

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

IN THE MATTERS OF:

OSPI CAUSE NOS. 2020 SE 0009  
2020 SE 0011

OAH DOCKET NOS. 01 2020 OSPI 00982  
01 2020 OSPI 00984

BETHEL SCHOOL DISTRICT

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

A hearing in the above entitled matter was held before Administrative Law Judge (ALJ) Jenna Schuenemann by video conference<sup>1</sup> on February 2 through 4, February 22 through 23, March 4 through 5, March 29 through 31, and September 21 through 23, 2021. The Parent of the Student whose education is at issue<sup>2</sup> appeared and was represented by Shannon McMinimee and Alex Hagel, attorneys at law. The Bethel School District (District) was represented by Erin Sullivan Byorick and Erica Doctor, attorneys at laws. Also present throughout the hearing was Connie Martin, District Director of Special Services. The following is hereby entered:

**STATEMENT OF THE CASE**

*Procedural History*

The Parent filed a Due Process Hearing Request (Complaint) with the Office of Superintendent of Public Instruction (OSPI) on January 9, 2020. The Complaint was assigned Cause No. 2020 SE 0009 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered January 10, 2020, which assigned the matter to ALJ Pamela Meotti. The District filed its Response to the Complaint on January 21, 2020.

The District filed a Due Process Hearing Request (District Complaint) OSPI on January 14, 2020. The District Complaint was assigned Cause No. 2020 SE 0011 and was forwarded to OAH for the assignment of an ALJ. A Scheduling Notice was entered on January 16, 2020, which assigned the matter to ALJ Meotti.

<sup>1</sup> Due to the COVID-19 pandemic, the Office of Administrative Hearings suspended all in-person hearings.

<sup>2</sup> In the interests of preserving the family's privacy, this decision does not name the parents or student. Instead, they are each identified as "Parent," "Mother," and/or "Student."

Cause numbers 2020 SE 0009 and 2020 SE 0011 were consolidated by agreement of the parties after the first prehearing conference on February 12, 2020. See First Prehearing Order, February 14, 2020.

Subsequent prehearing conferences were held on March 3, 2020, April 14, 2020, July 1, 2020, October 14, 2020, and December 11, 2020. A total of six prehearing orders were entered on the following dates: February 14, 2020, March 10, 2020, April 15, 2020, July 7, 2020, October 15, 2020, and December 16, 2020.

At the prehearing conference on October 14, 2020, the Parent's motion to amend the complaint was granted, and the issues, as amended, were set forth in the October 15, 2020, prehearing order.

On December 17, 2020, the consolidated cases were transferred to ALJ Matthew Wacker due to the unavailability of ALJ Meotti for the hearing dates. On January 28, 2021, the consolidated cases were transferred to the undersigned ALJ due to the unavailability of ALJ Wacker for the hearing dates.

#### *Due Date for Written Decision*

At the request of the District, and without objection from the Parent, the due date for a written decision in this matter is thirty (30) days after the close of record. By agreement of the parties, the record closed after receipt of the parties' closing briefs on November 1, 2021. See Order Setting Due Date for Post Hearing Briefs. Accordingly, the decision due date in these consolidated matters is **December 1, 2021**.

#### *Evidence Relied Upon*

The following exhibits were admitted into evidence:

**District's Exhibits:** S1 S6, S8, S10, S12 S14, S17 S18, S20 S21, S24, S28, S32, S35, S39, S41 S48, S50 S54, S56 S57, S62, S64 S65, and S68 S69.

**Parent's Exhibits:** P1 P27.

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

Amy McKee, Guidance Counselor, Frederickson Elementary School;  
Clinton Dearborn, Social Worker, Shining Mountain Elementary;  
Sara Banegas, former District School Psychologist;  
Lori Haugen, retired, former District Executive Director of Special Services;

Paul Marquardt, Principal, Shining Mountain Elementary School;  
Kathleen Johnson, DNP, ARNP, Yellow Brick Clinic;  
Shannon Rutland, former District School Nurse;  
Vanessa Tucker, PhD;  
Cori Tumbleson, Teacher, Shining Mountain Elementary;  
Rachel Boyer Tevis, Teacher, Shining Mountain Elementary;  
Connie Martin, District Director of Special Services;  
Allen Albertson, PsyD;  
Jennifer Blankenship, Teacher, Shining Mountain Elementary;  
Brian Lowney, District Executive Director of Special Services;  
Alynn Bartlebaugh, Teacher, Shining Mountain Elementary;  
Mother;  
Stepfather.

### ISSUES

The issues were originally set forth in the second prehearing order. The Parent filed an amended complaint in Cause No. 2020 SE 0009, effective October 14, 2020, which was discussed during a prehearing conference. The issues, as amended, are as follows:

The issues for the due process hearing in Cause No. 2020 SE 0011 are:

- A. Whether the District's evaluation of the Student conducted on January 8, 2020, was appropriate and, if not, whether the Parent is entitled to an independent educational evaluation (IEE) at public expense?

The issues for the due process hearing in Cause No. 2020 SE 0009 are:

- A. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:
  - i. Failing to meet its Child Find obligations under WAC 392 172A 02040 and WAC 392 172A 03005(1) between January 9, 2018, and September 29, 2019, by its staff not referring the Student for a comprehensive special education eligibility evaluation.
  - ii. Failing to follow the evaluation procedures in WAC 392 172A 03005 and WAC 392 172A 03020 through WAC 392 172A 03080 in conducting the Student's initial special education eligibility evaluation, namely:
    - a. failing to ensure that assessments were administered by trained and knowledgeable personnel;

- b. failing to ensure that assessments were administered in accordance with any instructions provided by the producer of the assessments;
  - c. failing to assess the Student in all areas related to the suspected disability;
  - d. failing to assess the Student consistent with the scope of consent provided by the Parent for the evaluation;
  - e. failing to review existing evaluation data on the Student, which includes information provided by the Parent; and
  - f. failing to have all necessary individuals present at the January 8, 2020, meeting to review the evaluation; specifically, a school nurse, a school counselor, a speech language pathologist, a special education teacher, and an occupational therapist.
- iii. Conducting an inappropriate and incomplete special education eligibility evaluation on January 8, 2020, that failed to identify the nature and extent of the Student's needs for special education and related services as is required by WAC 392 172A 01070, namely:
- a. failing to assess the Student's communication, fine motor, gross motor, and sensory processing needs at all;
  - b. conducting inadequate assessments of the Student's adaptive, behavioral, executive functioning, and social emotional needs; and
  - c. initially failing to include any medical/health information in its evaluation report and then seeking to insert inaccurate medical/health information in its evaluation report.
- iv. Failing to provide its IEE criteria to the Parent in response to her request for an IEE in a timely manner as is required by WAC 392 172A 05005(1)(b), and not timely responding to the request for criteria by the Parent's counsel.
- v. Predetermining that the Student would not be eligible for special education prior to January 8, 2020.
- vi. Failing to meet its Child Find obligations under WAC 392 172A 02040 and WAC 392 172A 03005(1) since January 9, 2020, by its staff not referring the Student for a

comprehensive special education eligibility evaluation when the Parent provided information to the District from:

- a. Seattle Children's Hospital;
- b. Mary Bridge Children's Hospital;
- c. Yellow Brick Clinic: Integrative, ADHD, Autism, Developmental, and Behavioral Health;
- d. Mary Bridge Children's Hospital's Children's Therapy Unit; and
- e. Summit Behavioral Solutions.

vii. Predetermining that the Student would not be eligible for special education at any point after January 8, 2020, despite receiving information from Seattle Children's Hospital; Mary Bridge Children's Hospital; Yellow Brick Clinic: Integrative, ADHD, Autism, Developmental, and Behavioral Health; Mary Bridge Children's Hospital's Children's Therapy Unit; and Summit Behavioral Solutions, which supported at minimum a decision that the Student was a candidate for a special education eligibility evaluation.

viii. Failing to provide the Parent with educational records consistent with the requirements of WAC 392 172A 05190 in response to requests for records prior to the January 8, 2020, evaluation meeting, and the January 23, 2020, resolution session, thus inhibiting parental participation.

B. And, whether the Parent is entitled to her requested remedies:

- i. Declaratory relief finding that the District violated the IDEA and that the Student was denied FAPE by the District's actions;
- ii. Reimbursement for the cost of the Student's receipt of private services;
- iii. Compensatory special education and related services for the Student to allow him to obtain the educational benefit that he would have received but for the District's violations of the IDEA and denial of FAPE;
- iv. An educational placement at District expense at New Horizon;
- v. An IEE at public expense;
- vi. And/or other equitable remedies, as appropriate.

*Sixth Prehearing Order, December 16, 2020.*

## FINDINGS OF FACT

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

### ***Background***

1. The Student is [REDACTED] and resides with the Parent in the Bethel School District (District). P1p14<sup>3</sup>; S6p1.
2. The Student first enrolled in the District for Kindergarten at Frederickson Elementary School (Frederickson) during the 2016 2017 school year. S2p1; S6.
3. When the Student entered Kindergarten, he was tested by the District, and he qualified for academic support in reading through the Title 1 Program. T86.<sup>4</sup> The Title 1 program is a State funded program that provides students with extra academic support. T84. Based on criteria determined by the State, the Student's reading improved to benchmark levels by January of his Kindergarten year, and he was exited from the Title 1 Program. T86 87.
4. While the Student was enrolled at Frederickson, the school used a system of number grade marks to indicate a student's performance in various subjects. The grade mark legend is as follows:
  - 4 Advanced: Student demonstrates advanced understanding of grade level standards expected at this time of year;
  - 3 Proficient: Student demonstrates proficiency with grade level standards expected at this time of year;
  - 2 Basic: Student demonstrates basic understanding of grade level standards expected at this time of year. Student needs additional support and practice;

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<sup>3</sup> Citation to the exhibits of record are by the party ("P" for the Parent and "S" for the School District) and page number. For example, a citation to P20p1 is to the Parent's Exhibit 20 at page 1.

<sup>4</sup> Citations to the hearing transcript are to T followed by the page number(s) on which the testimony appears. For example, a citation to T661-62 is to pages 661 and 662 of the transcript.

1 Below Basic: Student demonstrates minimal understanding of grade level standards expected at this time of year. Student needs significant support and practice.

S2p1.

5. During the first semester of the 2016 2017 school year, the Student received 3's in all academic subjects except for writing, in which he received a 2. The Student improved to a 3 in writing during the second semester. S2p3. The Student received a 2 for achievement in music during his Kindergarten year. His participation grade in music improved from a 2 to a 3 during the second semester. S2p5.

6. During the 2017 2018 school year, the Student was in first grade at Frederickson. The Student received mainly 3's and some 4's in all of his subjects, except for music. See S3. The Student earned a 2 in music achievement during the first semester of first grade and improved to a 3 during the second semester. S3p4. The Student's first grade report card includes a section titled "Characteristics of Successful Learners" with grading categories for "Maintains self control," "Responds appropriately to adults and accepts responsibility for own actions," and "Respects and cooperates with peers." The Student received 3's in each subcategory during the first semester of first grade, and he received 4s in each subcategory during the second semester. S3p4.

7. The Student's first grade teacher, Jerilyn Gerhardstein, wrote comments for the Student at the end of each semester on his grade report. Her end of first semester comment notes that the Student was "making a lot of progress in reading," and that he was reading above grade level. S3p5. Ms. Gerhardstein's end of second semester comment reads in part: "Dear [Student], I have truly enjoyed having you in my class this year! You have made so much progress and shown a lot of growth both socially and academically...You have turned in 15/15 homework packets on time. This year, I noticed how hard you worked at excelling your [sic] reading goals. What an amazing accomplishment!" *Id.*

8. Overall, during his time at Frederickson, the Student was well liked by teachers and staff, and he was observed to be talkative, outgoing, and a regular volunteer in class. Staff and teachers observed the Student having appropriate interactions with peers, such as making plans to play at recess. The Student appeared to enjoy the social aspects of school. T77.

### ***Student's Initial 504 Assessment and Plan***

9. In September 2018, the beginning of the Student's second grade year, the Parent emailed Amy McKee, the guidance counselor at Frederickson, and requested that the Student be evaluated for eligibility for Section 504 accommodations based on his Tourette's Syndrome diagnosis. T60.

10. The District completed a 504 evaluation for the Student, but this document is no longer in the District's online record keeping system and has been lost or destroyed by the record keeping program. T395.

11. As part of the evaluation process, the Parent provided documentation to Ms. McKee regarding the Student's Tourette's Syndrome diagnosis. Ms. McKee recalled seeing the documentation on the Parent's smartphone but does not recall receiving a hard copy. T63.

12. The District uses (IEP) Online, which is an electronic case management system for compiling documents and drafting reports related to Section 504 evaluations and plans and special education eligibility evaluations and Individualized Education Programs (IEPs). T73; T395.

13. On September 6, 2018, the District issued a Section 504 Notice of Meeting to the Parent setting a meeting for September 10, 2018. P2p1.

14. The Section 504 meeting occurred on September 10, 2018. Present at the meeting were Amy McKee; the Parent; Ellen Eddy, Frederickson Principal; and Jennifer Blankenship, the Student's second grade teacher. P2p1; T69.

15. The 504 team agreed upon the following accommodations, which were implemented effective September 12, 2018:

Allow Student to sit where he feels comfortable;  
Teacher will give Student a heads up if he will be reading or talking in front of the class;  
Teacher will offer Student a break if she sees or hear tics;  
Teacher will seat Student next to a supportive buddy;  
Student is allowed to access fidget items.

P2p2.

16. Ms. Blankenship attended the 504 meeting and indicated that she would do anything that was needed to assist the Student, but that she did not believe she would need to actually implement the accommodations in her classroom because they were not necessary. T69.

17. Although Ms. Blankenship did not believe the 504 accommodations would need to be utilized, Ms. McKee and the team went forward with implementing the 504 plan because it was something the Parent "really wanted" and "it was a situation where [Ms. McKee] was kind of giving [the Parent] what she wanted, in a sense." T89.

18. A 504 eligibility review date was set for September 11, 2019. P2p2.



19. On September 24, 2018, after the 504 eligibility meeting, the Student was evaluated by occupational therapist (OT) Kami Miller at Mary Bridge Children's Hospital (Mary Bridge) in relation to his tic disorder. The Student was referred for the evaluation by his doctor at the time, Dr. Tanja Evans. At the time of the OT evaluation, the Student was seven years and four months of age. P1p9.

20. At the time of the occupational therapy (OT) evaluation, the Parent was concerned that the Student had difficulty with social skills, was unable to assert himself when appropriate, and had difficulty managing how to respond to peers if they asked about his tics. The Parent also expressed concerns about the Student having difficulty with emotional regulation and body awareness or clumsiness. *Id.*

21. The Parent informed Ms. Miller that the Student needed supervision and/or verbal cues in order to use [REDACTED] once per week. P1p10.

22. After evaluating the Student, Ms. Miller recommended that the Student attend two to four OT sessions per month for a total of six to eight visits. The Student was placed on an OT waiting list at Mary Bridge. P1p12. The Parent did not follow through with OT services for the Student. P20p8.

23. The Parent recalled providing the OT evaluation report, P1p9 12, to Ms. McKee in September 2018. T2039. However, Ms. McKee had not seen the Student's OT evaluation report before her testimony. T63. Ms. McKee and the Parent had "very good communication" and communicated often by email throughout the initial 504 evaluation process. T61.

24. The Parent did not provide any proof that she gave Ms. McKee the OT evaluation report, despite being someone who regularly communicated with District staff and teachers by email. Additionally, the Parent did not follow up with OT services for the Student, nor did she provide proof of following up with the District regarding the concerns outlined in the OT evaluation report. Accordingly, I find Ms. McKee's testimony on this issue to be more reliable and find that the District did not receive the OT evaluation report in September 2018.

### **2018-2019 School Year (Second Grade)**

25. During the 2018 2019 school year, Ms. Blankenship regularly observed the Student in her classroom as well as during the Student's lunchtime in the cafeteria, when he would sit with his friends. She occasionally observed the Student during recess. T1730. Ms. Blankenship did not have any concerns about the Student or his behavior. T1729.

26. Ms. Blankenship is experienced in recognizing signs that a child has had a bathroom accident, either urinating or defecating in their pants. Signs would include, odor of urine or

feces, clothing tied around the waist to hide their pants, and not wanting to sit down because of discomfort. Ms. Blankenship did not recall the Student having any bathroom accidents while in her class. T1751.

27. The Student's grade report shows that he received 3's and 4's in all subjects except for music. His music teacher noted that the Student often needed reminders to stay on task. S4p5. Ms. Blankenship noted in her comments that the Student was "doing very well in class," and that he is "hardworking and respectful." Ms. Blankenship further noted that the Student "is thoughtful and kind to adults and students." S4p6.

28. In addition to having benchmark or above benchmark grades, Ms. Blankenship recalled that the Student was creative and enjoyed making comic books with one of his classmates. T1756 57. The Student was also able to be an advocate for himself and his classmates. If a classmate was having a hard time, the Student would alert Ms. Blankenship or share his supplies to offer help. T1756. The Student also participated in the class's "author's chair" activity where he would share his writing. T1759.

29. In her end of year comments, Ms. Blankenship noted: "It has been a pleasure to have [the Student] in class this year. He is a kind and caring young man. It's important to maintain good reading habits so it would be good for him to continue reading 20 minutes every day. I am excited to see [the Student's] continued growth next year." *Id.*

30. During second grade, the Student was performing above average, in the 97th percentile, in math. The Student was also performing above average, in the 92nd percentile, in reading. P12. The Student was reading at a fourth grade level while in second grade. P13; T1749.

31. On April 9, 2019, the Student was referred to the Pediatric Psychology Service at Mary Bridge for outpatient therapy by his neurologist, Dr. Majeed Al Mateen. P1p15. The Parent also recalls providing this referral to Ms. McKee in April 2019. T2039. Ms. McKee did not have a copy of this referral in her 504 file for the Student and did not receive it from the Parent. T72. For the same reasons stated in Findings of Fact 22 23, *supra*, I find that the District did not receive a copy of the psychology referral in April 2019.

32. Ms. Blankenship did not receive information from the Parent that the Student had been referred for OT and psychology services. If a student had diagnoses or conditions that affected their school day, Ms. Blankenship would have been informed of these conditions by school staff. T1766 67.

### **2019-2020 School Year (Third Grade)**

33. At the beginning of the 2019 2020 school year, the Student transferred to Shining Mountain Elementary School (Shining Mountain) for his third grade year. S5p1. The first day of the 2019 2020 school year was September 5, 2019. S1p2.

34. The Student's home was next to Shining Mountain and shared a fence line, so the Student walked to school. The Parent can see Shining Mountain from her home and could see the Student walking home from school. T643; T2197 98.

35. A meeting was scheduled for September 20, 2019, to review the Student's eligibility for 504 accommodations. The meeting was scheduled by Shining Mountain social worker, Clinton Dearborn. P2p4.

36. At the September 20, 2019, 504 meeting, the parties did not address the Student's 504 plan because the Parent had questions about the Student's initial eligibility. T288. It was at this time that the District realized that it could not locate a copy of the Student's September 2018 504 evaluation. P3p1; T565.

### *Special Education Referral and Evaluation*

37. On September 27, 2019, the Parent, through counsel, submitted a referral to the District's Executive Director of Special Services, Lori Haugen, to determine if the Student should be evaluated for special education eligibility. P4p1. The referral email states, in part:

[Student] has recently begun exhibiting concerns related to adaptive behavior and behavior [sic]/social emotional. For example, he is refusing to use the restroom with peers, to ask staff to allow him to use the restroom during recess, and as a result, is wetting himself at school. [Student] has struggled with social interactions, both with respect to pragmatic language and maintaining appropriate physical bathrooms [sic] with other students. He also appears to have fine motor concerns and he is very slow engaging in tasks. [Student] is also highly distractable [sic] and struggles to complete tasks.

We believe that an appropriate assessment would include assessments in academics, adaptive, behavioral, communication, cognitive [sic], executive functioning, fine motor, medical/health, sensory processing, and social/emotional.

P4p1.

38. The District and the Parent met on October 25, 2019, to discuss the Student's needs and decided to forgo the 504 meeting in order to focus on the special education eligibility evaluation. S18p2. In the interim period, the District continued to implement the Student's 504 plan from September 2018. T294.

39. On October 28, 2019, the District sent a proposed special education evaluation consent form to the Parent, through her attorney. The Parent was not satisfied with the scope of the evaluation and clarified in an email to the District's counsel that the areas of evaluation should include assessments in the areas of academics, adaptive skills, behavior, cognitive functioning, executive functioning, medical physical health, and social emotional skills. *Id.*

40. The District revised the Consent for Initial Evaluation form and re sent it to the Parent on October 28, 2019. S18p1. The Parent signed and returned the consent form to the District on October 29, 2019. P5p2. The consent form signed by the Parent recommended evaluation in the following areas: Medical Physical, Adaptive, Behavior, Observation, General Education, Cognitive, Social/Emotional, Academic, Other: Executive Functioning. *Id.* The consent signed by the Parent did not include consent for assessments in the areas of sensory processing, communication, fine motor skills, or OT. P5p2; T217.

41. The 35th school day from October 29, 2019, was January 6, 2020. S1p2.

42. On November 1, 2019, the District issued a Prior Written Notice (PWN) to the Parent, proposing to initiate a special education eligibility evaluation. The District noted that it was agreeing to the Parent's request for an evaluation. S69. November 1, 2019 was 25 school days from the date the District received the Parent's evaluation request. S1p2.

43. In 2019, the District was experiencing a school psychologist shortage, and Shining Mountain did not have a dedicated school psychologist. Initially, the District planned to hire an outside psychologist, Sean Whalen, to conduct the Student's evaluation. T403. Mr. Whalen had previously conducted evaluations in the District when the District was short staffed. He was also on the District's list of approved providers for Independent Educational Evaluations (IEEs). T435.

44. Ultimately, Mr. Whalen did not conduct the Student's evaluation because the Parent did not want to sign Mr. Whalen's consent form. T474. Sara Banegas, a school psychologist employed by the District, but based at a different school, conducted the Student's evaluation. T182.

45. Ms. Banegas has a Bachelor of Arts (BA) degree in Secondary Education with a Minor in Psychology. She also has an Educational Specialist Degree (Ed. S) in School Psychology and is a Nationally Certified School Psychologist (NCSP). S51. Ms. Banegas worked as a school psychologist for the District from September 2018 through July 2020. T182. Prior to that, she was a school psychologist in Arizona from August 2016 through August 2018, and a school psychologist intern from 2015 to 2016. Ms. Banegas holds school psychology certifications in both Arizona and Washington. S51p2 3.

46. Before starting her evaluation of the Student, Ms. Banegas introduced herself to the Parent and Parent's counsel by email. T186. Ms. Banegas did not discuss the specific assessment tools that she would be using. However, she did discuss the Parent's concerns and specific assessment areas with the Parent and Parent's counsel by email. During this exchange, the Parent, through counsel, clarified and ensured that the evaluation process would include classroom observation. Ms. Banegas assured the Parent that the evaluation process would include classroom observation. T193 94. During the evaluation process, Ms. Banegas did not speak with the Parent by telephone. T186; T194. The Parent had previously requested that all communication with Shining Mountain or the District be by email. T415.

47. Ms. Banegas sent the Parent, by mail, parent rating scales for the evaluation tools that she was using with the Student. Ms. Banegas did not email the forms to the Parent. T194.

#### *Draft Evaluation*

48. On December 16, 2019, Ms. Banegas emailed the Parent in order to schedule the meeting to review the Student's evaluation results. Due to the District's winter break, Ms. Banegas proposed times in January 2020. She initially suggested January 6, 2020, but the Parent's attorney was not available. The District and Parent agreed, by email, to meet on January 8, 2020. P6.

49. On December 16, 2019, the Parent requested that a copy of the District's draft evaluation be provided to the Parent prior to the January 2020 meeting. The Parent also requested a copy of all of the Student's educational records. P12p4 5.

50. On January 6, 2020, Ms. Banegas emailed the Parent a Notice of Meeting for the January 8, 2020, evaluation meeting. P6p1.

51. On January 7, 2020, Ms. Banegas emailed a copy of the draft evaluation report to the Parent. P7p1.

52. The draft evaluation report that was emailed to the Parent on January 7, 2020, did not contain a section for Medical Physical information. P7.

#### *January 8, 2020, Evaluation Meeting*

53. On January 8, 2020, the evaluation team met to review the Student's evaluation results. Present at the meeting were the Parent, Shannon McMinimee, the Parent's attorney; Mr. Dearborn; Paul Marquardt, Shining Mountain Principal; Ms. Banegas; Dr. Haugen; Rachel Boyer Tevis, the Student's third grade general education teacher; and Erin Sullivan Byorick, attorney for the District. P15p1;26.

54. The Parent was provided with a copy of the Special Education Procedural Safeguards at the beginning of the meeting. P15p26.

55. Information reviewed at the meeting included a review of existing information, Parent input, general education teacher input, the medical/health report, classroom observation data, Ms. Banegas' classroom observation, and the results of the Wechsler Individual Achievement Test, Third Edition (WIAT III); Wechsler Intelligence Scale for Children, Firth Edition (WISC V), Behavior Assessment System for Children, Third Edition (BASC 3); Adaptive Behavior Assessment System, Third Edition (ABAS 3); and the Comprehensive Executive Function Inventory (CEFI). P15p25 26. All of the assessment tools used by Ms. Banegas were norm referenced assessments, meaning the Student's performance was being compared to other children of the same age. T1122 23.

56. At the January 8, 2020, meeting, the Parent provided the District with a copy of an October 25, 2019, letter from the Student's neurologist, Dr. Al Mateen. Dr. Haugen expressed frustration with receiving this letter at the meeting, and not before. P15p26. The letter had been provided to counsel for the District by counsel for the Parent at 8:38 a.m. on January 8, 2020. The District and the Parent were able to discuss the letter from Dr. Al Mateen at the meeting. T1107.

57. The Parent provided the letter shortly before the meeting because the draft evaluation report that was sent to her on January 7, 2020, did not contain any of the Student's medical or physical health information. P13p1.

58. The letter from Dr. Al Mateen states that the Student has a diagnosis of Tourette's Syndrome and that he is taking medication, Guanfacine, for his condition. Dr. Al Mateen opined that there are other behavioral disorders associated with Tourette's, but he did not state that the Student had been diagnosed with any other behavioral disorder. P8p2. Dr. Al Mateen also stated in his letter:

While each student and school situation is different, accommodations in a 504 Plan of Accommodation for [Tourette's] may include:

- Preferential seating, away from distractions.
- Allowing use of a small object to hold/manipulate to provide stimulation to the brain.
- Cue student to stay on task with private, discrete signal.
- A process for tracking assignments, such as an agenda.
- A process for turning in homework, including teacher prompts.
- Helping the child give feedback showing that assignments and timelines are understood, developing strategies for supporting deficits in executive functioning processes, memory, and organization

P8p2.

59. Dr. Al Mateen did not state that the Student in this case would specifically benefit from any of the suggested accommodations. *Id.*

60. Other than the letter from Dr. Al Mateen, at the January 8, 2020, meeting, the Parent did not provide the evaluation team with any other documentation pertaining to the Student's medical or mental health issues, or other concerns, including OT, sensory processing disorder, social communication disorder, or psychiatric hospitalizations. T1107 08.

61. Ms. Banegas did not have any reason to suspect that the Student had any of the following conditions or issues, either before or after her evaluation of the Student: sensory processing disorder, social communication disorder, or hospitalization for psychiatric issues. T1108 09.

62. At the meeting, the evaluation team discussed the Parent's concern that the Student was frequently having bathroom accidents at school and that every day the Student was coming home smelling of urine. The Parent reported that she had sent multiple emails to District staff regarding the Student having bathroom accidents at school. P15p26.

63. Ms. Tevis has taught first, third, and fifth grades in her teaching career. S54. She is experienced in recognizing the signs of when a child has had a bathroom accident at school. If a child had defecated, she would typically smell it first, but if they had urinated in their pants, she would typically see a wet spot or stain on their pants, or wetness in the area where the child had been sitting. She would typically also smell the urine and see the child moving around because they were wet or uncomfortable. T1708. When the Student was in Ms. Tevis' third grade class, there was another student in the class who had almost weekly urination accidents, so she was particularly attuned to noticing and addressing this type of concern. T1709.

64. Ms. Tevis had one record of a bathroom accident where the Student urinated in his pants at school during the first semester of the 2019 2020 school year. Dr. Haugen was aware of one email from the Parent about the Student urinating or having bathroom accidents. P15p26.

65. Ms. Tevis was surprised when the Parent raised the concern regarding the Student coming home smelling of urine every day. The Student sat at the front of the classroom near Ms. Tevis and the Student also frequently stood in front of the class using a microphone to lead the class in various discussions. Despite this, Ms. Tevis never noticed that the Student smelled of urine. T1709 10.

## *Special Education Eligibility Evaluation*

### Review of Existing Data

66. Ms. Banegas initially included a review of existing data in the draft evaluation report. Her review of existing data prior to evaluating the Student included a review of previous evaluations and assessments, which included the Student's current 504 plan and accommodations. P7p3. Ms. Banegas also reviewed the Student's discipline records and academic data. T1098. Ms. Banegas did not have any other information in the Student's file to review, such as the September 24, 2018, OT report (P1p9 11) or the April 9, 2019, pediatric psychology referral from Dr. Al Mateen (P1p1). T1099 1100. Had these documents been in the Student's file, Ms. Banegas would have reviewed them. *Id.*

### General Education

67. Ms. Tevis gave input in the General Education section of the Student's special education evaluation. Ms. Tevis noted:

[Student] has excellent attendance and arrives at school every day on-time and ready to learn. He is skilled on the iPad and is a leader in the class during all academic areas. For example, [Student] helps lead Math "Number Corner" every day and also projects his ELA/Math slides on the Apple TV during instruction. [Student] volunteers to read aloud (especially during Science) and also supports peers while working in groups. [Student's] favorite subject is reading, and he is highly motivated with a strong growth mindset. [Student] is on-task and engaged at all times. He is truly a model student. [Student] is an important and respected member of our classroom community. [Student] is highly motivated! He enjoys reading and writing. He is a leader in the classroom. He also has excellent public speaking skills.

P7p8.

68. The Student's then current 2019 2020 school year academic data was also noted in the General Education section of the evaluation. The District used STAR Math and Reading tests as screeners and to monitor progress of students' math and reading skills. For each STAR assessment, a student receives a scaled score that is based on the difficulty of the questions and the number of correct answers. *Id.*

69. In this case, the Student took STAR Math assessments on September 10, 2019, and October 23, 2019, and received scores of 626 and 709 respectively. Both of these scores were above benchmark. The Student also took STAR Reading assessments on September 9, 2019, and October 22, 2019, and received scores of 495 and 587 respectively. Both of these scores were above benchmark. *Id.*



70. At the time of the January 8, 2020, evaluation, the Student had no discipline referrals. P15p9.

71. During the January 8, 2020, meeting, Ms. Tevis indicated that the Student should be considered for the Challenge Program, a gifted program for high achieving students, and that she would like to nominate him for the program as he was a high academic achiever, a leader in the classroom, and a model student. Parents can also nominate their children for the Challenge Program. The Parent had nominated the Student for the Challenge Program during his second grade year. P15p26.

72. During her testimony, Ms. Tevis also had a vivid recollection of the Student's academic performance and behavior in her classroom. Ms. Tevis was aware that the Student had a diagnosis of Tourette's Syndrome due to his 504 plan, and she paid special attention to the Student so that she could implement the 504 accommodations. However, Ms. Tevis never observed the Student exhibiting tics. T1329. Ms. Tevis noted that the Student "was such a high performing, happy, gregarious student that was constantly performing above his peers, if there were major anxiety behaviors in him, they were very internalized and not overtly exhibited during the day. *Id.*

73. The Student was a leader with technology in the classroom. He chose to sit in the front of the classroom next to Ms. Tevis, and he would regularly offer support in setting up her iPad to connect to the projector. Other classmates would seek out the Student's help with technology issues. T1690.

74. Ms. Tevis also had a program in her classroom called "number corner" where students could volunteer to use a microphone in front of the class and lead the class in talking through different mathematical questions. Ms. Tevis used number corner as a way for her students to organically ask mathematical questions, instead of using rote memorization. For example, Ms. Tevis could put a triangle up on the board and then the student leader could ask questions and guide the class in collecting data and identifying patterns, such as "how many points does it have?" "is it a two dimensional or three dimensional shape?" etc. T1303. The Student was a frequent volunteer to lead number corner, and Ms. Tevis viewed him as a leader in the classroom. T1305. There were times when the Student volunteered so frequently that Ms. Tevis had to remind the class that she wanted to hear from all voices in the classroom. T1317.

75. Ms. Tevis also used "exit tickets" as a way to gauge her student's self reflection of their skills and abilities. Students would put their assignments in bins labeled one through four, one meaning "I need help," two meaning "I need help in a small group," three meaning "I understand and feel confident," and four meaning "I understand and can help others." The Student frequently turned in exit tickets in bin four, and other students would often reach out to him for help with assignments. T1306.

76. Ms. Tevis recalled the Student having a great sense of humor and big heart, noting “he is the sort of kid that you hope to have in your classroom, I mean, if you could clone him, right, and have a whole classroom of the Student. He’s an incredibly kind young man.” T1310.

77. The Student also developed friendships in the classroom and demonstrated appropriate social skills. T1319 20.

### Social / Emotional

78. As part of the evaluation process, Ms. Banegas provided the BASC 3 teacher rating scales to Ms. Tevis. S24. The Student spent the majority of his school day with Ms. Tevis in her classroom. T1113.

79. The BASC 3 is part of a multimethod, multidimensional system used to evaluate the behavior and self perceptions of children and young adults, ages 2 through 25 years. The BASC 3 evaluates personality and behavioral problems, and emotional disturbance, as well as positive personality attributes. P15p9. Specific areas of inquiry include externalizing behaviors such as hyperactivity, aggression, conduct problems, and rule breaking behavior, as well as internalizing behaviors such as anxiety, depression, and somatization (complaints of health related issues such as stomach aches). The BASC 3 also looks at whether there are issues with a child’s ability to learn, adaptive skills, social skills, leadership, study skills and ability to transition to and from various situations. T1114 15.

80. The BASC 3 has five components that may be used either individually or in any combination and is comprised of a teacher rating scale (TRS), a parent rating scale (PRS), a self report scale (SRP), a structured development history (SDH), and a form for recording student observations (SOS). P15p9.

81. The purpose of the TRS is to evaluate how a student is performing in the classroom. The PRS is used evaluate a parent’s perception of their child in the home, and the SRP is for a child to share their own perceptions of how they are feeling. The SDH also asks a parent about their child’s developmental milestones, health, and physical concerns. T201 02.

82. Each of the components of the BASC 3 may be used individually or together to complete the BASC 3. It is not required that all five components be used together. In this case, only the TRS was used. T202 03.

83. The BASC 3 also includes three validity indexes that indicate whether the respondent depicted a child’s behavior in an overly negative fashion, responded to items in a pattern (indicating a lack of understanding or reading of the questions), and answered questions consistently (e.g., if a behavior was rated as present on one item, he or she rated the absence of the behavior as not present on another item). P15p9.

84. Ms. Tevis completed the TRS on November 21, 2019. At that time, the Student had been in her class for approximately two and half to three months. P15p11; S24p1.

85. All of Ms. Tevis' validity indexes fell within the acceptable range, so her ratings were considered to be an accurate picture of how she perceived the Student's social emotional functioning. P15p9.

86. At the evaluation meeting, there was discussion about the validity of Ms. Tevis' BASC 3 TRS due to her asking the Student a general question about if he was ever angry. Ms. Tevis had never observed the Student express anger in her classroom. T1326 27. Given that Ms. Tevis did not ask the Student any questions specifically from the TRS, and her responses were based on her own observations, Ms. Tevis' responses and the assessment were considered valid. P15p26; T196.

87. Ms. Tevis' responses about the Student on the BASC 3 TRS indicate that the Student was a very bright child who was actively engaged in her class both academically and socially. For example, one of the questions asked Ms. Tevis to rate whether the Student is highly motivated to succeed. Ms. Tevis circled "A" for "always" and wrote additional notes on the form: "Very highly motivated! Enjoys reading and writing. Leader in the classroom. Excellent public speaking skills." S24p2.

88. Scores for the BASC 3 are reported as T scores. T202 03. The Student's composite T score for Externalizing Problems on the BASC 3 was 40, P15p9, indicating that the Student did not have problems with maladaptive behaviors in the school setting. A score between 40 and 59 indicates that there are no significant concerns with maladaptive behaviors. T1117. Ms. Tevis reported that the Student is usually calm, tends not to act aggressively any more often than his peers, and does not display rule breaking behavior any more than others his age. P7p9.

89. The Student's composite T score for Internalizing Problems on the BASC 3 was 47, P15p9, again indicating that there were no significant concerns with regard to the Student struggling with internalizing behaviors in the school setting. T1117.

90. The Student's BASC 3 composite T score for School Problems was 36, P7p9, indicating no significant issues of concern. T1117. Ms. Tevis reported that the Student has little, if any, difficulty comprehending and completing schoolwork. P7p9.

91. The Student's Behavioral Symptoms Index composite T score was 40, indicating no significant concerns with the Student's behavior in school. P7p9; T1117. Ms. Tevis reported that the Student does not avoid social situations and appears to be capable of developing and maintaining friendships with others. P7p9.

92. Prosocial and adaptive skills scores are expected to be on the higher end of the scale, for example, above 60, if a child exhibits positive behaviors. T1117 20.

93. The Student's Adaptive Skills composite T score was 68, indicating that he has good adaptive skills. T1117 18. Ms. Tevis reported that the Student adapts well to most situations, and he is able to recover quickly from situations that are challenging. Ms. Tevis also reported that the Student is typically socially adept and at ease, and he is courteous, polite, and generally helpful to others. The Student's T score for leadership was 73. Ms. Tevis reported that the Student works well under pressure, is creative, and can effectively unite others to work together. The Student's functional communication T score was 59. Ms. Tevis reported that the Student generally exhibits expressive and receptive communication skills and that he is usually able to seek out and find new information when needed. P15p10.

94. Ms. Banegas did not offer the Student the BASC 3 self report scale because she believed the Student was too young. P15p26; T194.

95. Ms. Banegas attempted to get the Parent's input on the BASC 3 by sending the PRS and SDH forms to the Parent. Ms. Banegas sent the forms to the Parent's mailing address that was on file with Shining Mountain and the District. T194. The address that was on file with Shining Mountain was entered by the Parent when the Student was enrolled. P11p1; T667. Parents can change or update their address information at any time. T667. The Parent did not receive any forms in the mail from Ms. Banegas. T194. Before the January 8, 2020, meeting, Shining Mountain had sent the Parent documents in the mail, and there were no concerns raised regarding not receiving her mail. T678.

96. The evaluation team did not discover that the Parent had not received any rating scale forms until the evaluation meeting on January 8, 2020. Ms. Banegas did not email the forms to the Parent or otherwise inform the Parent that she had sent forms, so the Parent was unaware that Ms. Banegas had sent any forms to her or was waiting on information from her. T194.

97. At the January 8, 2020, evaluation meeting, the District offered the Parent the opportunity to complete the parent rating scales for the various assessment tools used by Ms. Banegas. The District asked for an extension of the evaluation due date in order to give the Parent an opportunity to complete the rating forms and incorporate the Parent's input into the evaluation report. The Parent refused to give the District an extension and refused to complete the parent rating forms. P15p25.

### Adaptive

98. In addition to the adaptive skills portion of the BASC 3, Ms. Banegas also administered the ABAS 3. The ABAS 3 provides a comprehensive, norm referenced assessment of adaptive

skills for individuals ages birth through 89 years. P7p12. The ABAS 3 is designed to evaluate an individual's various functional skills necessary for daily living without assistance from others. P15p14. The ABAS 3 may be used to assess an individual's adaptive skills for diagnostic purposes and classification of disabilities and disorders, identification of strengths and limitations, and to document and monitor an individual's progress over time. The skills areas assessed include communication, community use, functional academics, school/home living, health and safety, leisure, self care, self direction, social, and work. Adaptive domains assessed are conceptual, social, and practical, as well as an overall general adaptive composite (GAC) score. Standard scores have a mean of 100 and standard deviation of 15. Scaled scores have a mean of 10 and standard deviation of 3. P15p13.

99. There are two rating scales for the ABAS 3, the parent/primary caregiver form and the teacher/daycare provider form. *Id.*

100. Ms. Tevis completed the ABAS 3 teacher rating form. Based on Ms. Tevis' input, the Student's overall GAC was 120, which was in the high range. P7p13. The Student's overall score indicates that he was performing exceptionally well in the classroom and that he was displaying positive adaptive skills. T1122.

101. The conceptual domain of the ABAS 3 measures how well the Student listens and understands, expresses himself through speech, and reads and writes. The Student's conceptual skills at school were in the high range with a score of 120. P15p13.

102. The social skills domain assesses leisure skills needed for engaging in play and recreational activities, as well as the ability to interact socially, initiate and maintain friendships, and express and recognize emotions. The Student's social skills at school were in the high range with a score of 120. *Id.*

103. Based on Ms. Tevis' answers on the ABAS 3, the Student's ability to function in the community and to express knowledge of and interest in activities outside of the home is in the high range. *Id.* Overall, the Student was displaying many positive adaptive skills in the classroom. T1122.

104. Ms. Banegas also sent the ABAS 3 parent/caregiver form to the Parent with the BASC 3 PRS to the Parent's mailing address on file with the District. The Parent did not receive it. T206.

### Executive Functioning

105. Executive functioning is a term that represents the organization, planning, and self regulation involved in initiating and completing tasks. In order to evaluate the Student's executive functioning abilities, Ms. Banegas administered the CEFI, which is used to quantify

a teacher or parent's observations of a youth's executive functioning behaviors. The CEFI measures an individual's executive functioning abilities in nine different areas. P7p14.

106. The nine areas measured by the CEFI include:

1. Flexibility: Describes how a student adjusts behavior to meet circumstances, including coming up with different ways to solve problems, having many ideas about how to do things, and being able to solve problems using different approaches.
2. Self Monitoring: Reflects a student's ability to evaluate his or her own behavior in order to determine when a different approach is necessary, including noticing and fixing mistakes, knowing when help is required, and understanding when a task is completed.
3. Planning: Reflects how well a student can develop and implement strategies to accomplish tasks, including planning ahead and making good decisions.
4. Emotional Regulation: Reflects a student's control and management of emotions, including staying calm when handling small problems and reacting with the right levels of emotion.
5. Attention: Reflects how well a student can avoid distractions, concentrate on tasks, and sustain attention.
6. Inhibitory Control: Reflects a student's ability to control behavior impulses, including thinking about consequences before acting, maintaining self control, and keeping commitments.
7. Organization: Reflects a student's ability to manage personal effects, work, or multiple tasks, including organizing tasks and thoughts, managing time effectively, and working neatly.
8. Working Memory: Describes how well a student can keep information in mind that is important for knowing what to do and how to do it, including remembering important instructions and steps.
9. Initiation: Describes how a student begins tasks or projects on his own, including starting tasks easily, being motivated, and taking initiative when needed.

P7p14.

107. Based on her responses to the CEFI, Ms. Tevis rated the Student's executive functioning as Very Superior in the areas of flexibility and self monitoring. She rated his

executive functioning as Superior in the areas of inhibitory control, initiation, organization, and planning. Ms. Tevis rated the Student's executive functioning as High Average in the areas of attention, emotional regulation, and working memory. *Id.*

108. Ms. Tevis' scores were examined for consistency and negative response patterns. All of her validity indexes fell within the acceptable range, indicating that her ratings are considered to be an accurate picture of how she perceived the Student's executive functioning skills. *Id.*

109. Ms. Banegas also sent parent rating scales for the CEFI to the Parent at the address on file with the District. The Parent did not receive the CEFI forms. T209.

### Cognitive

110. On November 20, 2019, Ms. Banegas administered the WISC V. P7p16. The Student willingly followed Ms. Banegas to the testing room, and she easily developed rapport with the Student. Ms. Banegas noted that she observed the Student to have a strong work ethic. The Student continued to work diligently on problem solving, even when an answer did not come easily to him. P7p18.

111. The WISC V is an individually administered assessment tool for measuring the intelligence of children. Performance on the WISC V is summarized in five index scores as well as a Full Scale Intelligence Quotient (FSIQ), all of which have an average score with a standard deviation of 15. The five index scores are Verbal Comprehension (VCI), Visual Spatial (VSI), Fluid Reasoning (FRI), Working Memory (WMI), and Processing Speed (PSI). P7p16.

112. The WISC V uses the following qualitative descriptions to describe standard scores:

- 130 and above: Extremely High
- 120 129: Very High
- 110 119: High
- 90 109: Average
- 80 89: Low Average
- 70 79: Very Low
- 69 and below: Extremely Low

*Id.*

113. The Student scored 116 (High) on the VCI, indicating a well developed verbal reasoning system with strong word knowledge acquisition, effective information retrieval, good ability to reason and solve verbal problems, and effective communication of knowledge. *Id.*

114. The Student scored 119 on the VSI (High), indicating a well developed capacity to apply spatial reasoning and analyze visual details. The Student quickly assembled block designs and puzzles in his mind. P7p17.

115. The Student scored 118 on the FRI, indicating a well developed ability to abstract conceptual information from visual details and effectively apply that knowledge. The Student's patterns of scores on the FRI subtests indicated that the Student was particularly able to demonstrate his fluid reasoning skills when mathematical reasoning was involved. *Id.*

116. The Student scored 100 (Average) on the PSI, which measured the Student's speed and accuracy of visual identification, decision making, and decision implementation. *Id.*

117. The Student scored 97 on the WMI (Average), indicating his performance in this area was similar to other children his age. The Student's scores indicate that he best utilizes his working memory when a visual, rather than verbal, stimulus is used. P7p17; P15p19.

118. The Student's FSIQ on the WISC V was 113 (High). P7p18; P15p19.

119. The Parent expressed that she did not have any concerns regarding the Student's cognitive abilities at the January 8, 2020, evaluation meeting. P15p26.

#### Academic

120. In order to evaluate the Student's academic achievement, Ms. Banegas administered the WIAT III to the Student on November 21, 2019. The WIAT III assesses a student's academic achievement in seven areas: basic reading, reading comprehension, reading fluency, written expression, math problem solving, math calculation, and math fluency. Standard scores have an average of 100 with a standard deviation of 15. P7p20; P15p21.

121. The Student's composite scores indicate average scores for Oral Language (113), Written Expression (111), and Math Fluency (115), and above average scores for Total Reading (127), Basic Reading (122), Reading Comprehension and Fluency (125), and Mathematics (122). P15p21 22. The Student's Total Achievement Score was above average (123). P7p21 22; P15p22.

122. The WIAT III does not account for writing stamina or fatigue, but this is something the examiner can observe. Ms. Banegas did not observe the Student demonstrate any fatigue or difficulty with stamina during the writing portion of the assessment. T1133.

123. At the January 8, 2020, meeting, the Parent expressed that she did not have any concerns regarding the Student's academic achievement or abilities. P15p26.



## Classroom Observation

124. As part of her evaluation, Ms. Banegas also observed the Student in the classroom. She observed the Student in his third grade classroom starting at 9:15 a.m. on November 20, 2019. Ms. Banegas observed that Ms. Tevis spoke often about growth mindset. If a student said, "I don't get this," Ms. Tevis would add "yet." Ms. Tevis repeatedly referred to her class as a family, and Ms. Banegas observed that it was an environment that was very conducive to learning. P7p22; P15p23.

125. When the Student entered the classroom, he immediately picked up a chair to bring to his desk. He complied with Ms. Tevis' request for the students to get their iPads, and he waited attentively while Ms. Tevis reviewed the schedule for the day. The class then reviewed their recent vocabulary tests, grading each other's tests. The Student followed along with the lesson and remained on task. At one point during the observation, Ms. Tevis was struggling to connect her iPad to the projector, and the Student volunteered his iPad to help Ms. Tevis and the class continue with the lesson. *Id.*

126. The Student appropriately raised his hand during the observation period to ask questions and was praised by Ms. Tevis for asking a good question. The Student volunteered a number of answers to questions by appropriately raising his hand and waiting to be called on. The Student answered some of the questions correctly, and some incorrectly. *Id.* The Student was not visibly upset when he answered a question incorrectly. T1138. After answering incorrectly, the Student volunteered again and answered correctly. The Student smiled but did not otherwise inappropriately celebrate his correct answer by gloating or pointing it out to his peers. T1141.

127. Ms. Banegas also observed the Student engaging in social interactions with his peers. The Student was sitting next to a peer and they were both smiling and engaging in conversation. T1142.

128. In addition to this informal observation, Ms. Banegas also conducted a more formal observation using a 30 second momentary time sampling technique. Every 30 seconds, for a total of 15 minutes, if the Student engaged in off task behavior, a tally mark was recorded. Ms. Banegas also observed another student in the classroom for comparison. Off task behavior was defined as fidgeting with objects, lack of focus on adult tasks/activities, and moving around the room without permission. Ms. Banegas did not observe the Student engaging in off task behaviors during the 15 minute observation period. She observed the comparison student off task six percent of the time. The most common on task behaviors performed by the Student were looking at the teacher or white board, appropriately raising his hand, engaging with a worksheet or assignment, and making eye contact with a peer while the other student was talking. P7p22; P15p23.

129. Ms. Banegas observed the Student in the classroom for a total of one hour. She also observed the Student transition to his reading intervention class. T222. The Student did not have any difficulty transitioning to the next class. T1143 44.

130. Ms. Banegas also made more informal observations of the Student and developed rapport with him throughout the evaluation process. In order to get a sense of his social skills and emotional well being, she asked the Student questions such as “What is your favorite subject?” “Do you have friends?” and “How do you like your class?” T204. The Student was able to appropriately engage in conversation with Ms. Banegas, making eye contact and engaging in back and forth conversation. T1137.

131. In total, Ms. Banegas spent approximately five hours with the Student, including administering the tests, classroom observation, and observing him transition between classes. T1135. Ms. Banegas is trained to observe behaviors that are a manifestation of anxiety, such as being disengaged, not making eye contact, hanging the head down, and being emotional. Ms. Banegas did not observe the Student engage in any of these behaviors. T1136.

#### Medical Physical

132. On January 6, 2020, Ms. Banegas emailed Shannon Rutland, the school nurse, and asked her to complete the Medical Physical section of the Student’s evaluation for inclusion in the draft report. Dawn Fox, who is the District’s Nurse Administrator and Ms. Rutland’s supervisor, also called her on January 6, 2020, to discuss the Student’s evaluation. Ms. Rutland immediately started working on the Medical Physical portion of the evaluation because she was informed that the evaluation meeting was in two days on January 8, 2020. T944 45.

133. During the 2018 2019 and 2019 2020 school years, Ms. Rutland, a Registered Nurse (RN), was employed by Sunbelt Staffing, which contracted with the District to provide school nurse services. Ms. Rutland worked at Frederickson during the 2018 2019 school year. T905. During the 2019 2020 school year, Ms. Rutland worked at Shining Mountain, starting in November or December 2019. T939. Ms. Rutland has been licensed as an RN since 2007, and she holds an educational staff associate credential as a school nurse in Washington. T899.

134. Ms. Banegas did not explain the scope of the evaluation to Ms. Rutland, and Ms. Rutland was not involved in any meetings about the scope of the evaluation. T946. Ms. Banegas did inform Ms. Rutland that she had sent a Health and Developmental History form to the Parent three times since November 2019 and had not received anything back from the Parent. P10p3; T957.

135. After learning that the Student needed to be evaluated, on January 6, 2020, Ms. Rutland took the Student to the school health room and performed vision and hearing tests.

She also measured the Student's height and weight. T946 47. The Student passed the vision and hearing tests and his Body Mass Index indicated that he was at a healthy weight. P15p7.

136. Ms. Rutland also performed a neuromuscular assessment and did not observe anything out of the ordinary. T947; P15p7.

137. When Ms. Rutland was conducting her assessment with the Student, he related to her appropriately, made eye contact, and was able to follow instructions. Ms. Rutland did not observe anything concerning about the Student's fine or gross motor skills. T1923 24.

138. After completing the vision, hearing, and neuromuscular exams, Ms. Rutland called the Parent on January 7, 2020, and explained the results. The Parent informed Ms. Rutland that she had not received any health history forms from Shining Mountain, and Ms. Rutland offered to go over the questions with her on the phone. The Parent requested that Ms. Rutland send another copy of the form to her so that she could review it and give a copy to her attorney. P10p3. Ms. Rutland told the Parent that she would send the health history form home with the Student in his backpack. T958.

139. At the time of the January 7, 2020, phone call, the Parent was not aware that the nurse she was speaking with Ms. Rutland. The Parent realized that she was speaking with Ms. Rutland after the evaluation meeting on January 8, 2020. P10p2.

140. The Parent had the health history form with her at the January 8, 2020, meeting. P10p2. The Parent did not provide the form to the District at the meeting, and the record does not reflect why. *Id.*

141. The health history form gives parents an opportunity to provide information about a student's medical and mental health history. T1912 13.

142. As part of the medical physical assessment, Ms. Rutland reviewed the Student's paper medical file as well as his electronic medical file. She did not review the Student's 504 plan or file. At the time of her assessment, Ms. Rutland was not aware that the Student had a 504 plan or file. T947 48. Part of the Student's medical file was a health history form that was signed by the Parent on May 5, 2016, when the Student enrolled in the District. There was a note on the health history form indicating that the Student was holding his stool and bladder so that he could continue to play, and that he needs constant reminding to use the bathroom. P15p7. Ms. Rutland also noted that there was information in the Student's medical file from a conversation she had with the mother on September 28, 2017, indicating that the bathroom issue was resolved. Ms. Rutland spoke with the mother in 2017 because she reviews all medical care plans involving bathroom privileges at the beginning of the school year to determine whether a student still needs bathroom privileges. T950.

143. Ms. Rutland also spoke with Ms. Tevis and asked her if she had any medical or health concerns about the Student. Ms. Tevis did not report any medical or health concerns to Ms. Rutland. T975.

144. Ms. Rutland did not attend the January 8, 2020, evaluation meeting. She was told by Ms. Fox that the Parent did not want her at the meeting and that the Parent did not want to have any contact with her. T940 41 The Parent and Ms. Rutland had a contentious relationship based on experiences involving the Student's sibling. T1909.

145. Additional information in the medical physical portion of the final evaluation report was prepared by Ms. Fox and added to the report after the January 8, 2020, evaluation meeting. This included information from the Dr. Al Mateen letter that the Parent provided at the January 8, 2020, meeting, namely that the Student had a diagnosis of Tourette's and that he was taking Guanfacine. P15p7.

#### Eligibility Determination

146. At the January 8, 2020, evaluation meeting, the team determined that the Student was not eligible for special education services. Although the Student had a diagnosis of Tourette's Syndrome, the team found that the Student's diagnosis did not adversely impact his ability to access his education and that he did not require specially designed instruction in order to access his education. P15p25; T1101.

147. The Parent disagreed with the eligibility determination and recorded her disagreement by checking the dissent box on the signature page of the draft evaluation at the January 8, 2020, meeting. P9p1.

148. The District documented the eligibility decision and refusal to initiate an IEP for the Student in a PWN on January 22, 2020. P15p25 27. The final draft of the evaluation report, including the medical physical section, was also provided to the Parent on January 22, 2020. P15.

149. The final evaluation report contained additional information about the Student's second grade academic data in the General Education section. All of the Student's second grade STAR reading and math assessments showed that he was performing above benchmark standards during the 2018 2019 school year. P15p8.

#### *Request for Independent Educational Evaluation*

150. The Parent requested an IEE at public expense on January 8, 2020, after the evaluation meeting. The request was sent to the District's attorneys by email from the Parent's attorney. P13. The IEE request specifically stated that the Parent was not seeking a multi

provider evaluation, but rather an evaluation by a clinical child psychologist or neuropsychologist. P13p2.

151. On January 9, 2020, Dr. Haugen emailed the Parent and copied the Parent's attorney, the District's attorneys, Mr. Marquardt, and Ms. Banegas. Ms. Haugen informed the Parent that the District was denying the request for an IEE and requesting a due process hearing. The email included the District's due process hearing request and OSPI's Notice of Special Education Procedural Safeguards for Students and Their Families as attachments. S28.

152. On January 10, 2020, Dr. Haugen emailed the Parent and her attorney the District's criteria for an IEE. Dr. Haugen also sent the Parent the IEE criteria by hard copy in the mail. P14p1.

#### *Remainder of the 2019 2020 School Year*

153. The Parent stopped sending the Student to school in January or early February 2020. T711 12. The Parent was dissatisfied with the District's bathroom plan for the Student and would not send the Student to school until that issue was addressed. T727.

154. In response to the Parent's concerns about the Student's bathroom usage, the District attempted to set up a 504 meeting to address the Parent's concerns. *Id.*

155. On February 3, 2020, the Parent also requested that the Student be removed from Ms. Tevis' classroom and expressed that she would not have the Student return to Shining Mountain until his teacher was changed. *Id.*

156. After many unsuccessful attempts to meet with the Parent and discuss her concerns, Mr. Marquardt determined that it was important for the Student to get back into school, so he agreed to the Parent's teacher change request. *Id.* The Student was transferred to Ayllynn Bartlebaugh's classroom. Mr. Marquardt did not believe that this was the best course of action for the Student, but he agreed to the change to get the Student back into school. The Parent had been refusing to send the Student to school until he was transferred to a different classroom. T728. Shortly after the classroom transfer was made, schools closed due to the COVID 19 pandemic. T728.

157. Washington State schools, including Shining Mountain, closed for in person instruction, due to COVID 19, on or around March 15, 2020. T711.

158. On March 20, 2020, the District convened a 504 meeting with the Parent by telephone. S32p1; T685. Present at that meeting were Mr. Marquardt, Dr. Haugen, Ms. Bartlebaugh, Mr. Dearborn, the Parent, the Parent's attorney, and the District's attorney. S32p1.

159. At the March 20, 2020, meeting, the Parent raised concerns about the Student having bathroom accidents at school. The Parent suggested accommodations that could help the Student with bathroom use at school. The Parent wanted the Student to be able to use the nurse's office bathroom and leave the classroom whenever he wanted. Shining Mountain would not allow the Student to have free reign of the school without the Student notifying the teacher of where he was going. The Parent and the District worked together to craft an accommodation that would allow the Student to use a signal to let the teacher know he would be using the bathroom without drawing attention to himself. T685 86.

160. The Parent, through counsel, also provided documentation from Dr. Al Mateen and Dr. David Lashley, who was treating the Student for suspected elimination syndrome. The Student was evaluated by Dr. Lashley on January 28, 2020. Dr. Lashley's report indicates that the Student was not having elimination issues until an incident that occurred in August 2019. P17p5. Based on the Parent's input and documentation, the 504 team updated the 504 plan impact statement. S32p5.

161. Under the heading, "Explanation of Major Life Activity Impacted," the March 20, 2020, 504 accommodation plan states:

[Student] has Tourette's Syndrome, along with a Sensory Processing Disorder, for which he receives care from pediatric neurologist Dr. Majeed Al-Mateen of Mary Bridge Children's Hospital. He is also being treated by pediatric urologist Dr. David Lashley and the Seattle Children's Hospital Urology Department for suspected dysfunctional elimination syndrome. [Student's] Tourette's impacts his ability to communicate and Dr. Al-Mateen has identified that the medication he takes for the same may impact his ability to learn. [Student's] concerns associated with restroom use impact all aspects of his day.

S32p3.

162. Before the Student was transferred full time to Ms. Bartlebaugh's class, Ms. Bartlebaugh taught the Student in an advanced math group. The advanced math group was for students who tested above grade level on their STAR math assessment, and who were completing their work in class so quickly that the regular lessons were not challenging enough for them. T1938. The Student started attending advanced math group after his STAR assessment in October 2019. T1976. In the advanced math group, Ms. Bartlebaugh would teach the third grade curriculum. Once that was completed, she would teach the Student fourth and fifth grade level curriculum. T1939.

163. The Student and his peers in the advanced math group would show up early to Ms. Bartlebaugh's classroom after lunch, eager to start class. The Student always appeared excited to be in the advanced math class by showing up early for class with his materials prepared. *Id.*

164. The Student was also a leader when he was in Ms. Bartlebaugh's classroom for advanced math. The Student would assist classmates with technology and following instructions without prompting by Ms. Bartlebaugh. T1941.

165. The Student was not disruptive and appeared to be mindful of the needs of his classmates. T1942. He also participated appropriately in class when he felt confident in his answers. T1940 41. The Student volunteered answers on a daily basis. T1948. The Student's behavior in Ms. Bartlebaugh's math group was typical for other students in the class and third grade in general. T1947.

166. Based on Ms. Bartlebaugh's observations, the Student was a "cool kid" and other students wanted to be friends with him. She observed the Student talking with, smiling, and wanting to work with his classmates in the advanced math group. T1950 51. Ms. Bartlebaugh did not have any concerns about the Student's social skills or ability to relate to or interact with his peers. T1968.

167. The Student was also able to accept criticism of his work from Ms. Bartlebaugh in order to help him learn. Ms. Bartlebaugh's perception of the Student was that he was someone who "wanted to make sense and meaning of things, so he would instantly want to try and fix it and understand any directions or criticisms that I had given him on his work." T1969.

168. Ms. Bartlebaugh also used the Student's writing as an example of what exemplary, above standard writing would look like. T1951 52.

169. The Student never had bathroom accidents while in Ms. Bartlebaugh's advanced math group. T1958. The Student typically sat in the front of the classroom next to Ms. Bartlebaugh, although students were given freedom to choose their seats and move seats if they needed to in order to be more comfortable. T1978; 2006.

170. After the 504 meeting on March 20, 2020, the Student was in Ms. Bartlebaugh's class full time using virtual or remote learning. T1956. Ms. Bartlebaugh and the Parent emailed several times. The Parent informed Ms. Bartlebaugh that the Student would not be attending the live Zoom video sessions because of his discomfort about being in a new class. *Id.*

171. Although the Student did not attend the live zoom video sessions with Ms. Bartlebaugh, he did complete class work and would communicate with her via Canvas, the online classroom platform. If the Student did not understand an assignment or was missing materials, he would leave notes for Ms. Bartlebaugh about what he did and his thinking process in order to complete the assignment. T1961 62.

172. Based on the information shared at the March 20, 2020, 504 meeting, Ms. Bartlebaugh was aware that the Student had some sensory processing issues. The Parent did not share with Ms. Bartlebaugh any information about the Student attending OT or receiving

treatment for speech or communication issues. The Parent did not tell Ms. Bartlebaugh that the Student was receiving psychological or psychiatric treatment. The Parent did not tell Ms. Bartlebaugh that the Student was working with a Board Certified Behavior Analyst (BCBA) or that the Student had been diagnosed with autism. T1957 58.

173. The Student's grade report for third grade indicates that for all areas where there was sufficient data, he received 3's and 4's. Ms. Bartlebaugh noted that due to the COVID 19 pandemic, there were certain subjects or areas where there was insufficient information to render accurate grades. S5.

174. The last day of school for the 2019 2020 school year was June 19, 2020. S1p2.

### **Summer of 2020**

175. On July 1, 2020, the Student was evaluated by Dr. Kathleen Johnson. P17p1. Dr. Johnson is a Doctor of Nursing Practice (DNP) and Advanced Registered Nurse Practitioner (ARNP). T743. Dr. Johnson is a developmental behavioral nurse practitioner, and she has a special certification as a pediatric primary care mental health specialist. T747. She runs her own clinic called the Yellow Brick Clinic: Integrative, ADHD, Autism, Developmental and Behavioral Health. T748.

176. Dr. Johnson's evaluation of the Student took place via telehealth (video conference) while the Student was at home, and she has never met the Student in person. T750. Her evaluation consisted of a developmental history completed by the Parent, the Autism Quotient parent questionnaire, video conference observation of the Student, and several evaluation tools completed by the Parent including the Social Responsiveness Scale Second Edition (SRS 2), and the Childhood Autism Rating Scale Second Edition (CARS 2). T749 50.

177. Although Dr. Johnson met with the Student by video conference, the formal assessment tools that she used were completed with the Parent, not the Student. T756. All of the testing that Dr. Johnson did with the Parent, along with the developmental interview, indicated to Dr. Johnson that the Student had severe Autism Spectrum Disorder (autism or ASD). *Id.*

178. Dr. Johnson did not review the Student's academic records or observe him in the classroom. T770 71. The Parent has also never observed the Student at school. T2087 88. Dr. Johnson would have been surprised to see that the Student's grade reports and reflections from teachers describe the student as a leader, a clear communicator, and that he transitions well at school. T772 73.

179. Using the criteria from the Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (DSM V) for Autism Spectrum Disorder, Dr. Johnson noted the following in her report:



[Criteria for ASD]: Persistent deficits in social communication and social interaction across contexts, as manifested by the following, currently or by history (examples are illustrative, not exhaustive), not explained by general developmental delays, and manifest ALL THREE of the following:

**A1: Deficits in social-emotional reciprocity**

- a. Abnormal social approach, failure of normal back and forth conversation. **YES<sup>5</sup>**
- b. Reduced sharing of interests, emotions, or affect. Sharing is primarily for help/assistance. **YES**
- c. Failure to initiate or respond to social interaction. **NO**
- d. Does poorly in new situations and often becomes more irritable. **YES**

**A2: Deficits (absent, reduced, or atypical relative to cultural norms) in nonverbal communicative behaviors used for social interaction, including:**

- a. Poorly integrated verbal/non verbal communication. Does not integrate pointing and other gestures with verbal communication; does not use gestures at all. **NO**
- b. Abnormalities in eye contact and body language (poor eye contact with parents, peers, strangers). **YES**
- c. Deficits in understanding and use of gestures (wide range of facial communications, but unclear if they are used for communication). **YES, few facial expressions noted in exam or reported by mom. He is reported to have more of a robotic affect much of the time.**
- d. Total lack of facial expression and non verbal communication, Joint attention absent. **NO**

**A3: Deficits in developing, maintaining, and understanding relationships for developmental level (beyond those of caregivers)**

- a. Difficulties adjusting behavior to suit different contexts. **YES**
- b. Difficulties in sharing imaginative play or making friends; parallel play with peers or withdraws from peers. **YES, difficulties with grudges, thinking others cheat, does socially inappropriate behaviors such as taking ball from other children to try to get them to play with him, or pull someone's hoodie for attention. These are causing problems currently but were also problems in early childhood.**
- c. Absence of interest in peers, **NO**, but has difficulty making and keeping friends.

**Social Communication Domain Total: (Must meet all 3): THREE**

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<sup>5</sup> Answers in **bold** after a statement are attributed to Dr. Johnson. Punctuation noted is in the original format in Dr. Johnson's report at P22.

**B. Restrictive, repetitive patterns of behavior, interests, or activities as manifest [sic] by AT LEAST TWO of the following, currently or by history (illustrative examples, not exhaustive).**

**B1. Restricted repetitive patterns of behavior, interests, or activities as manifested by stereotyped or repetitive motor mannerisms, use of objects, or speech:**

- a. Enjoys organizing toys/objects (lining them up, sorting by color or type).  
**NO**
- b. Repetitive motor stereotypes include: startle like reaction, hand shaking/wiping/wringing in front of body, hand flapping, spinning, spinning on knees, flipping objects, echolalia, repeated idiosyncratic phrases. **YES, has been labeled as tics, but describes as likely repetitive behaviors (Yawning with talking, cracking fingers, burping without intending to repetitively, increasing with anxiety).**

**B2. Restrictive, repetitive patterns of behavior, interest, or activities, as manifested by insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior.**

- a. Poor transitioning. **YES, must have advance warning, anxiety is noted in many instances as a result as well as oppositional behaviors.**
- b. Strong willed, independent, rigid thinking patterns, need for same routine, route, foods: **YES**
- c. Extreme distress at small changes. **YES, restrictive thoughts are causing significant impact with being too anxious to use the restroom at school or ask to do so. He is having restrictive difficulties in other areas of self-care that are impactful.**

**B3: Restricted, Repetitive patterns of behavior, interests or activities as manifested by highly restricted, fixed interests that are abnormal in intensity or focus:**

- a. Strongly attached to a type of item (i.e., anything round: balls, circles, doorknobs)
- b. Intensely interested in topic: **Yes, Avengers, video games currently.**

**B4: Restricted, repetitive patterns of behavior, interests, or activities as manifested by Hyper- or Hypo-activity sensory input:**

- a. Sensory sensitivity easily aroused or irritated by various sensory input: sounds, textures, movement, touch, foods. **YES, mom gave many examples causing impact daily with light, noises, extreme stress sharing room with other children at school, being close to others in line at school, self-care.**

**Restrictive and Repetitive Domain: (must meet at least 2): Four**

**C: Symptoms are/were present in the early developmental period: Yes, before age 3 years**

**D: Symptoms cause clinically significant impairment in social, communication, developmental, and family function. YES**

**E: These disturbances are not better explained by global developmental delay [GDD] or intellectual disability. YES, there has been speech delay, and may be a co-occurring neurological or connective tissue disorder, but symptoms of autism are attributed to ASD.**

**F. GDD is also present, but patient's deficits in social interaction are atypical for his/her overall development. Social deficits are better explained by autism. YES**

**Autism Spectrum Disorder Criteria met: YES**  
**With or Without Intellectual Impairment: Unable to determine.**

**Social-communication current level of severity (see table below)**  
LEVEL 2 Requiring substantial support

**Restrictive, repetitive severity level (see table below)**  
LEVEL 2 Requiring substantial support

P22p9 12.

180. Based on the Parent interview and meeting and assessing the Student by video conference, Dr. Johnson diagnosed the Student with Autism Spectrum Disorder (ASD), severity level 2 (requires substantial support). In her evaluation report, Dr. Johnson opined that the Student's behaviors and skill deficits "are having an adverse impact on his development and social communication. [The Student] demonstrates atypical behaviors as documented in his chart notes by the presence of severe challenging behaviors and functional impairments that interfere with ability to participate adequately in home, school, and community environments." P22p12 13.

181. Under the DSM V, someone who "requires substantial support" in social communication exhibits "marked deficits in verbal and nonverbal communication skills; social impairments apparent even with support in place; limited initiation of social interactions; and reduced or abnormal responses to social overtures from others. For example, a person who speaks simple sentences, whose interaction is limited to narrow special interests, and has markedly odd nonverbal communication." P22p12.

182. Under the DSM V, someone who "requires substantial support" with restrictive, repetitive behaviors exhibits "inflexibility with behavior, difficulty coping with change, or other

restricted/repetitive behaviors appear frequently enough to be obvious to the casual observer and interfere with functioning in a variety of contexts. Distress and/or difficulty changing focus or attention.” *Id.*

183. The Student was initially very shy and withdrawn in his interactions with Dr. Johnson over video conference. T754. After seeing her for a few months, he became more comfortable and would joke with her. T754 55. Dr. Johnson attributes this change to the Student being prescribed Zoloft. T755.

184. Dr. Johnson made the following recommendations for the Student and the Parent:

1. Applied Behavior Analysis (ABA) therapy;
2. Addressing the Student’s Attention Deficit/Hyperactivity Disorder (ADHD);
3. Continuing to address the Student’s anxiety in continued clinical visits with Dr. Johnson;
4. Cognitive Behavioral Therapy to reduce symptoms of anxiety and ADHD;
5. Seattle Children’s Hospital Autism Center classes or other classes and support groups for the Parent;
6. Sparks for Autism information for the Parent;
7. Provide a copy of Dr. Johnson’s report to the Student’s school in order to create an IEP or 504 plan.

P22p13.

185. On July 1, 2020, Dr. Johnson also wrote a two page letter that summarized the Student’s autism diagnosis and recommended ABA therapy. P17p3 4. Dr. Johnson wrote this letter for insurance purposes so that the Parent could seek insurance coverage for the Student’s ABA therapy. T843.

186. Based on Dr. Johnson’s recommendation, the Parent sought out ABA therapy for the Student from Summit Behavioral Solutions. Angelina Lease, BCBA, evaluated the Student on August 17, 2020, P17p32, and prepared an initial treatment plan on August 28, 2020. P17p22.

187. In the assessment summary, Ms. Lease described the Student as a “friendly and articulate 9 year old boy.” She continued, “During this assessment, [the Student] was able to demonstrate the ability to engage in back and forth conversations once the assessor began speaking about a topic that was familiar and preferred to [the Student]. He was able to demonstrate the ability to recall very recent facts, identify important people in this [sic] life, and identify preferred reinforcers for play.” Ms. Lease also summarized the Parent’s report noting, “[P]er parent report, [the Student] struggles with executive functioning and has a difficult time compartmentalizing different tasks/activity when instructed to do so. In addition to this, [the Student] struggles with rigidity in transitions and abstract thinking which often impacts his ability to complete tasks and engage and maintain social relationships with others.” P17p25.

## **2020-2021 School Year (Fourth Grade)**

### *Fourth Grade Academics*

188. The first day of school in the District for the 2020 2021 school year was September 3, 2020. S1p3. All instruction was provided by remote learning. T1219.

189. The Student's fourth grade teacher at Shining Mountain was Cori Tumbleson. Ms. Tumbleson has been an elementary school teacher for eight years. T1218.

190. The Student attended live Zoom sessions with Ms. Tumbleson for ten days. After that, Ms. Tumbleson received an email from the Parent's attorney informing her that the Student would no longer attend the live Zoom sessions and would complete his assignments using Canvas only. T1224.

191. During the time that the Student attended live Zoom sessions, he would raise his hand to ask questions, and he participated in the class discussions. T1225.

192. Based on the limited time that she had him as a student and was able to assess his assignments, the Student was showing a 92 percent mastery of the subject matter. S41p6.

193. Ms. Tumbleson did note that the Student needed extra support in writing, but she did not find this out of the ordinary. In Ms. Tumbleson's experience, it was common for students to regress over the summer, and her observations were made at the beginning of the school year. T1232.

### *Preparation for October 7, 2020, 504 Meeting*

194. On September 24, 2020, the Parent, through counsel, emailed Mr. Marquardt, with notice that the Parent intended to seek a private placement for the Student at New Horizon School (New Horizon), and seek reimbursement for the private school tuition from the District. Mr. Marquardt forwarded the email to the District's new Director of Special Services, Connie Martin. P16p2 3.

195. On September 25, 2020, Ms. Martin replied to the Parent's email asking for clarification regarding the Parent's plans for the Student. A 504 meeting had already been scheduled for October 7, 2020, and Ms. Martin asked if the Parent and District should cancel the 504 meeting. P16p1.

196. The Parent, through counsel, replied to Ms. Martin, again informing the District of her intent to seek a private placement for the Student at New Horizon. The email states, in part:

We certainly hope that the BSD considers revisiting its prior denial of special education eligibility and considers this placement for [the Student]. If the BSD never responds or

considers this request, the Parents will move forward and make the placement at New Horizons [sic] School once the notice period has lapsed, then will seek reimbursement from the BSD for the same.

In the interim period before the notice period expires, [the Student] will continue to access asynchronous learning from BSD to the extent that he is able to, with the support of the RBT and BCBA that the family has been providing for him.

We certainly hope that the BSD does not cancel the Section 504 meeting. We are hoping that the BSD considers all of the attached and comes to the Section 504 team meeting ready to discuss the same as well as [the Student's] needs.

P16p1.

197. Mr. Dearborn emailed notice of the October 7, 2020, meeting to the Parent, the Parent's attorney, and Ms. Lease, the Student's BCBA, on September 25, 2020. The meeting was scheduled for 4:00 p.m. P17p1.

198. On September 25, 2020, the Parent, through counsel, emailed various medical records and documents to the District. Included on the email were Mr. Dearborn, Mr. Marquardt, the District's attorney, Ms. Tumbleson, Ms. Martin, and Brian Lowney, District Executive Director of Special Programs. The documents attached to the email were:

1. July 1, 2020, letter from Dr. Johnson that contained the Student's autism diagnosis and recommended ABA therapy.
2. Chart notes from the January 28, 2020, appointment with Dr. Lashley.
3. October 28, 2016, letter from Seattle Children's Urology Department noting the Student was being treated for "a condition related to the urinary system."
4. April 8, 2019, After Visit Summary from appointment with Dr. Al Mateen, noting the referral to pediatric psychology.
5. July 18, 2018, After Visit Summary from appointment with Dr. Tanja Evans, noting the new prescription for guanfacine and a referral to occupational therapy.
6. August 28, 2020, Initial Treatment Plan for ABA therapy with Summit Behavioral Therapy.

199. The Parent, through counsel, sent two subsequent emails with attachments to the same District employees and representatives on September 25, 2020. One contained a medication list for the Student that was updated by Dr. Johnson on September 14, 2020. P19.

200. The third email contained, as an attachment, a speech pathology communication evaluation for the Student that was completed on May 14, 2020. P18p3. The attachment shows that the Parent reviewed the evaluation letter on June 16, 2020. P18p9.

201. The speech pathology communication evaluation diagnosed the Student with “social communication disorder, pragmatic.” P18p8.

202. On October 6, 2020, the day before the 504 meeting, the Parent, through counsel, emailed the same May 14, 2020, speech pathology communication evaluation, along with a May 18, 2020, Virtual Occupational Therapy (OT) Evaluation, P20p6, and a June 16, 2020, Physical Therapy (PT) Evaluation. P20p12.

203. During the May 14, 2020, OT evaluation, the Parent informed the provider that although the Student had an OT evaluation in 2018 and he was placed on a waiting list for services, the Parent was not ready to commit to OT in 2018. P20p8.

204. Based on reports from the Parent, the OT noted that the Student had delays or challenges with daytime enuresis (wetting himself), being a picky eater, preferring to be in his room by himself, social skills, emotional regulation, having meltdowns that can last all day, communication, and possibly sensory processing (a full assessment was not completed for sensory processing). P20p8 10.

205. No issues were raised about delays or challenges with fine or gross motor skills. The Parent reported that the Student had good writing but would often require extra time because he would erase his work if it was not completed perfectly. P20p9.

206. Although the evaluator was not able to complete a full sensory processing assessment, she noted that the Student’s sensory processing was an area of concern and recommended further evaluation. The Student was placed on the waiting list for OT services at Mary Bridge Children’s Hospital. P20p10 11.

207. The PT evaluation that was provided to the District on October 6, 2020, indicates that the Student was evaluated by a physical therapist on June 16, 2020. The PT evaluator noted that the Student engaged in social interaction appropriate for his age. The evaluator noted that the Student had normal muscle bulk and movement, with some joint hypermobility. The Student’s hypermobility did not seem to interfere with any of his preferred activities, but the evaluator recommended further monitoring. P20P14 16.

*October 7, 2020, 504 Meeting*

208. At 2:52 p.m. on October 7, 2020, approximately one hour before the 504 meeting, the Parent’s attorney emailed Ms. Martin, informing her that the Student had been accepted to New Horizon. The email states, in part: “While the family hopes that the BSD [Bethel School District] agrees to place him there, once ten business days have lapsed from the notification below, they will unilaterally place him there effective Friday and continue to seek reimbursement from the BSD for placing him there consistent with the notification below. Does the BSD still want to meet today in light of this?” S42p1.

209. Ms. Martin responded, by email, that the District would still like to proceed with the 504 review meeting that afternoon. *Id.*

210. The October 7, 2020, 504 meeting was held by Zoom video conference due to the COVID 19 pandemic. Present at the meeting were the Parent, the Student's stepparent, the Parent's attorneys, the District's attorney, Mr. Marquardt, Ms. Lease, Chris Halladay (District Representative), Ms. Bartlebaugh, Ms. Tumbleson, and Mr. Dearborn. S41p7.

211. On October 7, 2020, the District issued a PWN proposing to continue the Student's 504 plan. The PWN documents the District's receipt and review of the medical records provided by the Parent on September 25, 2020, and October 6, 2020. The 504 team discussed whether additional accommodations should be added to the Student's 504 plan given the new information provided by the Parent. Both of the Parent's attorneys and the Parent stated that they would not be actively participating in the Student's 504 review because they believed that the Student was eligible for special education and that they were proceeding with a unilateral private placement. S41p6.

212. Both of the Student's general education teachers who were present noted no significant concerns regarding the Student's distance learning. S41p6.

213. The team proposed adding an additional accommodation to the Student's 504 plan, which was allowing the Student to access recordings of live teaching so that he could view them in his own time. There was no objection from the Parent to this additional accommodation. *Id.*

214. Although the District repeatedly asked for Parent input regarding accommodations, the Parent and her attorneys declined to comment on whether the Student required any additional accommodations. T690; S41p6.

215. As a result of receiving and reviewing the medical records provided by the Parent on September 25, 2020, and October 6, 2020, the District made a referral to its special education evaluation team in order to determine whether the Student should be evaluated again for special education services. The referral was documented in the October 7, 2020, PWN. S41p7.

216. The District also emailed the Parent a Notice of Special Education Referral on October 27, 2020, along with procedural safeguards, and a PWN. S48p1. The PWN, dated October 27, 2020, proposed to postpone the Student's special education referral, noting that the Student was withdrawn from the District and placed in a private school in another district. The PWN states that the child find obligations "rest with the containment district the private school is located in" and that Shining Mountain "can initiate the referral process upon re enrollment in the Bethel School District." S48p3.



*Enrollment at New Horizon School and Renton School District Evaluation*

217. The Parent unenrolled the Student from Shining Mountain and enrolled him at New Horizon effective October 9, 2020. S42p1.

218. New Horizon is a small, private school that serves approximately 40 students with special needs. T1528.

219. New Horizon is in the Renton School District (Renton). As such, Renton completed an evaluation of the Student and found him eligible for special education on January 15, 2021. P26.

220. The Renton evaluation found that the Student was eligible for special education and related services, and the evaluation team recommended specially designed instruction (SDI) in writing due to stamina issues associated with Ehlers Danlos Syndrome. The evaluation results showed that the Student was not eligible for special education services in the area of communication but did recommend SDI in the area of social skills, emotional coping skills, and adaptive skills based on teacher and parent input that the Student has significant difficulty with independent implementation of social skills, emotional coping skills, and self advocacy skills. The Renton evaluation did not find any delays in fine and visual motor skills and did not recommend OT, but rather, recommended general education modifications to facilitate writing. P26p4.

221. The Renton evaluation took into consideration both teacher and parent rating scales for the BASC 3. Many of the teacher's responses indicate that the Student was within the average range for certain behaviors, while the Parent's ratings indicated his behavior was clinically significant. The Renton evaluator noted:

These scores indicate Student has more external type behavior at home than when he's at school. This is consistent with Student's parents' verbal report that Student holds it together in school and lets it all out at home.

P26p15 16.

222. The New Horizon teachers who provided input for the Renton evaluation did not report any significant behavioral concerns evidenced by the Student since he started at New Horizon. T1605.

223. During her testimony, the Parent confirmed that the Student would often come home and "fall apart" while attending school in person in the District. T2236. The Student also told the Parent that he would suppress his tics at school. T2237 38.

224. The Renton evaluator also made several observations of the Student throughout the testing process. For example:

[Student] sustained attention throughout the testing process. He answered questions readily and stayed on topic. He offered relevant information and occasionally asked for clarification or help with a problem. He refused breaks and preferred to keep working. [Student] sat in a relaxed posture and smiled occasionally during the testing. [Student] attempted every test item presented to him. He worked quickly and confidently with easier items. He worked slowly and deliberately with harder items. With reading comprehension, he was able to return to the test and find answers. With math calculations, [Student] understood the concept of the addition and multiplication items but needed to make groups of hashtags or circles to correctly arrive at the answer. With writing, [Student] occasionally changed pencil grip. He wrote in large font and kept his letters all above the line – even letters such as /y/ or /g/. [Student] randomly capitalized some letters. During the writing portions, [Student] needed short (less than a minute) breaks to rest his hand. No subtest consisted of more than 6 sentences.

Discussion:

[Student] demonstrated age-appropriate ability to follow directions, sustain attention, and demonstrate age-appropriate student study skills. He was able to problem solve and ask for help when he wanted assistance.

[Student] did demonstrate self-management skills: toe and foot manipulation, use of fidgets, breaks for resting his hand during writing tasks.

P26p9.

225. The Renton evaluator further noted the absence of behaviors that would impact the Student's ability to access his education:

[Student] did not demonstrate behaviors that would tend to interfere with his ability to access and participate with his academic progress. This is consistent with [Student's] teachers' verbal reports that [Student] does not display any problem behaviors that would interfere with his academic progress.

*Id.*

226. The Parent, through counsel, informed the District of Renton's evaluation results on January 21, 2021, and requested that the District schedule an IEP meeting within 30 days. In the same email, the Parent withdrew the request for an IEE. P25p1.

227. On January 25, 2021, the Parent, through counsel, provided a copy of the Student's Renton evaluation to the District. P26p1. The Renton evaluation did not consider any of the Student's records from the District. P26p3.

228. None of the administrators or the Student's teachers at New Horizon provided testimony during the hearing.

229. The Student's December 11, 2020, progress report from New Horizon indicates that he received A+ grades in Homeroom Elementary, Music and PE rotation, Elementary US Geography and a class called Distar 2 and ALEKS 3/4. The Student received A grades in Performance Lab, Reasoning and Writing, and Literature.

*Bethel School District IEP*

230. After the District received the Renton evaluation, the District began developing an IEP for the Student in March 2021. T1408. The District's IEP offered a placement at Shining Mountain. T1800.

## CONCLUSIONS OF LAW

### *Jurisdiction and Burden of Proof*

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated thereunder, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392 172A Washington Administrative Code (WAC).
2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. See *Schaffer v. Weast*, 546 U.S. 49 (2005). Therefore, in this consolidated due process hearing, the District bears the burden of proving its January 8, 2020, evaluation of the Student was appropriate. The Parent bears the burden of proof on all the other issues.

### *The IDEA*

3. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities and condition such funding upon a state's compliance with extensive goals and procedures. In *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

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

*Rowley*, 458 U.S. at 206-207 (footnotes omitted). For a school district to provide FAPE, it is not required to provide a “potential maximizing” education, but rather a “basic floor of opportunity.” *Rowley*, 458 U.S. at 200-201.

4. The Supreme Court recently clarified the substantive portion of the *Rowley* test quoted above:

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

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

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

*M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1201 (9<sup>th</sup> Cir.), cert. denied, 583 U.S. \_\_\_, 138 S. Ct. 556 (2017).

5. A “free appropriate public education” consists of both the procedural and substantive requirements of the IDEA. The *Rowley* court articulated the following standard for determining the appropriateness of special education services:

[A] “free appropriate public education” consists of educational instruction specially designed to meet the unique needs of the handicapped child, supported by such services as are necessary to permit the child “to benefit” from the instruction. Almost as a checklist for adequacy under the Act, the definition also requires that such instruction and services be provided at public expense and under public supervision, meet the State’s educational standards, approximate the grade levels used in the State’s regular education, and comport with the child’s IEP. Thus, if personalized instruction is being provided with sufficient supportive services to permit the child to benefit from the instruction, and the other items on the definitional checklist are satisfied, the child is receiving a “free appropriate public education” [FAPE] as defined by the Act.

*Rowley* at 188-189.

6. A district is not required to provide a “potential maximizing” education” in order to provide FAPE, but only a “basic floor of opportunity” that provides “some educational benefit”

to the Student. *Id.* at 200 01. A district must provide a student with a “meaningful benefit” in order to satisfy the FAPE requirement. *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 852 (9<sup>th</sup> Cir. 2014).

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

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

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

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

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

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

***Whether the District violated the IDEA and denied the Student FAPE by failing to meet its Child Find obligations under WAC 392-172A-02040 and WAC 392-172A-03005(1) between January 9, 2018, and September 29, 2019, by its staff not referring the Student for a comprehensive special education eligibility evaluation.***

9. The IDEA mandates that school districts shall conduct “Child Find” activities “calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability.” WAC 392 172A 02040(1). The IDEA further mandates that school districts shall have policies and procedures in effect that describe the methods used to conduct Child Find activities. Methods used may include, but are not limited to, activities such as:

Using internal district child find methods such as screening, reviewing district wide test results, providing in service education to staff, and other methods developed by the school districts to identify, locate and evaluate students including a systematic, intervention based, process within general education for determining the need for a special education referral.

WAC 392 172A 02040(3)(f).

10. A disability is “suspected,” “when the district has notice that the child has displayed symptoms of that disability.” *Timothy O v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9<sup>th</sup> Cir. 2016). Notice that a child may have a particular disability can come from expressed parental concerns about a child’s symptoms, expressed opinions by informed professionals, or less formal indicators such as the child’s behavior. *Timothy O.*, 822 F.3d at 1121. See also *Pasatiempo v. Aizawa*, 103 F.3d 796, 803 (9<sup>th</sup> Cir. 1996) (“The informed suspicions of parents, who may have consulted outside experts, should trigger the statutory protections.”); *J.K. v. Missoula Cnty. Pub. Sch.*, 713 F. App’x 666, 667 (9<sup>th</sup> Cir. 2018) (“The duty to evaluate a student arises when disability is ‘suspected,’ or ‘when the district has notice that the child has displayed symptoms of that disability’”); *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202 (9<sup>th</sup> Cir. 2009) (The requirement to evaluate a student may be triggered by the informed suspicions of outside experts).

11. A Child Find violation is a procedural violation of the IDEA, and the ALJ must determine if the violation led to a denial of FAPE. See *Timothy O.*, 822 F.3d at 1124. “A procedural violation denies a free appropriate public education if it results in the loss of an educational opportunity, seriously infringes the parents’ opportunity to participate in the IEP formulation process or causes a deprivation of educational benefits.” *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 953 (9<sup>th</sup> Cir. 2010) (citations omitted).

12. To succeed on a claim that a child was denied FAPE, the aggrieved party need not definitively show that the child’s educational placement would have been different absent the procedural violation. *Timothy O.*, 833 F.3d at 1124 (citation omitted). In *Timothy O.*, the Ninth Circuit determined that, due to the district’s Child Find violation, the child’s IEP team lacked adequate information to craft an appropriate IEP; this denied the student educational opportunities and substantially hindered his parents’ ability to participate in the IEP process. *Id.*

13. As of January 9, 2018, the Student was in the first grade with Ms. Gerhardstein at Frederickson. Ms. Gerhardstein’s end of first semester grade report comments note that the Student was “making a lot of progress in reading,” and that he was reading above grade level. S3p5. Ms. Gerhardstein’s end of second semester comment reads in part: “Dear [Student], I have truly enjoyed having you in my class this year! You have made so much progress and shown a lot of growth both socially and academically...You have turned in 15/15 homework packets on time. This year, I noticed how hard you worked at excelling your [sic] reading goals. What an amazing accomplishment!” *Id.*

14. The Student was performing at or above benchmark standards in academics during the 2017 2018 school year at Frederickson, and he was well liked by classmates, teachers, and staff. He had no disciplinary referrals, and his teachers observed both academic and social growth.

15. The first time that the District became aware of the Student's Tourette's Syndrome diagnosis was September 2018. The Parent contacted Ms. McKee and informed her of the Student's diagnosis. As soon as the Parent contacted Ms. McKee, the Student was evaluated, and a 504 plan was put into effect. The Student continued to excel academically and socially in the second grade with Ms. Blankenship. The Student's grades reflected that he was at or above benchmark standards in all academic areas. Again, the Student had no disciplinary record in second grade. Ms. Blankenship noted that the Student was thoughtful towards adults and children, hardworking, creative, and able to advocate for himself and others. Ms. McKee observed that the Student was well liked and enjoyed the social aspects of school. Given their observations of the Student, Ms. Blankenship and Ms. McKee did not believe that 504 accommodations were necessary for the Student to access his education or thrive in school, but they wanted to accommodate the Parent's requests.

16. There is no binding Ninth Circuit case law on how courts are to determine whether a violation of Child Find laws has occurred and whether that amounts to a deprivation of a FAPE. *P.B. v. Thorp Sch. Dist.*, 2021 U.S. Dist. LEXIS 59845 (E.D. WA 2021). However, *Timothy O.* makes it clear that a disability is suspected when the district has notice that the child has displayed symptoms of that disability. 822 F.3d at 1119. The District Court of Hawai'i further adds that there must be reason to suspect a disability **and** reason to suspect that special education services may be needed to address that disability to trigger a district's Child Find obligations. *Dep't of Educ., State of Hawai'i v. Cari Rae S.*, 158 F. Supp. 2d at 1194 (D. Haw. 2001); *Dep't. of Educ. of Hawaii v. Leo W. ex rel. Veronica W.*, 226 F. Supp. 3d at 1097 98 (D. Haw. 2016) (emphasis added).

17. In this case, the District did not violate its Child Find obligations from January 9, 2018, through September 29, 2019. From January 9, 2018, to September 2018, the District had no reason to suspect that the Student had a disability. He was thriving in school academically and socially, and the District was not aware of any diagnoses. In September 2018, the District was put on notice that the Student had Tourette's Syndrome; however, no evidence has been provided to show that the Student displayed symptoms of the disorder in the school setting. The Student continued to thrive in school academically and socially throughout the 2018-2019 school year, and the District had no reason to believe that the Student required special education services to address his condition. The District did implement a 504 plan at the Parent's request, but neither the Student's second grade teacher nor the school guidance counselor observed that the Student actually needed any accommodations.

18. As such, the Parent has not shown by a preponderance of the evidence that the District violated its Child Find obligations from January 9, 2018, through September 29, 2019.

***Whether the District violated the IDEA and denied the Student FAPE by failing to meet its Child Find obligations under WAC 392-172A-02040 and WAC 392-172A-03005(1) since January 9, 2020, by its staff not referring the Student for a comprehensive special education eligibility evaluation when the Parent provided information to the District from: Seattle Children's Hospital; Mary Bridge Children's Hospital; Yellow Brick Clinic: Integrative, ADHD, Autism, Developmental, and Behavioral Health; Mary Bridge Children's Hospital's Children's Therapy Unit; and Summit Behavioral Solutions.***

19. The Parent argues that the District violated its Child Find obligations by not referring the Student for another comprehensive special education evaluation after receiving additional medical information.

20. The Parent alleges that as soon as the Student received an assessment, evaluation, or had a medical appointment, she provided the records to the District. As found above, the evidence does not support this contention. The record shows that on September 25, 2020, the District received records from Yellow Brick Clinic (Dr. Johnson's autism report and medication list), Seattle Children's Hospital (Dr. Lashley's chart notes and a Urology Department letter), Mary Bridge Children's Hospital (April 8, 2019, after visit summary from Dr. Al Mateen, July 18, 2018, after visit summary from Dr. Evans with OT referral, and May 14, 2020, speech pathology communication evaluation), and Summit Behavioral Solutions. This information indicated that the Student had new diagnoses of autism and "social communication disorder, pragmatic."

21. On October 6, 2020, the Parent provided the District with OT and PT evaluations from Mary Bridge Children's Hospital indicating that the Student had suspected issues with sensory processing, enuresis, emotional regulation, and hypermobility that affects his physical ability to write.

22. On October 7, 2020, the District referred the Student for a second special education eligibility evaluation. The Parent withdrew the Student from the District on October 9, 2020 and enrolled him in a private school in the Renton School District.

23. In this case, once the District was on notice that the Student had new diagnoses that may require special education services, the District agreed to complete another eligibility evaluation and referred the Student for such an evaluation the next day, well within the 25 school days required by WAC 392 172A 03005(2)(c).

24. Given that the District acted to refer the Student for a new evaluation within the required time after it was on notice of the Student's new diagnoses, the District did not violate its Child Find obligations from January 9, 2019, to October 14, 2020 (the date of the amended complaint), and the Parent has not met her burden of proof with regard to this issue.



***Whether the District violated the IDEA and denied the Student FAPE by failing to follow the evaluation procedures in WAC 392-172A-03005 and WAC 392-172A-03020 through WAC 392-172A-03080 in conducting the Student's initial special education eligibility evaluation, namely: (a) failing to ensure that assessments were administered by trained and knowledgeable personnel; (b) failing to ensure that assessments were administered in accordance with any instructions provided by the producer of the assessments; (c) failing to assess the Student in all areas related to the suspected disability; (d) failing to assess the Student consistent with the scope of consent provided by the Parent for the evaluation; (e) failing to review existing evaluation data on the Student, which includes information provided by the Parent; and (f) failing to have all necessary individuals present at the January 8, 2020 meeting to review the evaluation; specifically, a school nurse, a school counselor, a speech language pathologist, a special education teacher, and an occupational therapist.***

***Whether the District violated the IDEA and denied the Student FAPE by conducting an inappropriate and incomplete special education eligibility evaluation on January 8, 2020, that failed to identify the nature and extent of the Student's needs for special education and related services as is required by WAC 392-172A-01070, namely: (a) failing to assess the Student's communication, fine motor, gross motor, and sensory processing needs at all; (b) conducting inadequate assessments of the Student's adaptive, behavioral, executive functioning, and social emotional needs; and (c) initially failing to include any medical/health information in its evaluation report and then seeking to insert inaccurate medical/health information in its evaluation report.***

25. The two issues stated above both relate to the question of whether the District's January 8, 2020, evaluation was appropriate. These issues will be analyzed together.

#### *Timeline to Determine Whether to Evaluate After a Referral*

26. Once a student has been referred for a special education eligibility evaluation, the school district must make a determination about whether to evaluate within 25 school days. WAC 392 172A 03005(1)(b)(c). Here, the District received the Parent's evaluation request on September 27, 2019. Although the District agreed to evaluate the Student prior to issuing a PWN, the District did not issue a PWN until November 1, 2019, which was 25 school days from receipt of the evaluation request. Accordingly, there is no violation with respect to this timeline.

#### *35 Day Timeline for Initial Evaluations*

27. When a student is to be evaluated to determine eligibility for special education services, the school district shall provide PWN to the parent, attempt without unnecessary delay to obtain the parent's consent for the evaluation, fully evaluate the student, and arrive

at a decision regarding eligibility within 35 school days from the date written consent for an evaluation has been provided to the school district by the parent. WAC 392 172A 03005(3)(a). Here, the Parent signed a consent form on October 29, 2019, and the eligibility decision was made on January 8, 2020, 37 school days from the date the Parent provided consent. The District violated WAC 392 172A 03005(3)(a) by not completing the evaluation and reaching an eligibility decision within 35 school days. However, as discussed below, this procedural violation did not amount to a denial of FAPE.

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

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

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

29. Here, there is no evidence in the record that the District completing the Student's evaluation and eligibility decision two days late impeded the Student's right to FAPE, significantly impeded the Parent's opportunity to participate in decision making or caused a deprivation of educational benefits. This is further supported by the fact that the Student was found ineligible for special education and would not have received any services during the period of delay even if the evaluation had been timely completed. As such, no remedy is warranted for this procedural violation.

#### *Duty to Collect and Examine Existing Records*

30. As part of the initial evaluation process, school districts must "collect and examine existing school, medical, and other records in the possession of the parent and the school district." WAC 392 172A 03005(2)(b). Here, the District knew that the Student had a diagnosis of Tourette's Syndrome, but no other documentation in its records of behavioral, cognitive, sensory processing, academic, or social emotional concerns. The Parent did not offer any documentation regarding these issues at the time of the evaluation request.

31. In this case, the District was aware of the Student's Tourette's Syndrome diagnosis and had documents regarding this diagnosis. The Parent's special education evaluation request states that the Student has a sensory processing disorder and a stutter. The evaluation request also states that the Student had recently been exhibiting concerns relating to adaptive skills, social /emotional behaviors, and fine motor skills. The Parent did not offer any documentation to support these statements, and, based on the Student's behavior in school, the District had no reason to suspect that he was struggling with adaptive skills,

social / emotional behavior or skills, a sensory processing disorder, fine motor skills, or a stutter.

32. During the evaluation process, the District collected and examined all of the records in its possession, as well as the letter from Dr. Al Mateen provided at the January 8, 2020, meeting, and incorporated this information into the evaluation. The District also sought additional information from the Parent when it realized that she had not received the parent rating scales or health history form. After the January 7, 2020, phone call with Ms. Rutland, the Parent was aware that the District had been trying to send her forms. The Parent did, in fact, receive the health history form from the Student's backpack, and the Parent had the health history form with her at the January 8, 2020, meeting. She did not provide it to the District. Even after the District asked the Parent for additional information and forms, the Parent refused to fill out the parent rating scales, and she did not provide the health history form to the evaluation team. The Parent has not shown that the District violated WAC 392 172A 03005(2)(b).

#### *Required Evaluation Procedures*

33. The procedures for conducting evaluations and reevaluations under the IDEA are found at WAC 392 172A 03020, and provide in relevant part:

(2) In conducting the evaluation, the group of qualified professionals selected by the school district must:

(a) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:

(i) Whether the student is eligible for special education as defined in WAC [392-172A-01175](#); and

(ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities;

(b) Not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education and for determining an appropriate educational program for the student; and

(c) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(3) Each school district must ensure that:

- (a) Assessments and other evaluation materials used to assess a student:
  - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
  - (ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer;
  - (iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education. Use of professional judgment shall be documented in the evaluation report;
  - (iv) Are administered by trained and knowledgeable personnel; and
  - (v) Are administered in accordance with any instructions provided by the producer of the assessments.
- (b) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- (c) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- (d) If necessary, as part of a complete assessment, the school district obtains a medical statement or assessment indicating whether there are any other factors that may be affecting the student's educational performance.
- (e) The student is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

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(g) In evaluating each student to determine eligibility or continued eligibility for special education services, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

(h) Assessment tools and strategies are used that provide relevant information that directly assists persons in determining the educational needs of the student.

WAC 392 172A 03020.

#### *Trained and Knowledgeable Personnel*

34. The District had a duty to ensure that assessments given to the Student were administered by trained and knowledgeable personnel. WAC 392 172A 03020(3)(a)(iv). Here, Ms. Banegas is a Nationally Certified School Psychologist with the appropriate Washington credential in school psychology and experience conducting special education eligibility evaluations. Ms. Banegas was qualified to administer the various assessments given to the Student.

#### *Assessments Administered Using Producer Instructions*

35. The District also had a duty to ensure that assessments were administered in accordance with any instructions provided by the producer of the assessments. WAC 392 172A 03020(3)(a)(v). Here, the Parent contends that the BASC 3 assessment was invalidated because Ms. Tevis asked the Student a general question about how he was feeling or if he was ever angry. Ms. Banegas testified, and it is also documented in the PWN generated after the January 8, 2020, meeting that Ms. Tevis' questions were general in nature and did not invalidate the test results. Moreover, her completion of the teacher rating scales was based solely on her observations of the Student. There was no other information provided to show that any of the assessment tools used were improperly administered.

#### *Assessing All Areas of Suspected Disability and Within the Scope of Consent*

36. A school district is also obligated to ensure that "[i]n evaluating each student to determine eligibility for special education services, the evaluation is sufficiently comprehensive to identify all of the Student's special education and related service needs, whether or not commonly linked to the disability category in which the Student has been classified." WAC 392 172A 03020(3)(g).

37. On October 25, 2019, the District agreed to evaluate the Student for special education eligibility, and, after a series of emails between the District and the Parent's attorney, the Parent signed a consent form on October 29, 2019. The consent form signed by the Parent recommended evaluation in the following areas: Medical Physical, Adaptive, Behavior, Observation, General Education, Cognitive, Social/Emotional, Academic, Other: Executive Functioning. *Id.* The consent signed by the Parent did not include consent for assessments in the areas of sensory processing, communication, fine motor skills, or occupational therapy. P5p2; T217.

38. The Ninth Circuit has recognized that a parent does not have the right to dictate specific areas in which a school district must assess a student as part of a special education evaluation. *Avila v. Spokane Sch. Dist.* 81, 686 Fed. App'x 384, 385 (9th Cir. 2017); *L.C. ex rel. A.S. v. Issaquah Sch. Dist.*, No. C17 1365 JLR, 2019 WL 2023567 (W.D. Wash. 2019). Despite this, the District did give the Parent the opportunity to give input into all of the areas in which she thought the Student should be evaluated.

39. The District, in this case, had no reason to suspect that the Student had any difficulties with adaptive skills, behavior, cognitive functioning, academics, executive functioning, communication, motor skills, or sensory processing, or that he had a need for occupational therapy. The Student was excelling academically and engaged in prosocial behaviors at school. The District was aware that the Student had a Tourette's Syndrome diagnosis, but there was no observed impact on his education by any of his general education teachers either before or after the District became aware of the diagnosis. The District was also aware that the Student had toileting issues when he entered Kindergarten, but this was resolved as of September 2017 per the Parent's report. There were no toileting issues observed in first grade through the time of the evaluation in third grade.

40. The District's evaluation used assessment tools to address the concerns raised by the Parent and for which she gave consent to evaluate. These tools include the BASC 3 (behavior, social emotional, and adaptive skills), the ABAS 3 (adaptive skills), the CEFI (executive functioning), the WIAT III (academics), the WISC V (cognitive functioning), and informal and formal classroom observation. In this respect the District complied with WAC 392 172A 03020(2)(a) and WAC 392 172A 03020(3)(g), and its assessments were within the scope of the consent given by the Parent.

#### *Review of Existing Evaluation Data*

41. If appropriate, as part of an initial evaluation, school districts are required to review existing evaluation data on the student including, evaluations and information provided by the parent of the student, current classroom based, local, or state assessments, and classroom based observations, and observations by teachers and related service providers. WAC 392 172A 03025(1). On the basis of that review, and input from the student's parents, districts must identify what additional data, if any, are needed to determine whether the student is

eligible for special education services, and what special education and related services the student needs. WAC 392 172A 03025(2).

42. Here, Ms. Banegas reviewed, and the evaluation team considered, information provided by the Parent, including the evaluation request, the October 25, 2019, letter from Dr. Al Mateen, and the Parent's input at the evaluation team meeting regarding the Student's toileting issues. The evaluation team also considered all of the Student's second grade academic data as well as current third grade academic data and classroom observations by Ms. Tevis and Ms. Banegas. Based on all of this information, the team determined that although the Student had Tourette's Syndrome, his condition did not impact his ability to access his education such that he needed specially designed instruction.

43. The Parent alleges that because the District did not consider parent or caregiver rating scales for any of the assessment tools, the evaluation was deficient. Once the District realized that the Parent had not received the parent rating scales that were sent to her address on record with the District, the District asked if the Parent would agree to an extension of the evaluation timeline in order to give her an opportunity to fill out the parent rating scales for each of the assessment tools used in the January 8, 2020, evaluation. The Parent refused to grant an extension and fill out the forms, so the District relied on the information that it had available. The Parent has not proven that the District erred in regard to this issue.

#### *Necessary Team Members for January 8, 2020, Evaluation Meeting*

44. At the initial evaluation and eligibility determination phase, the IDEA does not require the presence of specific individuals at the eligibility meeting. Rather, upon completion of the administration of assessments and other evaluation measures, *a group of qualified professionals and the parent of the student* determine whether the student is eligible for special education services and the educational needs of the student. WAC 392 172A 03040(1).

45. Here, the Parent alleges that a school nurse and a special education teacher were necessary members of the evaluation team and should have been present at the January 8, 2020, evaluation meeting. Prior to the meeting, however, the Parent requested that the school nurse, Ms. Rutland, not have any contact with her or the Student or be further involved in the evaluation process. Ms. Rutland completed vision, hearing, and neuromuscular exams on the Student. Based on her observations of the Student, discussion with Ms. Tevis, and review of the Student's medical file, Ms. Rutland did not have any concerns regarding the Student's physical health. There is insufficient information in the record to show if or how Ms. Rutland's presence at the meeting would have assisted or impacted the team's eligibility decision.

46. Similarly, the Student was not being served by a special education teacher, and the overwhelming information before the evaluation team showed that the Student's Tourette's Syndrome diagnosis had no impact on his ability to access his education. Accordingly, the

Parent has not proven that the District erred by not having a school nurse or special education teacher present at the eligibility meeting.

*Failure to Assess the Student's Communication, Fine Motor, Gross Motor, and Sensory Processing Needs*

47. The Ninth Circuit has recognized that a parent does not have the right to dictate specific areas in which a school district must assess a student as part of a special education evaluation. *Avila*, 686 Fed. App'x at 385. Although the Parent discussed that the Student may have issues with communication, fine and gross motor skills, and sensory processing in her initial evaluation request, the District had no reason to suspect that the Student required evaluations in these areas. The Student was thriving academically and socially in school, and was not displaying any issues with communication, fine or gross motor skills, or sensory processing. This is further supported by the fact that Renton did not find that the Student needed SDI or special education for communication or motor skills. The Parent has not proven that the District erred by not evaluating the Student's communication, fine or gross motor skills, or sensory processing.

*Adequacy of the Assessments of the Student's Adaptive, Behavioral, Executive Functioning, and Social Emotional Needs*

48. The Parent alleges that the District's January 8, 2020, evaluation was inadequate because it failed to gather information from the Parent. *Parent's closing brief* at 16. However, even if only one component of a particular evaluation tool is used, the assessment is still valid. All of the testing tools used by Ms. Banegas have validity checks, which were used and the answers were determined to be valid. Additionally, the Student spent the majority of his day with Ms. Tevis, and she was in the best position within the school to evaluate his behavior in the classroom. The Parent has not proven that the District's evaluation tools were inadequate assessments.

*Medical and Health Information*

49. The Parent alleges that the District violated the IDEA and failed to provide the Student with FAPE because it had incomplete medical information in its January 7, 2020, draft evaluation report.

50. School districts are not required to come to the IEP table with a "blank mind," but rather an "open mind," and the District may come with a draft IEP prepared for discussion. *D.M. v. Seattle Sch. Dist.*, 2016 U.S. Dist. LEXIS 122519 (W.D. WA 2016). Likewise, with evaluations, it would have been improper for the District to have come to the meeting with a final report that did not take into consideration any discussion at the meeting, including the Parent's input.



51. Here, the District sent a draft evaluation report to the Parent on January 7, 2020, that did not have a section for medical physical health. It is unclear why this was not included in the draft, other than Ms. Rutland did not complete her exam until just before the evaluation meeting and the Parent had not returned the health history form. It is not a violation of the IDEA to have an incomplete draft. On the contrary, it would be a violation for the District to have finalized the report prior to the meeting. The Parent's claim that the lack of medical information in the draft report violated the IDEA is without merit.

52. After the meeting, the District was able to incorporate Ms. Rutland's exam notes from her January 6, 2020, evaluation. Because the Parent asked that Ms. Rutland no longer be involved in the evaluation of the Student, Ms. Fox prepared additional sections of the final evaluation report that incorporated the information from Dr. Al Mateen's letter. This information was pulled directly from Dr. Al Mateen's letter. It is unclear why the Parent alleges that this information is inaccurate. This claim is, again, without merit.

***Whether the District's evaluation of the Student conducted on January 8, 2020, was appropriate and, if not, whether the Parent is entitled to an independent educational evaluation (IEE) at public expense?***

53. The District has the burden to show that its January 8, 2020, evaluation was appropriate.

54. As discussed above, the District had no reason to suspect that the Student had a disability that required special education services. The District was aware of the Student's Tourette's Syndrome diagnosis, but there was no evidence that his condition impacted his ability to access his education.

55. Based on the Parent's request for an evaluation and input regarding the scope of the evaluation, the District completed an evaluation that assessed the Student's academic, cognitive, social/emotional skills, behaviors, adaptive skills, executive functioning and medical physical health. The evaluation also included classroom observation and review of academic data. The District's evaluation also included classroom observation from Ms. Banegas and input from Ms. Tevis that indicated the Student was thriving academically and socially, and that he was a leader in the classroom with academics and technology.

56. Additionally, as concluded above, the District's assessment was completed by trained and knowledgeable personnel, the assessment tools were administered in compliance with the producer's instructions, the evaluation assessed all areas of suspected disability and all areas that were within the scope of the Parent's consent, the evaluation included a review of existing data, and the evaluation team consisted of an appropriate group of professionals and the Parent.

57. The District has shown by a preponderance of the evidence that its evaluation was appropriate. Accordingly, the Parent is not entitled to an IEE at public expense.

***Whether the District violated the IDEA and denied the Student FAPE by failing to provide its IEE criteria to the Parent in response to her request for an IEE in a timely manner as is required by WAC 392-172A-05005(1)(b), and not timely responding to the request for criteria by the Parent's counsel.***

58. After a parent requests an IEE, school districts are required to provide information to parents about where an IEE may be obtained and the agency criteria for IEEs. WAC 392 172A 05005(1)(b).

59. Here, the Parent requested an IEE on January 8, 2020. On January 9, 2020, the District denied the request and filed a due process hearing request. S28. On January 10, 2020, the District emailed its IEE criteria to the Parent and her attorney. P14p1. The District timely provided its IEE criteria to the Parent and her attorney. The District did not violate the IDEA or deny the Student FAPE in this regard.

***Whether the District violated the IDEA and denied the Student FAPE by predetermining that the Student would not be eligible for special education prior to January 8, 2020.***

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

61. Although parental participation is paramount under the IDEA, "a district does not necessarily violate the IDEA if it refuses to implement a parent's requests, and a parent does not have 'veto' power over IEP provisions." *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834, 58 (W.D. Wash. May 8, 2019). "The IDEA does not require a school district to comply with every request a parent makes; rather, the district must 'seriously consider' the parents' input and concerns. *K.S. v. Fremont Unified Sch. Dist.*, 545 F. Supp. 2d 995, 1008 (N.D. Cal. 2008)." L.C. at 63.

62. School districts are not required to come to the IEP table with a "blank mind," but rather an "open mind," and the District may come with a draft IEP prepared for discussion. *D.M. v. Seattle Sch. Dist.*, 2016 U.S. Dist. LEXIS 122519 (W.D. WA 2016).

63. Here, the District came prepared to the January 8, 2020, eligibility meeting with a draft prepared. The draft was sent to the Parent on January 7, 2020, the day before the meeting, and did not contain a medical physical section. At the beginning of the January 8, 2020, meeting, the District distributed an updated draft with health information prepared by Ms.

Rutland, and the Parent also distributed a letter from Dr. Al Mateen with additional information on Tourette's Syndrome.

64. The meeting notes reflect that the Parent and her attorneys had ample opportunity to provide input, and that the District considered this input during the meeting and included it in the final evaluation and eligibility report. The overwhelming evidence before the team at the eligibility meeting, however, showed that the Student's Tourette's Syndrome diagnosis did not affect his ability to learn or access his education, either academically or socially.

65. The District came to the eligibility meeting with an open mind, provided the Parent an opportunity to give her input, and incorporated her input into the final eligibility report. The District did not predetermine that the Student would not be eligible for special education services before January 8, 2020, and the Parent has not carried the burden of proof with regard to this claim.

***Whether the District violated the IDEA and denied the Student FAPE by predetermining that the Student would not be eligible for special education at any point after January 8, 2020, despite receiving information from Seattle Children's Hospital; Mary Bridge Children's Hospital; Yellow Brick Clinic: Integrative, ADHD, Autism, Developmental, and Behavioral Health; Mary Bridge Children's Hospital's Children's Therapy Unit; and Summit Behavioral Solutions, which supported at minimum a decision that the Student was a candidate for a special education eligibility evaluation.***

66. After the January 8, 2020, meeting, the District held a 504 meeting on March 20, 2020, during which it considered new information from Dr. Lashley regarding the Student having a suspected elimination syndrome issue. The 504 team considered the information provided by the Parent and incorporated this information into the updated 504 plan.

67. During the remainder of the 2019 2020 school year, the Student continued to access his education by asynchronous remote learning, receiving grades that were at or above benchmark standards. The Student also went above and beyond Ms. Bartlebaugh's expectations for a third grade student by explaining his thought process or coming up with an alternative way of completing assignments when he did not have all of the materials or instructions.

68. The Parent, through counsel, provided the District with new information from the Student's various health care providers between September 25, 2020, and October 6, 2020.

69. Once the District had these medical records, the District proceeded with the already scheduled 504 meeting on October 7, 2020. The District representatives repeatedly asked the Parent and her attorneys for their input during this meeting, which they refused to provide.

70. One of the outcomes of October 7, 2020, 504 meeting and the District's review of the documents provided by the Parent was to refer the Student for a second special education eligibility evaluation. Two days later, on October 9, 2020, the Parent unenrolled the Student from the District and placed him in a private school in Renton.

71. The District issued PWN on October 27, 2020, proposing to continue the Student's special education referral and reinstate the referral when and if the Student reenrolled in the District.

72. In this case, once the District had new information from the Parent regarding new diagnoses, the District proceeded with the October 7, 2020, 504 meeting, and continued to try to solicit Parent input. The Parent refused to provide input regarding the 504 accommodations stating that she believed the Student required special education. The District did refer the Student for a new special education eligibility evaluation, and two days later, the Parent withdrew the Student from the District.

73. Nothing in the record suggests that the District predetermined that the Student would not be eligible for special education. When the District received information about the Student's diagnoses on September 25, 2020, and October 6, 2020, the District referred the Student for another special education eligibility evaluation. Therefore, the Parent has not carried the burden of proof with regard to this claim.

***Whether the District violated the IDEA and denied the Student FAPE by failing to provide the Parent with educational records consistent with the requirements of WAC 392-172A-05190 in response to requests for records prior to the January 8, 2020, evaluation meeting, and the January 23, 2020, resolution session, thus inhibiting parental participation.***

74. Parents and their representatives have right to inspect and review any educational records relating to their child. WAC 392 172A 05190(1). Under limited circumstances, this includes the right to receive copies of the educational records. WAC 392 172A 05190(2)(b). WAC 392 172A 05190 states:

(1) Each participating agency shall permit parents of students eligible for special education services to inspect and review, during school business hours, any educational records relating to the student which are collected, maintained, or used by the district or other public agency under this chapter. The school district shall comply with a request promptly and before any meeting regarding an individualized education program or hearing or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The school district shall respond, in no case, more than forty-five calendar days after the request has been made.

(2) The right to inspect and review educational records under this section includes:

(a) The right to a response from the school district to reasonable requests for explanations and interpretations of the records;

- (b) The right to request that the school district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- (c) The right to have a representative of the parent or adult student inspect and review records.

(3) A participating agency may presume that a parent has authority to inspect and review records relating to his or her student unless the school district or other public agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

#### WAC 392 172A 05190

75. In this case, the Parent appears to allege that the District inhibited her right to parental participation because the District did not provide her with physical copies of the Student's educational records. As was raised many times during the hearing, the Parent's home and Shining Mountain share a fence line, and the Parent can see the school from her home and easily walk to the school. There was no evidence presented that the Parent made any requests to review or inspect the Student's educational records during school business hours. Nor was any evidence presented that if such a request was made that the District denied it.

76. On December 16, 2019, the Parent, through counsel, did request a copy of all of the Student's educational records. However, the Parent did not indicate that a failure to provide copies would effectively prevent her from exercising her right to inspect and review records. WAC 392 172A 05190. Accordingly, the District was not obligated to provide the Parent with copies of all the Student's educational records. In this regard, the District did not violate the IDEA.

#### ***Whether the Parent is Entitled to Her Requested Remedies***

77. The District violated the IDEA by failing to complete the Student's initial special education eligibility evaluation within 35 school days of the Parent providing consent to evaluate. However, as discussed above, this violation did not result in the District denying the Student FAPE. Accordingly, no remedy is warranted.

78. With regard to the remaining issues raised by the Parent, the Parent has failed to prove by a preponderance of the evidence that the Bethel School District violated the IDEA and denied the Student FAPE. Therefore, the remedies requested by the Parent have been considered and denied.

79. All arguments made by the parties have been considered. Arguments not specifically addressed herein have been considered but are found not to be persuasive or not to substantially affect a party's rights.

## ORDER

1. The District violated the IDEA by failing to complete the Student's initial special education eligibility evaluation within 35 school days from the Parent providing consent to evaluate. However, the Parent has failed to prove by a preponderance of the evidence that the Bethel School District has otherwise violated the IDEA or denied the Student FAPE.
2. The District's January 8, 2020, evaluation of the Student was appropriate. The Parent is not entitled to an IEE at public expense.
3. All remedies requested by the Parent have been considered and are DENIED.

SERVED on the date of mailing.



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Jenna Schuenemann  
Administrative Law Judge  
Office of Administrative Hearings

## Right To Bring A Civil Action Under The IDEA

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

### DECLARATION OF SERVICE

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

Parent

████████████████████  
██████████  
████████████████████

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Dated November 23, 2021 at Seattle, Washington.

*Jazmya Johnson*

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Representative  
Office of Administrative Hearings  
600 University Street, Suite 1500  
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cc: Administrative Resource Services, OSPI