 580 U.S. ___, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Andrew F.* standard as follows:

In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can "make progress in the general education curriculum," 137 S. Ct. at 994 (citation omitted), taking into account the progress of his non-disabled peers, and the child's potential.

M.C. v. Antelope Valley Union High Sch. Dist., ___ F.3d ___, 2017 U.S. App. LEXIS 9359, at 22 (9th Cir. 2017).

35. For a district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Rowley*, 458 U.S. at 200 - 201. The IDEA, then, does not require a school district to provide an IEP that maximizes an individual child's potential, but requires it to provide an IEP that is "reasonably calculated" at the time developed to confer some educational benefit upon the Student. *Ash v. Lake Oswego Sch. Dist.*, 980 F.2d 585, 587 (9th Cir. 1992); see also *J.L. v. Mercer Island Sch. Dist.*, 575 F.3d 1025, 1033, 1038 n. 10 (9th Cir. 2009) (nothing that prior decisions

discussing a “meaningful benefits” standard were applying *Rowley’s* “some benefit” standard).

36. In Washington, “each school district shall ensure that its students eligible for special education have available to them the variety of educational programs and services available to nondisabled students in the school district’s area, including art, music, industrial arts, consumer and homemaking education, and vocational education.” WAC 392-172A-02030.

37. The team developing an IEP must consider:

- (1)(a) The strengths of the student;*
- (b) The concerns of the parents for enhancing the education of their student;*
- (c) The results of the initial or most recent evaluation of the student; and*
- (d) The academic, developmental, and functional needs of the student.*

....

WAC 392-172A-03110.

38. It is an important fact that the Parents did not challenge the reevaluation eligibility determination or the evaluation process. The issue presented by the Parents is whether the Student’s IEP is ambitious enough in light of her evaluation and circumstances.

39. The record reflects that the District’s IEP was developed from the reevaluation and designed to transition the Student from full-time homeschooling to full-time public high school with multiple classes. The District’s personnel all credibly testified that the special education classes in the IEP reflected the Student’s performance in the areas of reading, writing, math and adaptive skills. Moreover, the District’s personnel also credibly testified that placing the Student in three general education classes (biology, modern history, and art) allowed her to benefit from interacting with her peers in a general education environment, and would challenge the Student academically.

40. In contrast, the Parents presented the testimony of the Mother, Ms. West and Dr. Kasa. As noted above, the Mother does not have training and experience in the area of special education and therefore her testimony and opinion regarding whether the IEP is ambitious in light of the Student’s circumstances is given less weight than the testimony of the District’s personnel. However, the Mother did express her concerns that 1) the Student’s education would not be enhanced by curriculum that required the Student to repeat skills and tasks that she knew how to perform already and 2) that the Student would benefit from being in general education classes with her peers. The record shows that the District’s IEP team members considered and accounted for the Parents’ concerns when developing the IEP.

41. Ms. West offered testimony regarding her experience tutoring the Student in Math in October 2018, but Ms. West does not have experience teaching special education

children in a public high school setting. Ms. West also did not tutor the Student in the District's sophomore math course and was not familiar with the requirements of the Functional Math class the IEP team had selected for the Student. Ms. West, however offered credible testimony based on her personal experience regarding tutoring the Student in reading the fictional book assigned in the District's Developmental Reading class. Ms. West's testimony reflects the reevaluation that the Student is a confident reader at the fifth and sixth grade level. Ms. West's testimony, however, does not contradict the District's conclusion that Basic English (ELA) is more appropriate than Developmental Reading given the level of assistance that Ms. West provided to the Student when reading high-interest fiction.

42. Finally, Dr. Kasa's testimony, as noted above, is not based on an interaction with the Student and does not challenge the reevaluation's conclusion. Dr. Kasa's testimony is that special education students generally benefit from being in a general education environment with paraeducators and supports. Given the specificity of the District's reevaluation and the consistency and depth of the District's witnesses' testimony regarding their interactions with the Student and the available curriculum at the District, the District's testimony must be given more weight than Dr. Kasa's.

43. Notably the Parents challenge the appropriateness of placing the Student in the general education class of Art 1 because it is not ambitious in light of the Student's experience taking a similar art class at Cavelero Mid-High. It is certainly understandable that the Student and Parents prefer that the Student enroll in Painting 1. However, the District did not recommend Art 1 as part of the IEP but instead, given the Student's interest in art, the District offered any general education art class to the Student. Elective general education classes are subject to class space limits. Because the District did not have space for the Student, as well as any other general education student, in the Painting 1 class the Student could not register for that class. Notably, no general education student similarly situated could enroll in Painting 1 as of August 31, 2018. This situation has little to do with the IEP. Moreover, allowing the Parents and the Student to select a general education art class meets the requirements of the IEP by providing the Student with a general education class that fits her interests.

44. On balance then, after weighing the testimony of the parties and comparing the IEP with the reevaluation, it is clear that the District considered the Student's strengths and interests, the concerns of the Parents, the results of the reevaluation, and the academic, developmental and functional needs of the Student and the Parents have not shown otherwise. As a result, it is concluded that the District met the requirements of WAC 392-172A-03110, *Rowley*, and *Andrew F.* and provided an appropriately ambitious IEP for the Student in light of her circumstances.

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H. The District Provided the Student Services in Her Least Restrictive Environment

45. The heart of the Parents' case is that the District did not provide the Student an education in the least restrictive environment appropriate to her current educational needs. Specifically, the Parents contend that the Student should be placed in general education classes for math and reading, with an opportunity to work on adaptive skills, instead of in the special education classes of Basic English (ELA), Functional Math, and Life Skills. The District asserts that it provided the Student with an appropriate education in her least restrictive environment.

46. In Washington, school districts must provide services to students eligible for special education: "(1) to the maximum extent appropriate in the general education environment with students who are nondisabled; and (2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily." WAC 392-172A-02050.

47. "When determining the educational placement of a student eligible for special education . . . the placement decision shall be determined annually made by a group of persons, including the parents and other persons knowledgeable about the student, the data, and the placement options." WAC 392-172A-02070(1). Placement is based on: (a) the student's IEP; (b) the least restrictive environment requirements contained in WAC 392-172A,-02050 through 392-172A-02070; (c) the placement option(s) that provide any potentially harmful effect on the student or on the quality of services which he or she needs." *Id.* at (2). A school district cannot remove a student from education in an age-appropriate general classroom only because of modifications necessary to the general education curriculum. *Id.* at (4).

48. The Ninth Circuit established a four-factor test to determine whether a child's disability impedes an appropriate education in a mainstream environment in the case of *Sacramento City Unified Sch. Dist. v. Rachel H.*, 14 F.3d 1398, 1400-01 (9th Cir. 1994). The two factors relevant to this case are:

- (1) The educational benefits available for [the student] in a regular classroom, supplemented with appropriate aids and services as compared with the educational benefits of a special education classroom; [and] (2) the nonacademic benefits of interaction with children who were not disabled . . .

Rachel H., 14, F.3d at 1400-01.

(1) Comparative Educational Benefits of Possible Placements

49. The IDEA does not require that IEP teams mainstream all students in to general education classes with modifications and supports because not all classes can be sufficiently modified with supports to provide the Student access to the curriculum. As stated in *Beth B. v. Clay*, 282 F.3d 493, 499 (7th Cir. 2002), “a modicum of developmental achievement does not constitute a satisfactory education . . . [Indeed, where] academic progress [is] virtually nonexistent and . . . developmental progress [is] limited,” mainstreaming a student is not appropriate.”

50. The District presented credible evidence that given the significant deficits in the Student’s math, reading and writing, as well as the deficits in her adaptive skills (below average and borderline), the District could not modify the general education classes in a manner that would provide the Student with sufficient access to the curriculum. The District’s witnesses presented convincing testimony and documentation that the Student’s skill level was such that she would not have gained any meaningful academic instruction without highly individualized supports. Instead, the District’s recommendation of special education classes of Basic English (ELA), Functional Math, and Life Skills place the Student in her least restrictive environment because placement in the general education curriculum with modifications and supports cannot be satisfactorily achieved.

51. The Parents did not present evidence that the curriculum in the general education classes could be modified in such a manner that the Student could access the curriculum and gain meaningful academic instruction in the areas of reading, writing, math, and adaptive skills. While the Parents presented the testimony of Dr. Kasa that special education students should be in general education classes as much as possible, Dr. Kasa’s testimony only reflects the IDEA’s underlying philosophy that all students should receive public education in a general education environment unless that environment is inappropriate. Dr. Kasa’s testimony did not describe how the general education classes at the District could be satisfactorily modified to achieve access to the curriculum for this Student in particular.

52. Given these specific circumstances, then, the Parents have not met their burden and shown the District violated the IDEA or WAC 392-172A-02050, 02060 and 02070. Instead, it is concluded that the IEP and class schedule placed the Student in her least restrictive environment.

(2) Comparative Nonacademic Benefits of Possible Placements

53. Based on Dr. Kasa’s testimony only, the Parents seek to have the Student placed in general education classes in order to maximize the nonacademic benefit of socializing with her general education peers. However, again, Dr. Kasa performed only a cursory review of the reevaluation and had not performed any evaluation or interacted with the Student. Dr. Kasa’s testimony amounts to a general philosophical assertion that special education students should be in general education classes with modifications and

supports in order to obtain the maximum benefit of being part of the mainstream student population.

54. As highlighted by the District, "the IDEA is primarily concerned with the long-term educational welfare of disabled students," and not with social interaction opportunities at the expense of an academic education. *Poolaw v. Bishop*, 67 F.3d 830, 836-37 (9th Cir. 1995). The IEP and class schedules, as testified by the District personnel, provide the Student opportunity for skill and academic acquisition in special education classes with at least half of her school day spent in general education classes with her peers (art, history, and biology). The IEP also provides opportunities to assist the Student with developing independence and self-reliance in the public school environment through the Life Skills class.

55. Given that the District does not have an obligation to emphasize the nonacademic benefits of attending general education classes over the academic development of the Student, it is concluded that the District did not violate the IDEA or WAC 392-172A-02050, 02060 and 02070. The Parents have not met their burden as to this issue.

56. Given that the Parents have not met the first and second parts of the *Rachel H.* test, it is concluded that the Parents have not met their burden. The evidence instead supports a conclusion that the District placed the Student in her least restrictive environment.

I. Remedies

57. Because the Parents did not prevail on any of the issues raised in the due process hearing request, the Parents are not entitled to any of the remedies requested.

ORDER

Now it is hereby ordered that:

1. The District provided the Student a free appropriate public education by having an Individualized Education Program in effect for the Student at the beginning of the 2018-2019 school year.
2. The District provided the Student a free appropriate public education by offering appropriate transition services that take into account the Student's strengths, preferences and interests, including academic classes consistent with her goal to attend college.
3. The District provided the Student a free appropriate public education by offering an education that is appropriately ambitious in light of the Student's circumstances.
4. The District provided the Student a free appropriate public education by placing the Student in the least restrictive environment.

5. The District provided the Student a free appropriate public education by creating meaningful opportunities for parental participation at the IEP meeting, providing an IEP reflecting team discussion in August and September 2018, and offering an IEP that reflects the August and September discussions.
6. The remedies requested by the Parents are DENIED.

Dated on January 18, 2019.

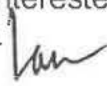


Courtney E. Beebe
Administrative Law Judge
Office of Administrative Hearings

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, Administrative Resource Services.

CERTIFICATE OF SERVICE

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

Parents



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