

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

IN THE MATTER OF:

BELLINGHAM SCHOOL DISTRICT

OSPI Cause Nos. 2020-SE-0109
2020-SE-0113

OAH Docket Nos. 08-2020-OSPI-01109
08-2020-OSPI-01115

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

A videoconference hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Jason Kinn on January 25, 26 and 27, 2021. The Parent of the Student whose education is at issue¹ appeared and was represented by Shannon McMinimee and Alex Hagel, attorneys at law. The Bellingham School District (the District) was represented by Lynette Baisch and Elizabeth Robertson, attorneys at law. Michael Haberman, Special Education Director for the District, was also present throughout the hearing.

ISSUES

The issues were identified in the third prehearing conference order. They are:

1. Whether the District's December 20, 2019 evaluation of the Student was appropriate, and, if not, whether an independent educational evaluation of the Student should be conducted at public expense.
2. Whether the District violated its obligations under the Individuals with Disabilities Education Act (IDEA) and its implementing regulations by failing to provide the Student with a free appropriate public education (FAPE) since his enrollment in the District, by failing to meet its Child Find obligations under WAC 392-172A-02040 and WAC 392-172A-03005(1) by its staff not referring the Student for a comprehensive special education eligibility evaluation any sooner than October 23, 2019.
3. Whether the District violated its obligations under the IDEA and its implementing regulations by failing to provide the Student with FAPE since October 23, 2019, by not following the evaluation procedures set forth in WAC 392-172A-03005, and WAC 392-

¹ The names of the Parent and the Student are omitted from this decision.

172A-03020 through WAC 392-172A-03080, with respect to conducting the Student's initial special education eligibility evaluation, dated October 23, 2019, specifically by: failing to evaluate the Student in all areas of need as identified by the District's own referral; failing to use the Behavior Assessment System for Children – 3rd Edition (BASC-3) assessment tool in the manner it is required to be used in order to be valid; failing to consider data provided by the Parent, including the Kornerstone Kids Therapy Center occupational therapy (OT) assessment of March 2018 and the psychological assessment from the Senden Center; and failing to consider data from the District's claim to have implemented strategies with the Student since September of 2017.

4. Whether the District violated its obligations under the IDEA and its implementing regulations by failing to provide the Student with FAPE from October 23, 2019, to his enrollment in the Hoquiam School District in September of 2020, by conducting a substantively inappropriate and insufficient initial special education eligibility evaluation that failed to identify the nature and extent of the special education and related services that the Student needs as required by WAC 392-172A-01070, specifically by: failing to address receptive and expressive language, writing skills, and social-emotional skills; looking only at behavior and failing to use the BASC-3 appropriately by not having the Student complete the self-report; failing to conduct an OT or communication evaluation despite the Student's dysgraphia and the District's awareness of OT reports; failing to include an OT report in the evaluation; failing to have a speech-language pathologist and an occupational therapist assess the Student's receptive/expressive language, adaptive, fine motor, and sensory processing skills; and failing to assess the Student in social-emotional functioning.
5. Whether the District violated its obligations under the IDEA and its implementing regulations by failing to provide the Student with FAPE from January 10, 2020, to his enrollment in the Hoquiam School District in September of 2020, by not providing him with an Individualized Education Program (IEP) developed, reviewed, and revised in accordance with WAC 392-172A-03090 that was appropriate and reasonably calculated to meet his unique needs, including:
 - a. a consideration of the strengths of the Student and the concerns of the Parent for enhancing the education of the Student that were provided by the Parent at the IEP meeting; and the academic, developmental, and functional needs of the Student, as is required under WAC 392-172A-03110(1);
 - b. a consideration of information provided by the Parent, specifically reports from private providers as is required by WAC 392-172A-03110(3)(b)(iii);

- c. a consideration of the Student's anticipated needs and other matters as is required by WAC 392-172A-03110(3)(b)(iv) and as is required by WAC 392-172A-03110(3)(b)(v) as it relates to the Student [REDACTED]
- d. any measurable goals under WAC 392-172A-03090 (neither of the two goals in the January 10, 2020 IEP are measurable);
- e. all specially designed instruction the Student needs in the areas of academics, adaptive, behavior, executive functioning, and social emotional under WAC 392-172A-01175;
- f. all related services the Student needs, including related services in the areas of counseling, medical services, occupational therapy, psychological, social work services in schools, and parent counseling and training under WAC 392-172A-01155;
- g. all the modifications, accommodations, supplementary aides and services that the Student needs under WAC 392-172A-02060(4), WAC 392-172A-01185 and WAC 392-172A-02025, including any modifications at all and a dedicated Certified Behavior Technician or Registered Behavior Technician working under the supervision of a Board Certified Behavior Analyst or Licensed Assistant Behavior Analyst, instead of a part-time dedicated para educator;
- h. the training and supports necessary for school staff and/or the District's contract service providers to address behavior, social-emotional, communication and sensory processing needs, in order to be able to implement the specially designed instruction the Student needs as part of his educational placement WAC 392-172A-03090(1)(d);
- i. the provision of specially designed instruction and related services that are based upon scientifically based research consistent with WAC 392-172A-01165;
- j. an educational placement for the Student that was his least restrictive environment, which would be his neighborhood school rather than the school at which he was placed, as mandated by WAC 392-172A-02050; and
- k. individualized and appropriate extended school year (ESY) services under WAC 392-172A-02020.

6. Whether the District violated its obligations under the IDEA and its implementing regulations by failing to provide the Student with FAPE, from his enrollment in the District until his enrollment in the Hoquiam School District in September of 2020, by not providing him with a behavior intervention plan (BIP) that was based upon an appropriate functional behavior assessment (FBA);
7. Whether the District violated its obligations under the IDEA and its implementing regulations by denying the Student FAPE, from his enrollment in the District until his enrollment in the Hoquiam School District in September of 2020, by failing to comply with WAC 392-172A-05145 with respect to removing the Student from his education placement for disciplinary purposes, specifically by: removing the Student from his educational setting as discipline for the behaviors now identified as the basis of his special education eligibility category, including numerous suspensions, in-house suspensions, being sent to the Principal's office, and his Parent being asked to pick him up from school without any form of due process.
8. Whether the District violated its obligations under the IDEA and its implementing regulations by denying the Student FAPE, from his enrollment in the District until his enrollment in the Hoquiam School District in September of 2020, by committing both procedural and substantive violations of the IDEA by repeatedly disciplining the Student for manifestations of his disabilities and removing him from his educational placement as a result of conduct that was a manifestation of his disabilities, in violation of WAC 392-172A-05147 though -05155.
9. Whether the District violated its obligations under the IDEA and its implementing regulations by failing to provide the Student with FAPE, from his enrollment in the District until his enrollment in the Hoquiam School District in September of 2020, by not conducting manifestation determination reviews when issuing discipline to the Student, including failing to implement and appropriately adjust FBAs and BIPs as required by WAC 392-172A-05147.
10. Whether the District failed to provide the Student with FAPE, from January 10, 2020, until his enrollment in the Hoquiam School District in September of 2020, by not providing him with all the specially designed instruction, related services, and supplemental services called for in the District's initial IEP for the Student.
11. Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student with FAPE from March 11, 2020, until his enrollment in the Hoquiam School District in September of 2020, by materially and substantially changing the Student's educational placement to one that is not designed to ensure that he will be able to make meaningful educational progress or meet his unique needs.

12. Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student with FAPE from March 11, 2020, until his enrollment in the Hoquiam School District in September of 2020, by materially and substantially changing the Student's educational placement absent the existence of any evaluative data to support the same.
13. Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student with FAPE from March 11, 2020, until his enrollment in the Hoquiam School District in September of 2020, by unilaterally changing the Student's educational placement outside of the IEP team setting and without meaningful parental participation.
14. Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student with FAPE from March 11, 2020, until his enrollment in the Hoquiam School District in September of 2020, by unilaterally changing the Student's educational placement without providing prior written notice of the same to the Parent.
15. Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student FAPE during the summer of 2020 by failing to make a determination as to what ESY services the Student was entitled for the summer of 2020 based upon his unique and individual needs.
16. Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student FAPE by issuing materially false progress reports from January 10, 2020, until his enrollment in the Hoquiam School District in September of 2020, specifically on or around March/April of 2020 and June of 2020.
17. Whether the District failed to comply with procedural requirements of the IDEA by failing to timely offer a resolution session to the Parent including relevant IEP team members, as determined by the Parent and the District, and after the Parent had received all educational records of the Student that she had requested on August 17, 2020.
18. Whether the Parent is entitled to her requested remedies, including:
 - a. A determination that, as a matter of law, the two-year statute of limitations does not apply in this matter;
 - b. Declaratory relief finding that the District violated the IDEA and that the Student was denied FAPE by the District's actions;

- c. 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 consistent with 20 U.S.C. 1415(i)(2)(c)(iii);
- d. Reimbursement of costs that the Parent has incurred as a result of the District's violations of the IDEA and denial of FAPE;
- e. Whatever additional relief the court may find just and equitable.

PROCEDURAL HISTORY

The Parent filed a due process hearing request on August 11, 2020. The District filed a due process hearing request on August 17, 2020. Prehearing conferences were held on September 15, 2020, and November 19, 2020.

At the September 15, 2020 prehearing conference, the Parent moved that the decision deadline be set at 30 days after the close of record, and this motion was granted.

The hearing was held on January 25, 26 and 27. The record was kept open to allow the parties to file written closing arguments. The parties did so, and their arguments were considered. The record closed on March 23, 2021. Accordingly, the due date for the written decision is **April 22, 2021**.

EVIDENCE RELIED UPON

Joint Exhibits 1–12 and District Exhibits 1–5, 7–9 and 12 were admitted. The Joint Stipulations filed on March 23, 2021 were also considered.

The following witnesses testified under oath or affirmation: (a) Christopher Wermus, school counselor at Roosevelt Elementary in the District; (b) Dr. Bruce McHale, school psychologist at Lowell Elementary in the District; (c) Erik Wermus, District occupational therapist; (d) Jessica Raymond, counselor at Lowell; (e) Charlene Esget, special education teacher; (f) Deborah Hanson, fourth grade teacher at Lowell; (g) Mary Sepler, principal at Lowell; (h) Michael Haberman, Special Education Director for the District, and; (i) the Parent.

5. The Student entered the District during his second grade year, the 2017-18 school year. He attended Lowell Elementary (Lowell).¹²
6. When the Student transferred into the District, the Parent informed District personnel of his history as a [REDACTED].¹³
7. The counselor at Lowell, Jessica Raymond, completed a form indicating that the Student was a student of concern shortly after his enrollment in September 2017. There were meetings between school staff and the Parent regarding the Student in September, October and December 2017.¹⁴
8. On September 19, 2017, there was a meeting between the Lowell principal Mary Sepler, Ms. Raymond, the Student's second grade teacher Rachel Frye, and the Parent. The problem noted was "[the Student] has a difficult time appropriately engaging [in a] group setting during classroom instruction and will distract his peers."¹⁵ Part of the plan formulated by this group was to start a "check-in / check-out" system (discussed in greater detail below), and for the Parent to connect the Student with a therapist.¹⁶
9. On October 24, 2017, the team had a follow-up meeting. By this time, the Student had been in therapy for a month. One part of the team's plan at that point was to "[c]onnect with OT/PT at school to complete a sensory screen and an outside provider to complete [a] sensory profile. ([The Parent] will ask her pediatrician and [the Student's therapist] for recommendations)."¹⁷
10. On May 16, 2018, the team met again. By that time, an occupational therapy (OT)/physical therapy (PT) assessment from Kornerstone Kids had been done. The parent obtained this assessment. The report from Kornerstone Kids did not identify any behavioral concerns, but reported that the Student was working on building upper body strength and handwriting with his left hand.¹⁸ At the May 16, 2018 meeting, the District team put continued supports in place for the Student, including a check-in / check-out with Ms. Raymond, daily goal sheets, eating lunch

¹² Tr. at 587 (Parent).

¹³ Tr. at 595 (Parent).

¹⁴ D-1; Tr. at 387 (Raymond).

¹⁵ D-1 at 1.

¹⁶ D-1 at 1.

¹⁷ D-1 at 2.

¹⁸ D-2 at 2.

with a fifth grader, and engagement in a lunch bunch / friendship group to build connections.¹⁹

11. The Parent understood that part of the problem in second grade was that the Student was making distracting noises in class, and that he was rolling around and fidgeting. He also sometimes left the classroom and/or disengaged with others by reading a book.²⁰
12. The District did not propose a special education eligibility evaluation for the Student when he was in second grade.²¹

The Student's third-grade year

13. For the third grade, in the 2018-19 school year, the Student started at Lowell and then transferred to Roosevelt Elementary (Roosevelt).²² He transferred from Lowell to Roosevelt on October 16, 2018.²³
14. On September 19, 2018, the Student's teacher Ms. Frye, the Parent, Ms. Sepler, school counselor Jessica Keskey and student teacher Marissa had a meeting. This group decided to continue interventions with the Student to help him "during unstructured times throughout the day and challenges expressing big emotions."²⁴
15. On September 28, 2018, the team met again. At that point, they decided to pursue a referral to a multidisciplinary team (MDT) for a special education evaluation. The Student's aggression was "increasing," meaning that it was worse than the second grade year. The team thought that "[the Student]'s roughhousing/aggressive horseplay could be related to his past trauma."²⁵ Interventions were kept in place, but the team acknowledged that the interventions were only having limited success:

A meeting was called as [the Student]'s behaviors have been escalating and the scaffolding in place was not providing the needed support to help address the concerns. Various significant supports and interventions have been in place for the last year. The team and [the

¹⁹ D-2 at 2.

²⁰ Tr. at 585, 590 (Parent).

²¹ Tr. at 593 (Parent).

²² Tr. at 488 (Sepler).

²³ Tr. at 598 (Parent).

²⁴ D-3.

²⁵ D-4 at 1.

Parent] agreed to bring the concern to an MDT for evaluation of special education services.²⁶

16. There was an incident or incidents at Lowell in the fall of 2018 that caused the Parent alarm.²⁷ Her testimony was that school staff restrained and mentally abused the Student, laying him out supine because that calmed him down. She also testified that Lowell school staff put him into a “little box of a room” with “an itty bitty window for people to look in.”²⁸ I find that her testimony regarding these points is not enough on its own to support a finding of fact in this order. The Parent’s testimony is not supported by any other documentation in the record.²⁹ Her hearsay testimony is based on information from the Student. The Parent concedes that the Student is not able to accurately perceive things during times of stress.³⁰ Second-hand information from somebody who does not accurately perceive events is not evidence upon which a reasonable person would rely in their daily affairs. Further, the Parent testified that she has e-mails that support her version of events, but did not file those e-mails as exhibits.³¹ The Parent’s attorney had a chance to ask Ms. Sepler, Mr. Haberman, and other witnesses about these serious allegations, and elected not to. Again, the only finding I make in this regard was that there was an incident or incidents in the fall of 2018 that caused the Parent alarm. I do *not* find that Lowell staff restrained the Student, by putting him in a little box of a room or otherwise. The Parent’s testimony on these points is not adopted as a finding of fact.
17. At Roosevelt, the Student’s teachers reported that, although the Student was a good reader and was generally polite with adults, he would also “say unkind things to other students, push[]/shove[] kids often, react[] strongly when things don’t go his way or if he is corrected behaviorally (tears, shouting, hitting the table, etc.), [and] wander[]/sneak[] away from class.”³²
18. On March 6, 2019, the Student refused to go to class. When Christopher Wermus, Roosevelt school counselor, intervened with him, the Student hit him.³³ There were other

²⁶ D-4 at 3.

²⁷ Tr. at 599 (Parent).

²⁸ Tr. at 600 (Parent).

²⁹ See J-2 at 2 (Parent sharing same concerns with Dr. Holland. This information is third-level hearsay. The Student told the Parent about events, the Parent told Dr. Holland, and Dr. Holland wrote it in her report and did not testify. There is no indication that Dr. Holland independently investigated these allegations.)

³⁰ Tr. at 599, 609 (Parent) (“ Q. Does Student sometimes when he is in a trauma response is he able to accurately – always accurately perceive what’s occurring around him or have the same perception of events as others? A. No, no.”)

³¹ Tr. at 599 (Parent) (“and Mary Sepler in the e-mail to me told me that, you know, restraining him seems to calm him down”).

³² J-2 at 6-7.

³³ J-6 at 12 Tr. at 21 (C. Wermus).

behavioral incidents in March 2019 as well, including throwing rocks at a window, throwing objects in his general education classroom, and kicking and screaming.³⁴

19. For the last month and a half of his third grade year, the Student was assigned a one-to-one paraeducator by the District. His behavior improved as a result.³⁵
20. When the Student was in third grade, Roosevelt school counselor Christopher Wermus and the Student “checked in” with each other twice a day.³⁶
21. When the Student was in third grade, he had an alternate recess plan. This is because the Student had certain children in his grade that he was more likely to have conflicts with, and the alternate recess plan was an attempt to lessen those conflicts.³⁷
22. During the Student’s third grade year, starting in March 2019, the school maintained a One Note document recording some of the Student’s more intense behaviors. This document was shared by the Roosevelt principal Tom Gresham, the vice principal Valarie Swenson and school counselor Christopher Wermus.³⁸

October 2018: referral to discuss whether a special education evaluation was necessary

23. On October 1, 2018, the District sent a Notice of Guidance Team Referral to the Parent.³⁹ The District set a meeting for October 8, 2018 at 7:15 a.m., and the Parent agreed to this time. The purpose of the October 8, 2018 meeting was to review the Student’s performance.⁴⁰
24. A District document entitled “Guidance Team Record – Special Education Referral” explains that

[Student] is being referred to the evaluation due to concerns about receptive/expressive language, writing, behavior and social-emotional skills...[the Student] has become more aggressive during this year. The team is worried that [the Student]’s behavioral difficulties are significantly impacting his education.”⁴¹

³⁴ J-6 at 12.

³⁵ Tr. at 22 (C. Wermus).

³⁶ Tr. at 23 (C. Wermus). Mr. Gresham and Ms. Swenson did not testify.

³⁷ Tr. at 23 (C. Wermus);

³⁸ Tr. at 19-20 (C. Wermus).

³⁹ J-1 at 1-2.

⁴⁰ J-1 at 1-2.

⁴¹ J-1 at 3.

25. As of October 2018, the school personnel on the school's guidance team communicated that they believed a special education evaluation was appropriate. The team did not tell the Parent that the Student had to be diagnosed with a disorder to be eligible for an evaluation or for special education.⁴²
26. The guidance team met on October 8, 2018.⁴³ A special education teacher from Lowell, Charlene Esget, was present.⁴⁴ The team considered moving forward with a special education evaluation for the Student. However, the team rejected that option because "[Student] is currently undergoing outside evaluation. Mom requested evaluation discussions be postponed until after [Student] is finished with these evaluations to see if more information is needed."⁴⁵ The Parent clearly asked that the District not move forward with the special education referral until the information from the outside evaluation was received.⁴⁶
27. It was not known at the time of the October 8, 2018 meeting when the outside evaluation of the Student would be complete. The time that such evaluations take to schedule and complete can vary widely.⁴⁷
28. On October 8, 2018, the District issued a Prior Written Notice (PWN). The PWN stated that the District proposed to initiate a referral for the Student "to discuss whether a special education evaluation was necessary."⁴⁸ Although the PWN does not identify the purpose of the notice as declining to initiate an initial special education evaluation, the PWN states that the team considered but rejected moving forward with an evaluation because of the Parent's request that an evaluation be postponed.⁴⁹
29. The District did not provide a PWN to the Parent proposing and outlining the scope of its proposed evaluation. It did not receive a document signed by the Parent indicating her written refusal to consent to an evaluation.⁵⁰

⁴² Tr. at 312-13 (Esget).

⁴³ J-1 at 5.

⁴⁴ Tr. at 225 (Esget).

⁴⁵ J-1 at 5; Tr. at 316 (Esget) ("the Parent did not want to proceed with an evaluation"); tr. at 455 (Sepler) ("She asked that we wait on the referral until she was able to get – secure that information, and so the team wanted to support the Parent in that effort").

⁴⁶ Tr. at 489 (Sepler).

⁴⁷ Tr. at 490 (Sepler).

⁴⁸ J-1 at 5.

⁴⁹ *Id.*

⁵⁰ Tr. at 506 (Haberman).

30. The team put an Emergency Response Protocol in place while it waited for “[the Student]’s mom [to] contact the team with information about [the Student]’s outside evaluations.”⁵¹

Dr. Elizabeth Holland of the Sendan Center performed a psychological evaluation of Student during his third-grade year

31. On October 31, December 5 and December 12, 2018, licensed psychologist Elizabeth Holland of the Sendan Center performed a psychological evaluation of the Student, which resulted in a written report.⁵² Dr. Holland did not testify. It is not clear from the report when Dr. Holland completed the evaluation and signed her report.
32. The Parent paid out of pocket for Dr. Holland’s evaluation. Her insurance company did not pay for it.⁵³
33. As part of her evaluation, Dr. Holland spoke with the Student, the Parent, the Student’s teachers Sarah Fairchild and Meridith Hansen, and school counselor Christopher Wermus.⁵⁴
34. Dr. Holland observed the Student for four hours. She observed that he “employed an inefficient left-handed grip when handwriting (e.g. hooked and used a tripod grip), and his handwriting appeared laborious.”⁵⁵
35. Dr. Holland administered the Beery-Buktenica Developmental Test of Visual-Motor Integration – Sixth Edition (Beery VMI-6). The reason to administer this test was to assess his visual-motor integration, visual perception and motor coordination abilities. Dr. Holland found that the Student was Average in visual-motor integration and visual perception. However, on motor coordination, he scored in the Below Average range, one point above the Low range. He demonstrated particular difficulties in motor control with paper-pencil tasks.⁵⁶ Based on this assessment and her personal observation, Dr. Holland diagnosed the Student with “developmental coordination disorder (dysgraphia).”⁵⁷ Dr. Holland does not explain whether she believes dysgraphia is a subset of developmental coordination disorder or is a synonym for it.⁵⁸

⁵¹ J-1 at 5.

⁵² J-2.

⁵³ Tr. at 673 (Parent).

⁵⁴ J-2 at 1.

⁵⁵ J-2 at 4.

⁵⁶ J-2 at 17.

⁵⁷ J-2 at 18.

⁵⁸ *Id.*

36. According to Bellingham school psychologist Dr. McHale, the term “dysgraphia” is amorphous. It refers to bad handwriting.⁵⁹ Dysgraphia would be a subset or subsets of developmental coordination disorder, which (unlike dysgraphia) is defined in the Diagnostic and Statistical manual. Developmental coordination disorder is a broader category that often refers to coordination problems and gross motor issues and clumsiness, neither of which affect the Student.⁶⁰ Dr. McHale’s testimony regarding the definition of dysgraphia was not disputed by any other witness, and “dysgraphia” was not defined by Dr. Holland (nor did she testify). Dr. McHale’s testimony is adopted as a finding of fact. Based on the evidence in the record, dysgraphia is an amorphous term that generally means bad handwriting.⁶¹
37. Dr. Holland conducted a semi-structured diagnostic interview of the Parent as part of the Kiddie Schedule for Affective Disorders and Schizophrenia – Present and Lifetime Version. During this interview, the Parent told Dr. Holland about the Student’s history with displacement and trauma. The Parent reported that the Student suffered some anxiety, but that his anxiety had recently reduced. Dr. Holland tried to administer a PTSD Symptom Scale, but the Student did not endorse any historical event in his life as his most distressing event.⁶²
38. Dr. Holland used the Behavior Assessment System for Children, Third Edition (BASC-3) to provide a standardized measure of the Student’s behavioral and emotional problems. The Student’s Parent and two teachers completed rating scales, which Dr. Holland scored. Dr. Holland noted that there were

significant discrepant ratings from [the Student’s] perceived functioning at school compared to the home setting. Specifically, maternal ratings of [the Student] resulted in all scores/subscales falling in the non-clinical/average range. In contrast, both teacher ratings were highly consistent in documenting Clinical elevations on the Hyperactivity, Aggression, Conduct Problems, and Depression scales[;] Borderline/Clinical elevations on the Atypicality, Withdrawal, and Attention Problems subscales.⁶³

⁵⁹ Tr. at 126 (McHale).

⁶⁰ Tr. at 127 (McHale).

⁶¹ Tr. at 126 (McHale).

⁶² J-2 at 4-5.

⁶³ J-2 at 6.

39. Dr. Holland used the Attention-Deficit Hyperactivity / Disorder (ADHD) Rating Scale-Fifth Edition in her assessment of the Student. She gave rating scales to the Parent, his teachers Sarah Fairchild and Meredith Hansen, and Roosevelt counselor Christopher Wermus. The Parent reported “symptoms below clinical cut-offs” for purposes of attention deficit disorder. However, Ms. Fairchild endorsed inattentive, hyperactive and impulsive symptoms for the Student that were above clinical cut-offs.⁶⁴ Based on these inconsistent results, Dr. Holland gave a provisional diagnosis of ADHD for the Student.⁶⁵
40. Dr. Holland used the Children’s Depression Inventory, Second Edition. She found that the Student was not endorsing elevated depressive symptoms. His scores on this instrument fell in the average range.⁶⁶
41. Dr. Holland used the Multidimensional Anxiety Scale for Children, Second Edition. Although Dr. Holland concluded that the Student was *not* endorsing significantly elevated levels of anxiety, she also concluded that the test might not be reliable due to the Student’s inconsistent pattern in some responses.⁶⁷
42. Dr. Holland used the Autism Spectrum Rating Scale, Parent Rating Form for Ages 6-18. The “[r]esults of the ASRS indicated that [the Student was] not perceived by his mother as exhibiting many characteristics associated with Autism Spectrum Disorder.”⁶⁸
43. Dr. Holland used the Wechsler Intelligence Scale for Children – Fifth Edition (WISC-V). The WISC-V is an individually administered intelligence test that provides an overall assessment of intellectual functioning as represented by a Full Scale Intelligence Quotient (FSIQ) score. The Student’s FSIQ was measured at 113, corresponding to the 81st percentile, or high average range. The Student’s General Ability Index also fell in the high average range.⁶⁹
44. Dr. Holland used the Kaufman Test of Educational Achievement – Third Edition (KTEA-3). The purpose of administering the KTEA-3 was to assess the Student’s level of academic achievement. The results of the KTEA-3 showed that the Student’s overall academic performance was generally less developed than his intellectual functioning. [His] overall academic performance fell within the Average Range (Academic Skills Battery = 103, 58th percentile), and reflected age-expected skills in reading, decoding (Letter & Word Recognition, 73rd percentile), reading comprehension (68th percentile),

⁶⁴ J-2 at 8.

⁶⁵ J-2 at 18-19.

⁶⁶ J-2 at 8-9.

⁶⁷ J-2 at 9-10.

⁶⁸ J-2 at 11.

⁶⁹ J-2 at 12-13.

math problem solving (Math Concepts & Applications, 70th percentile), math computation (45th percentile), written expression (34th percentile), spelling (61st percentile), silent reading fluency (47th percentile), writing fluency (37^h percentile) and math fluency (39th percentile). The Student demonstrated an exceptional strength in his listening comprehension skills (95th percentile).⁷⁰

45. As a result of her assessment:

- a. Dr. Holland recommended [REDACTED], to decrease the Student's worry and stress;
- b. Dr. Holland recommended a behavior management program. Dr. Holland recommended that the Student's Parent work with a clinician to develop and implement an appropriate behavior management program for both home and school. Dr. Holland recommended that the Parent and the school work together to consistently implement this program;
- c. Dr. Holland recommended *against* using punitive interventions, especially those which would surround the Student with peers who themselves have maladaptive behaviors;
- d. Dr. Holland recommended that the Students' school consider:
 - i. a structured behavior management system, like a token economy;
 - ii. a "check-in / check-out" system with a positive, supportive mentor who is not responsible for the Student's discipline
 - iii. putting tier 1 and tier 2 behavioral interventions in place to prevent problem behaviors;
 - iv. explicit instructions in alternative, acceptable behaviors;
 - v. conducting a functional behavior assessment (FBA) *if* the Student did not respond to tier 2 behavioral interventions; and
 - vi. implementing a "class pass" system in which the Student would have an opportunity to briefly leave the classroom to a calm, safe place after a warning from his teacher, and would be encouraged with rewards to not overuse these class passes.
- e. Dr. Holland recommended that the Parent and the school be consistent with the Student, provide positive feedback, and teach him to recognize when he is frustrated or angry.

⁷⁰ J-2 at 15.

- f. Dr. Holland recommended a home-based reward program for the Student to provide positive reinforcement.
 - g. Dr. Holland recommended that the Parent consult with an occupational therapist to help the Student with fine motor coordination. She further recommended that the Student learn how to type (she recommended keyboarding programs).
 - h. Dr. Holland recommended the use of a voice-dictated word processor or computer for written content to help the Student with spelling, grammar, and writing efficiency; and
 - i. Dr. Holland recommended that the Student get at least 10 hours of sleep a night.⁷¹
46. Dr. Holland made clear that her recommendation for ██████ was essential for the Student to access his education.⁷² Dr. Holland believed that the Student's undergoing ██████ would have a positive effect on his behavior in school, and that ██████ was an integral part of her recommendations to the Parent. In Dr. Holland's words:

It is recommended that ██████ and implementation of a behavioral management program at home and school are the first lines of treatment to decrease problem behaviors.⁷³

At some point the District obtained a copy of Dr. Holland's assessment

47. It is not clear from the record when the District first received Dr. Holland's evaluation. Michael Haberman, District Special Education Director, does not know when it was received.⁷⁴ The Parent testified that she had provided it to Roosevelt during the Student's third grade year, but could provide no further details as to timing. The Parent could not remember when she herself received it.⁷⁵ Lowell principal Mary Sepler first became aware of it in August 2019, at the beginning of the Student's fourth-grade year.⁷⁶

⁷¹ J-2 at 19-23.

⁷² *See id.*

⁷³ J-2 at 20 (emphasis in original).

⁷⁴ Tr. at 506 (Haberman).

⁷⁵ Tr. at 623, 665 (Parent).

⁷⁶ Tr. at 476. Ms. Sepler has been principal for a total of 10 years, 6 of them at Lowell Elementary. Ms. Sepler is certificated as a teacher in special education, K-12, and regular education, K-8. She earned an undergraduate degree in music therapy and a master's degree in early childhood special education. She has not taught special education since 1994. Tr. at 435-36, 450.

August 20, 2019 to January 13, 2020: The Student's fourth-grade year, prior to his IEP

48. The Parent decided to move the Student back to Lowell for his fourth grade year.⁷⁷
49. On August 20, 2019, there was a meeting between Lowell personnel and the Parent to discuss the Student's re-entry into Lowell.⁷⁸ Present were the Student's fourth-grade teacher Deborah Hanson, Lowell counselor Jessica Raymond, Ms. Sepler, and the Parent. This planning team planned for a number of supports for the Student, including: (a) a daily point sheet, which would be scanned and sent home; (b) giving the Student an opportunity to ask for breaks; (c) giving him a de-escalation space in Ms. Raymond's room; (d) regarding counseling, which had temporarily stopped, the Parent was to seek more counseling for the Student at [REDACTED]⁷⁹; (e) a one-to-one paraeducator for the first two weeks of school; (f) an alternative music and physical education schedule; he would not attend these with his class, and; (g) an alternate recess / lunch schedule.⁸⁰
50. Curiously, there is no mention of Dr. Holland's assessment in the meeting intervention tracking notes for the August 20, 2019 meeting.⁸¹ It appears that the District did not ask about it, or seek to incorporate its results into the plan for the Student. Nor is there any evidence that the Parent brought it up.⁸²
51. The Student's general education teacher in fourth grade was Deborah Hanson. He was in a class with about 24 students. Ms. Hanson has been a teacher for 34 years, the majority of that time for the District. She is certificated in K-8 general education, K-12 special education and pre-K special education. She last taught special education in 1995.⁸³
52. For only the first two weeks of fourth grade, the Student had a one-to-one paraeducator to support his transition back to Lowell.⁸⁴ This arrangement is rare. In Ms. Hanson's 34 years of experience as a teacher, she has never had a student with a one-to-one paraeducator in the classroom who was *not* already determined to be eligible for special

⁷⁷ Tr. at 622-23 (Parent)

⁷⁸ Tr. at 622 (Parent)

⁷⁹ D-5 at 1-2; tr. at 596-98 (Parent).

⁸⁰ D-5 at 1-2.

⁸¹ D-5 at 1-2.

⁸² *See id.*

⁸³ Tr. at 401-03, 429 (Hanson).

⁸⁴ Tr. at 410 (Hanson); tr. at 490-91 (Sepler).

education.⁸⁵ His disruptive behaviors were reduced when the one-to-one assistant was with him, but they were not eliminated.⁸⁶

53. During the fourth-grade year before the IEP, the Student and Ms. Raymond worked closely together.⁸⁷ Ms. Raymond has earned a master's degree in social work and has a clinical associate license in social work. She has worked as a school counselor in the District since 2014.⁸⁸
54. During the fourth-grade year before the IEP, Ms. Raymond checked in with the Student twice a day, and she role-played with him when struggles arose. Role play helps students understand others' points of view, and it was a useful tool for the Student. The Student had goal sheets that he reviewed with Ms. Raymond at the end of the day. The Parent and Ms. Raymond coordinated to provide small rewards when he met goals. Ms. Raymond also put him in a couple of small groups with other students that she had created.⁸⁹
55. Ms. Hanson noticed that the Student was more successful in technology tasks and other work that he enjoyed. He had more difficulty attending to tasks he found not as enjoyable.⁹⁰
56. In fourth grade before the IEP, sometimes the Student became physically aggressive towards other children and took things that did not belong to him.⁹¹ Ms. Hanson sometimes became worried for the Student's health and safety and that of other students. According to Ms. Hanson, "he would be pretty explosive when he got angry and throw things."⁹²
57. The Student had 24 behavior referrals between the start of the school year and mid-November 2019, 18 of which were "major." Both of those figures were considered high, and Ms. Sepler, was aware and was concerned. These incidents were described and recorded in an online database called "SWIS," but the SWIS documents are not in the record.⁹³

⁸⁵ Tr. at 410-11 (Hanson).

⁸⁶ Tr. at 248 (Esget); tr. at 444 (Sepler).

⁸⁷ Tr. at 181 (Raymond).

⁸⁸ Tr. at 386 (Raymond).

⁸⁹ Tr. at 181, 184-85, 194 (Raymond).

⁹⁰ Tr. at 403 (Hanson).

⁹¹ Tr. at 403-04 (Hanson).

⁹² Tr. at 410 (Hanson).

⁹³ Tr. at 52-53 (McHale); tr. at 439-40 (Sepler). The acronym SWIS is not defined.

58. During this period between the start of the school year and the implementation of the IEP, the Student had five or six in-school suspensions (times when he was in an alternate location lasting more than 20 or 30 minutes). Twice the Parent was asked to come get the Student due to safety concerns.⁹⁴
59. Before the IEP was enacted, Ms. Hanson asked the Parent whether the Student was physically aggressive at home, and she responded that he was not.⁹⁵ The Parent confirmed at the hearing that he had never been physically aggressive with her or anybody else in her presence.⁹⁶
60. The Student sometimes became agitated when asked to do something that he did not want to do at school. He would also become frustrated by having to move from something that he was engaged in; transitions bothered him. Ms. Hanson noticed that when the Student became agitated, he would start to flip things, throw things a short distance – that was a sign to Ms. Hanson that his behavior might escalate.⁹⁷
61. In Ms. Hanson's class, the Student did not seem to be triggered to aggression or other poor behavior choices by noise or loud sounds.⁹⁸
62. Sometimes during the day when the Student's behavior would escalate so that it would become disruptive, he would choose to go to Ms. Raymond's room because it was a safe, comfortable place for him to be. She typically would talk about what had just happened with him. There were other times when he voluntarily left the room to work on his schoolwork in her office because it was too challenging for him to be in class.⁹⁹
63. Sometimes when the Student harmed something or harmed somebody, Ms. Raymond used restorative practices to encourage responsibility. For example, if the Student tore up his paper, Ms. Raymond would encourage him to clean up the pieces on the floor. When the Student had a conflict with another student, Ms. Raymond would encourage him to make amends with the other student in a problem-solving session.¹⁰⁰
64. The Student frequently struggled to maintain his behavior during music class, as demonstrated by increased office referrals during music time, and the Student's own

⁹⁴ Tr. at 457 (Sepler).

⁹⁵ Tr. at 431 (Hanson).

⁹⁶ Tr. at 645 (Parent).

⁹⁷ Tr. at 404, 429 (Hanson).

⁹⁸ Tr. at 430 (Hanson).

⁹⁹ Tr. at 186, 188 (Raymond).

¹⁰⁰ Tr. at 199-200 (Raymond); *see also* tr. at 458 (Ms. Sepler also supported the kind of restorative practice that encouraged face-to face problem solving with a peer).

report.¹⁰¹ He used the noise-cancelling headphones that Lowell provided him sometimes during music class.¹⁰²

65. The Student sometimes listened to classical music during times of transition. This was the Parent's suggestion, and Ms. Raymond agreed. She believed it was a good way for him to self-regulate during periods of transition to a new task.¹⁰³
66. Ms. Raymond provided additional physical items for the. In addition to the noise-cancelling headphones, she provided fidget materials, paper and markers, and a rocking chair. The Student used these tools to help him calm himself.¹⁰⁴
67. The Student also had other supports, including preferred seating near the teacher.¹⁰⁵
68. The Student's team at Lowell (including Ms. Raymond, Ms. Hanson, the Parent, and Ms. Sepler) had a meeting on October 9, 2019. The District, through Ms. Raymond, offered counseling to the Student through SeaMar, a partner organization with the District. There was a SeaMar counselor on site at Lowell, at least part time.¹⁰⁶
69. The Student was engaging in [REDACTED] [REDACTED].¹⁰⁸
70. Other than the fact that the District was not paying for it, there is no evidence in the record regarding how the Student's [REDACTED] was paid for. There is no evidence that it was paid for by insurance. There is no evidence about what it cost the Parent, if anything. There is no evidence regarding how many visits at [REDACTED] [REDACTED] he had available, and if that number was limited.
71. Ms. Raymond consulted with the Student's [REDACTED] therapist over the phone.¹⁰⁹ Ms. Hanson and Ms. Sepler met with the therapist in person to find out strategies that worked for the Student.¹¹⁰

¹⁰¹ Tr. at 189 (Raymond).

¹⁰² Tr. at 186 (Raymond).

¹⁰³ Tr. at 200(Raymond).

¹⁰⁴ Tr. at 187-88 (Raymond).

¹⁰⁵ Tr. at 209 (Raymond).

¹⁰⁶ TD-5 at 3 ("[The Student] will begin 1:1 counseling with Bryer twice a month at school"); tr. at 618-19(Parent).

¹⁰⁷ Tr. at 321 (Esget).

¹⁰⁸ Tr. at 596-98 (Parent).

¹⁰⁹ Tr. at 200-01 (Raymond).

¹¹⁰ Tr. at 413 (Hanson).

72. The Student had an alternate recess / lunch period. He did not go with the other fourth graders. He went with the third and fifth graders. But he did have a chance to socialize with fourth graders at school outside of academic time during the daily morning meeting.¹¹¹
73. The Student socialized with his peers outside of school time. For example, he was very enthusiastic about playing ice hockey, a team sport. He attended the Boys and Girls Club after school.¹¹²
74. During the first semester of the 2019-20 school year, the Student's report card shows that he was meeting standard in reading, science, social studies, physical education, and most areas of math. He was approaching standard in writing, and the "operations and algebraic thinking" part of math.¹¹³

October 2019: The Parent consented to the District's evaluation of the Student

75. On October 14, 2019, the District sent a Notice of Guidance Team Referral to the Parent. The District set a meeting for October 25, 2019 at 7:00 a.m., and the Parent agreed to this time. The purpose of the October 25, 2019 meeting was to review the Student's performance.¹¹⁴
76. A District document entitled "Guidance Team Record – Special Education Referral" explains that "[the Student was] being referred to the evaluation due to concerns about receptive/expressive language, writing, behavior and social-emotional skills...[the Student] has become more aggressive during this year. The team is worried that [the Student's] behavioral difficulties are significantly impacting his education."¹¹⁵
77. The guidance team did not actually have a concern about the Student's receptive and expressive language in October 2018, October 2019, or at any other time. It was an area of strength for the Student. Dr. McHale, Ms. Raymond, Ms. Hanson and Ms. Sepler all had no concerns about the Student's receptive or expressive language skills at all relevant times.¹¹⁶ Nor is such a concern reflected in the material that Dr. McHale reviewed for the evaluation.¹¹⁷ Even the Parent, when discussing the Student at the outset of her testimony, said, "he has fantastic conversations with adults in the room, so

¹¹¹ Tr. at 244-46 (Esget); tr. at 479, 488 (Sepler).

¹¹² Tr. at 75-76 (McHale); tr. at 390 (Raymond).

¹¹³ D-12

¹¹⁴ J-5 at 1-2.

¹¹⁵ J-1 at 3.

¹¹⁶ Tr. at 70-71 (McHale); tr. at 211 (Raymond); tr. at 405 (Hanson); tr. at 456 (Sepler).

¹¹⁷ Tr. at 112 (McHale).

he just – he engages really well.”¹¹⁸ This appears to be a circumstance of an unfortunate typo that was then duplicated multiple times across several documents.¹¹⁹

78. On October 25, 2019, the team met. The Parent was there, as was Ms. Raymond, and Steve Clark, the deputy superintendent. The dean of students was also there. The Parent had also invited the director of the Boys and Girls Club where the Student went to to be a support person for her, and that director came to the meeting.¹²⁰
79. During the October 25, 2019, meeting, the team talked about how an evaluation would be completed, how information would be gathered, what a functional behavior assessment (FBA) is and what a behavior intervention plan (BIP) is. There was an opportunity for the Parent to ask questions and provide feedback.¹²¹
80. On October 25, 2019, the Parent signed a Consent for Initial Evaluation form, after the team had gone through and decided which boxes to check on the form. On the one-page form, the team documented its recommendation for an evaluation in the areas of general education, behavior, academic, social-emotional, and cognitive.¹²²
81. The team did *not* recommend that the Student be assessed in the area of “fine motor,” despite Dr. Holland’s diagnosis of dysgraphia for the Student.¹²³ The Parent also had the opportunity to suggest that fine motor be assessed. There was a place on the consent form for the Parent to identify other requests for assessment. But she did not request that the Student be assessed in the area of “fine motor.”¹²⁴
82. The District did not recommend that the Student be assessed in the area of gross motor. The District had no information that there were any concerns for the Student in this area. The Parent also did not identify gross motor as a concern.¹²⁵
83. Although the special education referral document mentioned concerns about the Student’s receptive and expressive language, the consent form did not recommend or seek the Parent’s consent for assessment in this area and the Parent did not request that it be added.¹²⁶

¹¹⁸ Tr. at 580 (Parent)

¹¹⁹ See Tr. at 70-71, 112 (McHale); tr. at 211 (Raymond); tr. at 405 (Hanson); tr. at 456 (Sepler); tr. at 580 (Parent).

¹²⁰ D-5 at 3; tr. at 390-91 (Raymond).

¹²¹ Tr. at 392 (Raymond)

¹²² J-3 at 1; D-5 at 3; tr. at 392 (Raymond).

¹²³ *Id.*; J-2 at 7, 18.

¹²⁴ J-3.

¹²⁵ J-3 at 1; tr. at 149 (McHale).

¹²⁶ J-3.

84. The District did not recommend that the Student be assessed in the area of “adaptive.” The Parent also did not request that the Student be assessed in the area of “adaptive.”¹²⁷
85. The Consent for Initial Evaluation form does not contain a checkbox for an area called “sensory processing.” Neither the District nor the Parent suggested that this was an area in which the Student needed to be evaluated.¹²⁸
86. The District agreed with the Parent’s request for an FBA, and the Parent indicated her consent to an FBA on October 28, 2019.¹²⁹
87. On October 30, 2019, the District issued a PWN. The District notified the Parent that it was proposing to initiate an Initial Evaluation of the Student.¹³⁰ It is dated after the Parent gave her consent to the evaluation, including the FBA. It is not the District’s usual practice to provide the PWN after the Parent has already consented. Usually the practice is to send the PWN to the parent first.¹³¹
88. There are initials and a date, next to the checkbox for “observation” on the Consent for Initial Evaluation form. That was added by Dr. McHale. The Parent initialed the change.¹³²

The District’s evaluation of the Student

89. Dr. Bruce McHale was responsible for the special education evaluation of the Student.¹³³ He has been a school psychologist for about 22 years. He worked for two school districts in Arizona. For the last five years, he has been working for the District.¹³⁴ Dr. McHale earned a doctorate in educational psychology from the University of Arizona.¹³⁵

¹²⁷ J-3.

¹²⁸ J-3.

¹²⁹ J-4.

¹³⁰ J-5 at 5.

¹³¹ Tr. at 128-30 (McHale).

¹³² Tr. at 95 (McHale).

¹³³ Tr. at 29-30 (McHale).

¹³⁴ Tr. at 28-29 (McHale).

¹³⁵ Tr. at 93 (McHale).

90. The school psychologist at Lowell, where the Student was then attending, was Lindsey Pollino. The Parent requested that Ms. Pollino not perform the evaluation. The District agreed, and Dr. McHale agreed to do the assessment.¹³⁶
91. The Lowell counselor that worked closely with the Student, Ms. Raymond, met with Dr. McHale to talk about the Student as part of the evaluation.¹³⁷
92. Dr. McHale was concerned at the outset with the Student's documented behavioral incidents. As part of the evaluation, he spoke with Ms. Sepler and Ms. Esget. They reported that the Student had high rates of aggression, that he lied frequently, that he was oppositional, and that he threatened other students.¹³⁸
93. The first time that Dr. McHale spoke with the Parent, he gave her a copy of the Notice of Procedural Safeguards for Special Education Students.¹³⁹ It is unclear from the record when they first spoke.
94. The Parent filled out a special education parent inventory, a questionnaire created by the District.¹⁴⁰ That parent inventory contains questions about a student's health, and the Parent answered those questions.¹⁴¹ She did not express any concerns about his vision or hearing.¹⁴²
95. During his evaluation, Dr. McHale did not observe the Student in the classroom. He was not working at Lowell, and he thought that people from the school would be the best ones to observe the student personally.¹⁴³
96. The evaluation report lists the strategies that had been used for the Student since September 2017. The strategies listed were:

Check-in / check-out with a school counselor (2x per day)
Check in with the office after recess and lunch
Eating lunch with 5th grade buddy
Writing support 1:1 daily for 25 minutes
Alternate recess plan

¹³⁶ Tr. at 30-31 (McHale).

¹³⁷ Tr. at 203-04 (Raymond).

¹³⁸ Tr. at 53-54 (McHale).

¹³⁹ Tr. at 653 (Parent).

¹⁴⁰ J-6 at 15; tr. at 82. (McHale).

¹⁴¹ Tr. at 110 (McHale).

¹⁴² Tr. at 152 (McHale).

¹⁴³ Tr. at 77-78 (McHale).

Counselor support during music, sensory supports in the room
Lunch bunch / friendship group
Restorative practices (i.e., picking up trash before / after school)
Daily use of a goal sheet that is sent home
Reteaching learning behaviors / expectations when “unexpected”
behaviors arise
Establishing a reset routine when the Student enters the classroom (ex.
“Listen to this piece of music and pick out the instruments”) during
transitions
Visual aid for learning / checklist on desk
[The Student] saw a therapist from Oct 2017 to May 2018.¹⁴⁴

97. During his evaluation, Dr. McHale did not contact any of the following persons to talk about the Student: (a) Christopher Wermus; (b) Ms. Hanson; (c) Dr. Holland; (d) the Student’s Boys and Girls club teacher/staff; (e) anybody connected with the Student’s ice hockey playing.¹⁴⁵
98. During his evaluation, Dr. McHale did not obtain a copy of the FBA that the Orleans Parish School District completed for the Student.¹⁴⁶ However, he did review the Student’s school records from Orleans Parish.¹⁴⁷ There is no indication in the record that the Student was receiving special education before fourth grade.
99. There is no health information for the Student in the evaluation report, even though this is typically part of an evaluation report. Dr. McHale solicited information about the Student’s medical information from the Parent. The Parent told him that the Student had had cognitive behavioral therapy, also known as counseling, at [REDACTED]. During his evaluation, Dr. McHale did not speak to therapists or counselors who were working with the Student or had worked with him. He did not seek releases to do so.¹⁴⁸ There is no vision or hearing screening in the evaluation report.¹⁴⁹
100. In the area of **general education**, Dr. McHale received a report from the Student’s general education teacher, who told him that the Student was a great reader, that his ability to do mental math was an area of strength, and that, of the subjects taught in the

¹⁴⁴ J-t at 3.

¹⁴⁵ Tr. at 38, 41, 52, 76 (McHale).

¹⁴⁶ Tr. at 50-51 (McHale).

¹⁴⁷ J-6 at 12.

¹⁴⁸ Tr. at 67-68, 81-82 (McHale).

¹⁴⁹ Tr. at 133 (McHale).

general education classroom, the one that gave the Student the most trouble was writing.¹⁵⁰

101. In the area of **cognitive**, Dr. McHale reviewed Dr. Holland's report, which contained results of the WISC-V.¹⁵¹ Even though Dr. Holland's report was recent, Dr. McHale decided to administer the Woodcock-Johnson Test of Cognitive Abilities, fourth edition (WJ-Cognitive-4) to the Student.¹⁵² One cannot give the WISC-V twice in one year without affecting reliability.¹⁵³
102. The WJ-Cognitive-4 is a valid and reliable instrument to assess cognitive functioning in a student of the Student's age. Dr. McHale administers it several times a year, and he administers it in accordance with the instructions. It is not necessary for a school psychologist with Dr. McHale's experience to review the instructions each time.¹⁵⁴
103. On the day of the WJ-Cognitive-4, Dr. McHale went to Lowell, talked with the Student briefly, and then gave him the assessment. The Student worked hard on the assessment.¹⁵⁵
104. The results of the WJ-Cognitive-4 for the Student were: a score of 103 to 105 in the general ability index (average range), and a general fluid and general crystallized score of 113 (high average range).¹⁵⁶ These scores were compatible with the findings of Dr. Holland.¹⁵⁷
105. In the area of **academic**, Dr. McHale reviewed Dr. Holland's assessment, which had used the Kaufman Test of Achievement, which is normed on a similar population as the WISC-V. Dr. McHale decided to use the Woodcock Johnson Test of Academic Achievement (WJ-Academic) because it was normed on the same population as the WJ-Cognitive-4.¹⁵⁸
106. As part of the WJ-Academic, the Student had to generate pieces of writing based on pictures that are presented. One of the reasons to use the WJ-Academic is that it

¹⁵⁰ J-6 at 7.

¹⁵¹ Tr. at 44-45 (McHale).

¹⁵² Tr. at 38-39, 44 (McHale).

¹⁵³ Tr. at 45 (McHale).

¹⁵⁴ Tr. at 96 (McHale).

¹⁵⁵ Tr. at 40 (McHale).

¹⁵⁶ J-6 at 7, 8.

¹⁵⁷ J-6 at 8; Tr. at 42 (McHale)

¹⁵⁸ Tr. at 45-46 (McHale).

provides information on the Student's ability to spell and handwrite, legibly, under timed conditions.¹⁵⁹

107. The WJ-Academic shows the Student's achievement scores to be in the average range. This was true for his scores related to writing also. He scored in the 68th percentile in Broad Written Language skills. He scored in the 63rd percentile in Written Expression, which "is a combined measure of meaningful writing and writing speed."¹⁶⁰ These were similar to the results of Dr. Holland's assessment, which also generated a written language composite score that was solidly within the average range.¹⁶¹
108. There was nothing in Dr. Holland's evaluation or in the results of the WJ-Academic or other assessments that showed that the Student had a specific learning disability in reading, writing or mathematics.¹⁶² This was consistent with Dr. Holland's assessment.¹⁶³
109. Because the area of **fine motor** was not identified as an area to be assessed by either the Parent or the District, it did not have its own section in the the District's evaluation report. However, Dr. McHale was concerned with the results of the Beery VMI-6 in Dr. Holland's report. Therefore, he got the permission of the Parent to engage a District OT, Erik Wermus, to complete a screening test of the Student for dysgraphia.¹⁶⁴
110. Erik Wermus has 20 years of experience as an OT in a school setting. He earned a bachelor's of science degree and a master's of science degree in OT from D'Youville College in New York. He serves students at multiple District schools. He is qualified to administer the tests he administered.¹⁶⁵
111. Erik Wermus completed the test of the Student in December 2019. It was for the purpose of gathering information to see if further evaluation would be warranted. He used the Beery VMI-6 and the Beery motor coordination assessment, and he reviewed the instructions for these tests beforehand. These are standardized assessments, and the Beery VMI-6 is the same assessment that Dr. Holland used. There is no evidence that they are invalid for a student of the Student's background. These tests do not assess sensory processing or sensory regulation.¹⁶⁶

¹⁵⁹ Tr. at 101 (McHale).

¹⁶⁰ J-6 at 10-11; Tr. at 47 (McHale).

¹⁶¹ Tr. at 100.

¹⁶² Tr. at 102-03 (McHale).

¹⁶³ J-6 at 11.

¹⁶⁴ Tr. at 103-04 (McHale).

¹⁶⁵ Tr. at 157-59, 171-72 (E. Wermus).

¹⁶⁶ Tr. at 137 (McHale); tr. at 162-64, 172, 175 (E. Wermus).

112. It appears that Erik Wermus's "screening" of the Student was as thorough as Dr. Holland's assessment that resulted in the diagnosis of dysgraphia. Both administered the exact same test – the Beery VMI-6. Dr. Holland did not call it a "screening tool."¹⁶⁷
113. At the time that he conducted the screening, Erik Wermus had reviewed Dr. Holland's report.¹⁶⁸ He also had reviewed some writing samples from the Student's classroom. Those writing samples were messier than the ones the Student provided in the context of the Beery tools.¹⁶⁹
114. The Student expressed to Erik Wermus that he did not like his handwriting, but he produced very legible handwriting during the assessment. The Student was able to write in cursive, which is unusual for a student of the Student's age.¹⁷⁰
115. Erik Wermus provided the score sheets for the Beery VMI-6 and the Beery motor coordination assessment to Dr. McHale, but they are not attached to the District evaluation report.¹⁷¹
116. On each of the Beery VMI-6 and the Beery motor coordination tests, the Student scored in the average range.¹⁷² Erik Wermus did not suspect that fine motor issues were interfering with the Student's ability to participate in and benefit from his education.¹⁷³
117. When Dr. Holland gave the Beery VMI-6 to the Student, he scored in the low average range for motor coordination. When Erik Wermus gave the Beery VMI-6 to the Student about a year later, he scored in the average range.¹⁷⁴ It is not unusual for a student to improve over the course of a year. It does not stand out. Sometimes students get better on their own, such as when they take a special interest in their writing or start drawing more.¹⁷⁵ This makes sense for the Student because he enjoys drawing and writing poetry.¹⁷⁶ Giving a second Beery VMI-6 a year later does not affect the results for a student of the Student's age.¹⁷⁷

¹⁶⁷ J-2 at 17; tr. at 175.

¹⁶⁸ Tr. at 167 (E. Wermus).

¹⁶⁹ Tr. at 168 (E. Wermus).

¹⁷⁰ Tr. at 69 (E. Wermus).

¹⁷¹ Tr. at 165 (E. Wermus).

¹⁷² Tr. at 173 (E. Wermus).

¹⁷³ Tr. at 173 (E. Wermus).

¹⁷⁴ Tr. at 175 (E. Wermus).

¹⁷⁵ Tr. at 176-77 (E. Wermus).

¹⁷⁶ Tr. at 605 (Parent).

¹⁷⁷ Tr. at 178 (E. Wermus).

118. When Dr. McHale reviewed the results of the screening test, and considering that the Student's academic progress did not seem to be impacted by his handwriting, he decided not to seek additional consent to do more detailed fine motor assessments.¹⁷⁸ He did not directly speak with any of the Student's teachers regarding the Student's writing skills or fine motor skills.¹⁷⁹
119. The area of **behavior** in an evaluation is generally concerned with overt observable behavior.¹⁸⁰ The area of **social emotional** in an evaluation is generally concerned with the thoughts and feelings of the child being assessed (as opposed to externalized, observable behavior).¹⁸¹ Dr. McHale used the BASC-3 to assess the Student in both of these areas. The BASC-3 is valid and reliable to assess the behavioral functioning and social emotional functioning of a student of the Student's age.¹⁸²
120. For the areas of behavior and social emotional, Dr. McHale reviewed Dr. Holland's report.¹⁸³ He did not probe beneath the surface of the report to make sure she had done the assessments appropriately. He presumed professionalism on the part of the licensed psychologist Dr. Holland.¹⁸⁴
121. Dr. McHale asked the Student's teacher, Ms. Hanson, to fill out a teacher rating scale. He asked the Parent to fill out a parent rating scale. The Parent initially left a section blank. When Dr. McHale pointed that out, she promptly completed the rest of the rating scale.¹⁸⁵ The instructions on the forms were sufficient for Ms. Hanson without further instruction from Dr. McHale.¹⁸⁶ She has filled out the BASC-3 rating scale many times, so she is familiar with it.¹⁸⁷
122. Dr. McHale did not ask the Student to fill out a student rating scale. This was intentional, because the 163-item student rating scale is only useful if a student is self-aware and candid. The information that Dr. McHale had from the Student's teachers and Parent (regarding the Student's truthfulness in the school setting) indicated that the student rating scale would not prove useful.¹⁸⁸ In addition, Dr. McHale felt that he was able to

¹⁷⁸ Tr. at 104 (McHale).

¹⁷⁹ Tr. at 49 (McHale).

¹⁸⁰ Tr. at 35 (McHale).

¹⁸¹ Tr. at 35 (McHale).

¹⁸² Tr. at 106 (McHale).

¹⁸³ J-6 at 11-13; tr. at 36-37, 106 (McHale).

¹⁸⁴ Tr. at 87-88 (McHale).

¹⁸⁵ Tr. at 55-57 (McHale); tr. at 654 (Parent).

¹⁸⁶ Tr. at 106 (McHale); tr. at 407 (Hanson).

¹⁸⁷ Tr. at 426 (Hanson).

¹⁸⁸ Tr. at 57-59 (McHale).

gather information about the Student from interacting with him during the assessment. He had spent about three hours with the Student prior to his decision not to administer the student rating scale to him.¹⁸⁹ Another option would have been to give the Student the BASC-3 and then use the BASC-3's own internal reliability checking mechanism to either use it or throw it out.¹⁹⁰

123. The BASC-3 has a composite score for internalizing problems. That score did not show that the Student was at risk for internalizing problems. The scores also did not show that he was at risk for, or clinically significant for, depression.¹⁹¹
124. The BASC-3 scores show that the Student's behavioral and social-emotional profile is very different at home and at school. After the BASC-3 had been scored, the teacher's rating scales showed that the Student had "clinically significant" or "at risk" scores in 19 areas ("clinically significant" marked with a double asterisk): (a) externalizing problems**; (b) behavioral symptoms index**; (c) school problems; (d) hyperactivity**; (e) aggression**; (f) conduct problems; (g) attention problems; (h) atypicality; (i) withdrawal; (j) adaptability**; (k) social skills; (l) study skills; (m) anger control**; (n) bullying**; (o) developmental social disorders; (p) emotional self-control**; (q) executive functioning**; (r) negative emotionality**, and; (s) resiliency**. In contrast, the Parent's rating scale showed that not only was the Student not clinically significant in any of these areas – the Student was not even "at risk" in any of these 19 areas.¹⁹²
125. The rating scales completed by the Parent and the teacher in the BASC-3 show great variance. However, that does *not* mean the results are invalid. The results are valid, and there is consistency in the location where the Student was exhibiting behaviors. The BASC-3 is a valid instrument that shows that the Student does not have significant social-emotional or behavioral problems when he is not in the school setting.¹⁹³
126. The BASC-3 contains a functional communication score for the Student. It shows that the Student is average in functional communication. This is consistent with the team's decision that communication was not a concern that needed to be specifically evaluated.¹⁹⁴

¹⁸⁹ Tr. at 62, 67 (McHale).

¹⁹⁰ Tr. at 87 (McHale).

¹⁹¹ J-6 at 14; tr. at 108 (McHale).

¹⁹² J-6 at 14.

¹⁹³ J-6 at 14; tr. at 124-26 (McHale)

¹⁹⁴ Tr. at 73-74 (McHale).

127. There is nothing in the record that shows that the results of the BASC-3 would not be valid for a student with the Student's background. There is nothing in the record that shows that any other assessments performed would result in invalid results due to the Student's background.
128. The evaluation report references some attachments, but they are not attached to the report admitted as Exhibit J-6. Dr. McHale attributes this lack of attachments to the storage software that the District uses, but he testified that these attachments were available at the team meeting.¹⁹⁵ I adopt his testimony as a finding – these attachments were available to the team when they met in December 2019.¹⁹⁶
129. One of the attachments to the evaluation report was Dr. Holland's evaluation.¹⁹⁷ This means that the evaluation team, including Dr. McHale, was aware that Dr. Holland had concluded that [REDACTED] was essential for the Student to improve his behavior in school.¹⁹⁸
130. Ms. Esget performed a **functional behavior assessment (FBA)**.¹⁹⁹ An FBA assesses external behavior. Ms. Esget recalls being asked by the team to focus on the Student's physical aggression and compliance.²⁰⁰
131. Ms. Esget engaged three other observers and, adding herself, that made four observers. They observed the Student in his classroom. One of the observers was a dean of students, one was Ms. Raymond, and one was Hailey Horn, the counseling intern Ms. Raymond was supervising. Ms. Esget talked to the observers beforehand to ensure that they were looking for the same behaviors, but she encouraged them to write down anything that might occur, negative or positive. She talked to the raters individually beforehand.²⁰¹ Dr. McHale did not know who the observers were, and he did not personally provide them any training on what to look for.²⁰²

¹⁹⁵ Tr. at 43-44 (McHale); *see also* tr. at 531 (Haberman) (attachments available in electronic file).

¹⁹⁶ Tr. at 43-44 (McHale).

¹⁹⁷ J-6 at 9.

¹⁹⁸ *See id.*; J-2 at 19.

¹⁹⁹ J-7,

²⁰⁰ Tr. at 233-34 (Esget).

²⁰¹ Tr. at 237 (Esget); tr. at 381-83 (Raymond)

²⁰² Tr. at 78-79 (McHale).

132. The sheets that Ms. Esget had the observers fill out were not attached to the document the team reviewed at the evaluation team meeting on December 19, 2019. To Ms. Esget's knowledge, the Parent has not reviewed those observation sheets.²⁰³
133. During the observation period, the teacher sometimes ignored the Student and sometimes redirected the Student. Sometimes redirecting him would escalate his behavior.²⁰⁴
134. Sometimes other students gave the Student negative peer attention by giggling when he was not doing what he asked to do. On the other hand, he was also observed playing chess appropriately with a peer or peers.²⁰⁵
135. The FBA identified the Student's not following directions in class to be a target behavior. The observational data showed that the Student followed a direction on only 13 out of 51 opportunities. When he became escalated, his ability to follow directions decreased significantly. The FBA contained data regarding where the behavior occurs, what the antecedent events are, and what the student does. The recommendation to the IEP team was to create a designated break space for the Student, to use a signal he could give when he needed for a break, to use a checklist, and to use an individual schedule with built-in break opportunities.²⁰⁶
136. The FBA identified the Student's physical aggression towards peers, teachers and inanimate objects as the second target behavior.²⁰⁷ The FBA contained data regarding where the behavior occurs, what the antecedent events are, and what the student does. The recommendation for the IEP team was: (a) that the Student be taught how to self-monitor and take a break when needed; (b) that the Student be taught meditation strategies he can use when escalated; (c) that the Student be taught how to express his anger or frustration using words, and (d) that the Student be taught how to express frustration when experiencing a consequence of his actions.²⁰⁸
137. The data gathered for the FBA was sufficient to enable the identification of antecedents to problem behavior. It was also sufficient to reach recommendations for setting

²⁰³ Tr. at 234-36 (Esget). On January 27, 2021, the District's counsel e-mailed the Parent's counsel the Student's ABC Functional Assessment forms, which had not previously been provided to the Parents. March 23, 2021 Stipulation.

²⁰⁴ Tr. at 241 (Esget).

²⁰⁵ Tr. at 244-45 (Esget).

²⁰⁶ J-6 at 1-3.

²⁰⁷ J-7 at 4.

²⁰⁸ J-7 at 8.

antecedent strategies, event strategies, and teaching strategies to help the Student manage and improve his classroom behavior.²⁰⁹

The Student's evaluation team, including the Parent, met on December 19, 2019

138. On November 14, 2019, the District sent a Notice of Meeting to the Parent, which set a meeting to occur on December 20, 2019 at 2:45 at the Lowell. Also on November 14, 2019, the Parent told the District that she could attend.²¹⁰
139. On December 19, 2019, the Student's evaluation team, including the Parent, had a meeting. I find that the meeting took place on December 19, 2019 because all the participants dated their signatures "12/19/19."²¹¹ At the meeting, the Parent was present. Dr. McHale was present. Steve Clark, an assistant superintendent at the time, was the administrative designee.²¹² Brooke Wertz, the Dean of Students at Lowell, attended.²¹³ Ms. Hanson, the Student's fourth-grade general education teacher, was present, as was special education teacher Charlene Esget. Ms. Raymond, the school counselor, was there.²¹⁴ OT Erik Wermus was not present.²¹⁵
140. At the meeting, the Parent was again provided with the Notice of Procedural Safeguards.²¹⁶
141. The team determined that the Student was eligible for special education and related services under the emotional-behavioral eligibility category. This was because, in the judgment of the team, the Student exhibited inappropriate behaviors under normal circumstances, to a marked degree, for a long period of time, and to the extent that it was impinging on his education.²¹⁷ The team decided that the Student did not meet the criteria for a specific learning disability in any academic area. The team also decided that he not did meet the criteria for "other health impairment."²¹⁸

²⁰⁹ Tr. at 317 (Esget).

²¹⁰ J-6 at 1-2; *see* Tr. at 231-32 (Esget) (testimony regarding whether the meeting took place on the 19th or the 20th)

²¹¹ J-6 at 6.

²¹² Tr. at 37, 115 (McHale); tr. at 497 (Haberman).

²¹³ Tr. at 438 (Sepler)

²¹⁴ J-6 at 6; Tr. at 231 (Esget).

²¹⁵ Tr. at 257 (Esget).

²¹⁶ Tr. at 260 (Esget) (Notice of Procedural Safeguards probably given to the Parent at the time of the evaluation meeting); tr. at 393-99 (Raymond) (Ms. Raymond's recollection that Dr. McHale gave them to the Parent).

²¹⁷ J-6 at 4; Tr. at 30-33 (McHale).

²¹⁸ J-6 at 4; tr. at 116 (McHale).

142. When discussing the FBA that she conducted, Ms. Esget did not recommend that the Student undergo further testing for ADHD, despite her observations of the Student's sometimes hyperactive and impulsive behavior. The reason she did not recommend further assessment in this area was because Dr. Holland had assessed the Student for ADHD recently.²¹⁹
143. At the meeting, the Parent requested that the language around the Student displaying behaviors associated with ADHD be removed from the evaluation report.²²⁰ She had had an experience in the Student's second-grade year where a teacher had inappropriately labeled him as ADHD at school.²²¹
144. Ms. Esget did not propose, and the team did not consider, referring the Student to a physician for diagnostic purposes.²²² The team felt that they had the information they needed from Dr. Holland's assessment that was done the previous year.²²³
145. The team did not consider the appropriateness of providing related services in the area of [REDACTED].²²⁴
146. The team did not consider whether it would be appropriate to engage a registered behavior technician (RBT) working under the supervision of a board-certified behavior analyst (BCBA) as a supplementary aid for the Student.²²⁵
147. At the December 19, 2019 meeting, nobody expressed that the Student should be evaluated in any of these areas: (a) social communication; (b) sensory processing; (c) expressive or receptive language.²²⁶
148. The participants discussed the data in Dr. McHale's report. Nobody at the meeting, including the Parent, proposed that additional data needed to be gathered before the evaluation was complete.²²⁷

²¹⁹ Tr. at 251 (Esget) ("I guess I took the evaluation done at the Sendan Center and because they didn't officially diagnose him I respected their diagnoses and so I didn't suggest anything further.")

²²⁰ Tr. at 384 (Raymond).

²²¹ Tr. at 588 (Parent).

²²² Tr. at 254 (Esget).

²²³ Tr. at 385 (Raymond)

²²⁴ J-6; tr. at 384 (Raymond).

²²⁵ Tr. at 256 (Esget).

²²⁶ Tr. at 117 (McHale).

²²⁷ Tr. at 115-17 (McHale); tr. at 395 (Raymond).

149. At the meeting, the Parent reviewed and signed the evaluation report.²²⁸
150. The team recommended that the Student receive specially designed instruction (SDI) in the areas of behavior and social – emotional. In the area of behavior, the team determined that “[the Student] requires SDI to increase behavioral self-monitoring skills and to improve his decision-making skills.” In the area of social-emotional, the team determined that
- [e]motional self-monitoring and self-regulation skills as well as increasing appropriate social problem solving skills are areas of development for [the Student] in order to increase his academic production as well as increasing productive interactions with peers and adults working with him.²²⁹
151. Before the meeting concluded, the team decided on a date (January 9, 2020) and time (7:30 a.m.) for the Individualized Education Plan (IEP) meeting.²³⁰ The Parent confirmed that the time for the IEP meeting worked for her.²³¹ The District did not document this invitation until the date of the meeting, January 9, 2020.²³²
152. As a result of the team meeting on December 19, 2019, Dr. McHale prepared a PWN, which documents why other options for the Student were considered and rejected:²³³
153. The team determined:
- [the Student] does not meet criteria for SLD in writing despite Sendan Center evaluation report identifying as a child with “dysgraphia.” Current school occupational therapy screening also did not suggest motor skills challenges suggesting the need for additional assessment or provision of OT as a related service despite Sendan Center evaluation report diagnosis of Developmental Coordination Disorder. Also, the team noted that current data continues to lack indications of ADHD behavioral characteristics in a second setting besides school. The team reached consensus that EBD is the area that best describes [the Student]’s educational challenges. However, the team noted that challenges with

²²⁸ J-6 at 6.

²²⁹ J-6 at 5.

²³⁰ Tr. at 260-61, 319 (Esget); tr. at 395 (Raymond).

²³¹ J-8 at 2; tr. at 395 (Raymond).

²³² J-8 at 1.

²³³ J-6 at 17; tr. at 118 (McHale).

impulsivity and distractibility in the school setting are also significant for him.²³⁴

Individualized Education Plan and Behavior Intervention Plan

154. An IEP team meeting was scheduled for January 10, 2020. Before the meeting, Ms. Esget sent an e-mail invitation to the Parent to attend the meeting.²³⁵
155. The IEP team meeting was held on January 9 and 10, 2020. On January 9, 2020, the team discussed the IEP. On January 10, 2020, the team discussed the BIP.²³⁶
156. The attendees on January 9, 2020, were Ms. Sepler, Mr. Clark, Ms. Hanson, the Parent, Ms. Esget, and another special education teacher, Tim Strcklett.²³⁷ The January 9, 2020 meeting lasted from 7:30 to 9:00 a.m.
157. The attendees on January 10, 2020, were Ms. Esget, Ms. Sepler, the Parent and Ms. Hanson. The January 10, 2020 meeting lasted from 7:30 to 8:30 a.m.²³⁸ During the January 10, 2020 meeting, Ms. Hanson had to leave after 25 minutes to attend to her class. The Parent did not confirm in writing that she was granting permission for the general education teacher to leave the meeting.²³⁹
158. The Student's IEP set two behavior goals and one social-emotional goal:

[behavior] By 01/09/2021, when given a whole group or individual direction [the Student] will follow the direction improving behavior from following direction 25% of opportunities to following directions 70% of opportunities as measured by daily behavior charts and observations.

[behavior] By 01/9/2021, when given a direction, consequence or frustrating situation [the Student] will maintain a safe body improving behavior from averaging 2.5 incidents of physical aggression per week to 0 incidences of physical aggression per week as measured by daily behavior chart, teacher data, and observations.

²³⁴ J-6 at 17.

²³⁵ Tr. at 258 (Esget).

²³⁶ Tr. at 282, 286 (Esget).

²³⁷ D-8 at 1.

²³⁸ D-8 at 15.

²³⁹ Tr. at 282-83 (Esget).

[social-emotional] By 01/09/2021, when given a direction or frustrating situation [the Student] will choose a calming strategy improving self-regulation from independently choosing a strategy 50% of opportunities to independently choosing a strategy 90% of opportunities as measured by daily behavior chart and observations.²⁴⁰

159. The IEP provides for progress reports every semester.²⁴¹
160. The IEP contains 13 accommodations for the Student: (a) access to designated break space, as needed; (b) access to the resource room as a quiet place to complete work; (c) alternative music class; (d) alternative place for rainy day recess; (e) attend lunch and recess with older students; (f) daily behavior chart and behavior improvement plan; (g) daily check-in and check-out with an adult, 15 minutes per day; (h) individual schedule with built-in breaks from the general education classroom; (i) extra practice for handwriting, daily; (j) use of speech-to-text software during testing; (k) use of dictation and word prediction software, during writing assignments; (l) use of office bathroom, and; (m) use of word prediction software.²⁴²
161. The IEP provides for a special education teacher to provide him SDI in behavior and social-emotional skills concurrently.²⁴³ The amount of time in these services – one hour total per week – was the amount requested by the Parent during the IEP meeting. Ms. Esget had proposed a half hour of SDI per day.²⁴⁴ The Parent wanted him to spend more time in the general education classroom than what Ms. Esget proposed.²⁴⁵
162. The IEP provided for 15 minutes per day of SDI in the form of two daily meetings, again called “check-in” and “check-out” meetings. As distinct from earlier check-in, check-out meetings before the IEP was implemented, the Student’s special education teacher would be the one to have these meetings with the Student.²⁴⁶
163. The IEP provided for the Student to be in a general education classroom for 92% of the school day and provided the Student with a one-to-one paraeducator, or instructional aide, to support him in the general education classroom.²⁴⁷ Part of the reason to provide him a paraeducator was to help the Student deal with managing stimuli and activity in

²⁴⁰ J-8 at 5-6.

²⁴¹ J-6 at 8.

²⁴² J-8 at 7-8.

²⁴³ J-8 at 10; tr. at 286-87, 321 (Esget).

²⁴⁴ Tr. at 321-22 (Esget).

²⁴⁵ Tr. at 443 (Sepler).

²⁴⁶ Tr. at 323 (Esget).

²⁴⁷ J-8 at 11.

the moment. The team did not consider providing the Student with the support of a certified behavior technician (CBT) or RBT.²⁴⁸

164. The IEP provided the Student with speech-to-text and word prediction software as assistive technology, because the evaluation noted that the Student struggled with producing written work.²⁴⁹
165. The IEP called for the Student to attend an alternative music class because music class had been an environment in which he had been unsuccessful before. His music teachers were to teach him one-to-one, without peers present.²⁵⁰ The team did not discuss providing the Student with other related services or supplementary aids and services to help him manage situations with high activity and stimuli.²⁵¹
166. The Student's IEP team developed a BIP for the Student, which addressed the target areas considered in the FBA.²⁵² The same two target areas and goals were identified.²⁵³ Because the team felt the BIP would be sufficient, an emergency response protocol was deemed not necessary at that time.²⁵⁴ The BIP also contained detailed steps for how staff was to handle physical aggression, including giving him verbal direction to go to the resource room as the first step.²⁵⁵
167. The BIP included opportunities for the Student to earn rewards if he met his goals throughout the day. The rewards included being able to take a reading break, play basketball or play chess.²⁵⁶
168. For each of the two target behaviors, the BIP included: (a) the pattern of behavior that impeded the Student's learning; (b) the instructional and environmental conditions or circumstances that contributed to the pattern of behaviors being addressed; and (c) the positive behavioral interventions and supports to reduce the pattern of behavior and ensure the consistency of implementation, and; (d) the skills that will be taught and monitored as alternatives to the Student's challenging behavior.²⁵⁷

²⁴⁸ Tr. at 277-78, 282 (Esget); tr. at 414 (Hanson).

²⁴⁹ TJ-8 at 4; r. at 264-65 (Esget).

²⁵⁰ Tr. at 271-72 (Esget).

²⁵¹ Tr. at 368-69 (Esget).

²⁵² J-9.

²⁵³ J-9 at 1-4.

²⁵⁴ Tr. at 281 (Esget).

²⁵⁵ J-9 at 5.

²⁵⁶ Tr. at 327 (Esget).

²⁵⁷ J-9.

169. The IEP team did not consider providing the Student [REDACTED] as a related service. The team did not consider paying for the private counseling that the Student was engaging in.²⁵⁸ The Parent did not ask the school for additional therapy because the Student was already being served at [REDACTED].²⁵⁹ As discussed above, there is no evidence in the record about how [REDACTED] was paid for providing these services.
170. On January 10, 2020, the Parent signed the written parental consent for initial special education services.²⁶⁰
171. The IEP went into effect on January 13, 2020, just as the first semester was ending.²⁶¹

Period between implementation of the IEP and COVID-19-related school closure

172. After the IEP was implemented, the Student's special education teacher was Charlene Esget. Ms. Esget is certificated as a special education teacher in Washington. She earned a bachelor's degree and a master's degree from Western Washington University and she has 21 years of teaching experience.²⁶²
173. Ms. Esget had two daily discussions with the Student on school days, called "check-in" and "check-out," between January 13, 2020 and March 12, 2020.²⁶³ These meetings were an opportunity to review his goals twice daily, practice skills that he and Ms. Esget were working on, and talk about his toolbox of strategies. They were an opportunity for Ms. Esget to provide reinforcement or correction in context with the events of the day. Ms. Esget and the Student talked about his feelings during his meetings, not just his external behavior.²⁶⁴
174. Between January 13, 2020, and March 12, 2020, Ms. Esget provided SDI to the Student in behavior and social-emotional. For example, she used a numerical system with the Student to allow him to self-assess, self-regulate and make improvements.²⁶⁵ She also taught alternative behaviors to the Student. Part of her teaching alternative behaviors to him was to teach an alternative frame of mind for the Student, where he consciously replaces a negative thought with a positive or neutral one.²⁶⁶ This SDI did not involve

²⁵⁸ Tr. at 371 (Esget); tr. at 413 (Hanson); tr. at 441 (Sepler)

²⁵⁹ Tr. at 670 (Parent).

²⁶⁰ J-8 at 13.

²⁶¹ Tr. at 285 (Esget); tr. at 475 (Sepler).

²⁶² Tr. at 224-25 (Esget).

²⁶³ Tr. at 270 (Esget).

²⁶⁴ Tr. at 322-23, 326-27 (Esget).

²⁶⁵ Tr. at 324 (Esget).

²⁶⁶ Tr. at 329-30 (Esget).

Ms. Esget talking the whole time. The Student talked and worked on the skills himself, in a reciprocal way, with Ms. Esget.²⁶⁷

175. Between January 13, 2020, and March 12, 2020, the Student was assigned a one-to-one paraeducator (also known as an instructional assistant) to support him. This person was a substitute at first until the best match could be found to serve him on a regular basis.²⁶⁸ The best match was found (on a date not in the record) – a person with experience with children with emotional regulation issues and children with disabilities.²⁶⁹
176. The paraeducator was part of the “check-in” and “check-out” meetings, so Ms. Esget talked to her frequently.²⁷⁰ Ms. Esget and the paraeducator worked as a team. The paraeducator knew the strategies that Ms. Esget was teaching the Student, and she helped the Student implement them in class.²⁷¹ This was a change from before, because the paraeducator who worked with him before the IEP was not working within the context of an IEP and did not have the support and guidance provided by the BIP and the special education teacher.²⁷²
177. After the IEP was implemented on January 13, 2020 and until March 12, 2020, the Student made progress in the general education class. He was spending more time in his general education class. He was participating more in general education. His instructional aide was helping him in critical moments in the general education classroom to remind him of strategies that the Student and Ms. Esget talked about.²⁷³
178. In the classroom, the one-to-one paraeducator was a big help for the Student. The paraeducator helped him get motivated to complete tasks he was resistant to doing. The paraeducator also helped if the Student was making signs that he needed a break from the classroom. The paraeducator helped him stay in the classroom a higher percentage of the time than before the IEP was implemented.²⁷⁴

²⁶⁷ Tr. at 342 (Esget).

²⁶⁸ Tr. at 270, 275, 278 (Esget).

²⁶⁹ Tr. at 448 (Sepler).

²⁷⁰ Tr. at 279 (Esget).

²⁷¹ Tr. at 322, 325 (Esget).

²⁷² Tr. at 325 (Esget).

²⁷³ Tr. at 467 (Sepler).

²⁷⁴ Tr. at 411 (Hanson); tr. at 627 (Parent) (when asked about what elements of the post-IEP period were successful, responding “The short answer is the one-to-one support.”).

179. Ms. Esget did not coordinate her SDI with the skills that the Student may have been learning in his private [REDACTED]. She did not seek a release to speak the Student's counselor, and she did not speak with the counselor.²⁷⁵
180. Between January 13, 2020, and March 12, 2020, the paraeducator that worked with Student ensured that he received extra practice in handwriting.²⁷⁶
181. Between January 13, 2020, and March 12, 2020, the Student's behavior charts were consistently filled out by the paraeducator who worked with him.²⁷⁷
182. Between January 13, 2020, and March 12, 2020, Ms. Hanson, the Student's general education teacher, e-mailed with the parent every day. The Parent shared her concerns about the Student's learning, if she had any.²⁷⁸
183. On February 28, 2020, the Student's first progress update toward his IEP goals was entered. The baseline for the first goal was that he was exhibiting appropriate behavior in 25% of measured opportunities. The target was 70%. He met the goal, averaging 81%. He also reduced his weekly instances of physical aggression from an average of 2.5 instances per week to an average of 1.4.²⁷⁹
184. As of February 28, 2020, the school was seeing real success in terms of safety with the one-to-one support. There was no evidence to suggest that hiring a one-to-one behavior technician was a necessary step for the Student to remain safe and for him to make progress on his goals. The information available suggested that the next step might be to decrease the Student's dependence on a one-to-one assistant.²⁸⁰
185. During the first progress period after the IEP was enacted, before February 28, 2020, the general education teacher also reported progress. He was able to be moved back to one of the table groups in his classroom and work with those other students successfully.²⁸¹
186. Ms. Esget did not recommend that the IEP be amended to add new goals after the February 28, 2020 progress.²⁸²

²⁷⁵ Tr. at 371-72 (Esget).

²⁷⁶ Tr. at 275 (Esget).

²⁷⁷ Tr. at 300, 325 (Esget).

²⁷⁸ Tr. at 416, 427 (Hanson).

²⁷⁹ Tr. at 332-33 (Esget).

²⁸⁰ J-11; tr. at 446, 449 (Sepler).

²⁸¹ Tr. at 333 (Esget).

²⁸² Tr. at 375 (Esget).

March 12, 2020 until the end of the school year

187. On March 12, 2020, Governor Jay Inslee ordered in-person instruction at Washington schools to stop.²⁸³ The closure of the District to in-person learning was announced on March 13, 2020.²⁸⁴ Initially the closure was mandated by Governor Inslee to last six weeks, but then it extended for the rest of the school year.²⁸⁵
188. After March 13, 2020, considering the amount of information available at the time, it was inadvisable for the Student to spend time in person with his peers or with teachers – for his health and for the health of the people of Washington generally.²⁸⁶
189. The COVID-19 disease, caused by a virus, spreads easily from person to person and may result in serious illness or death. In early April 2020, the pandemic was threatening the life and health of the people of Washington.²⁸⁷ In late March and early April, by declaration, Governor Inslee prohibited, with limited exceptions,
- all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business.²⁸⁸
190. The Student and the Parent were the only ones living in his home between March 13, 2020 and the end of the school year.²⁸⁹ The Parent supported him in remote learning by putting procedures and parameters in place, including setting up a space for him and a space for her where she could observe him. She set up a schedule and made sure he followed it.²⁹⁰ She also got support from the Student's [REDACTED] therapist and another [REDACTED] staff member in setting up a good learning environment for him.²⁹¹

²⁸³ Governor Proclamation 20-08

²⁸⁴ Tr. at 561(Haberman); Parent's prehearing brief, Addendum C. Addendum C is the April 6, 2020 Proclamation by the Governor. It has the effect of law because it declares a State of Emergency. Therefore, even though Addendum C was not admitted as an exhibit, I cite to the facts Governor Inslee uses in his "whereas" statements in the following findings.

²⁸⁵ Tr. at 344 (Esget).

²⁸⁶ See Parent's prehearing brief, Addendum C; tr. at 295 (Esget) ("Q. Did you ask if Student was having any interactions with peers outside of the home?" A. I didn't ask because I assumed probably not given the quarantine situation."); tr. at 424 (Hanson) ("Q. Did you ever see any other students, or children, or peers of Student in his videos? A. No, there was a quarantine.").

²⁸⁷ Parent's Prehearing Brief, Addendum C.

²⁸⁸ Parent's Prehearing Brief, Addendum C.

²⁸⁹ Tr. at 357 (Esget).

²⁹⁰ Tr. at 636-37 (Parent).

²⁹¹ Tr. at 637 (Parent).

She even timed when she encouraged him to do his different assignments so that he built up successes before taking on material that was more challenging to him.²⁹²

191. The Parent was able to work her own job while the Student was in online learning.²⁹³
192. After March 13, 2020, until the end of the school year, the Student's general education instruction was given asynchronously, meaning the Student did not engage in learning at the same time as his peers.²⁹⁴
193. The Student successfully participated in his general education curriculum after the District went to remote learning for all students. According to Principal Sepler, he was able to participate in his general education curriculum "to a very high degree, more than we had seen before."²⁹⁵ The Parent shared this impression. After two months of online learning, she reported that the Student was "excelling with the Seesaw/remote learning."²⁹⁶ He was engaging in the activities, taking ownership, and moving through his menu items independently, self-selecting when he wanted to do assignments.²⁹⁷
194. After March 13, 2020, Ms. Hanson would post weekly menus of assignments for her students to complete at a time that worked for them. She reviewed the assignments that the Student wrote. They were typed. The Student had access to speech-to-text software and a District-provided laptop computer.²⁹⁸
195. The Student did all of his general education assignments that were assigned by Ms. Hanson. Sometimes he would not follow the directions the first time. Ms. Hanson would send him an (asynchronous) chat, and he was able to successfully follow her recommendation to correct his work to follow the directions.²⁹⁹ The Parent also helped him follow the directions in the assignment.³⁰⁰
196. At the end of fourth grade, Ms. Hanson did not have any doubt that the Student would be able to successfully advance to the general education content of fifth grade.³⁰¹

²⁹² Tr. at 639 (Parent).

²⁹³ Tr. at 493 (Sepler).

²⁹⁴ Tr. at 415-18 (Hanson).

²⁹⁵ Tr. at 467 (Sepler).

²⁹⁶ Tr. at 335 (Esget).

²⁹⁷ Tr. at 336 (Esget).

²⁹⁸ Tr. at 418-19, 428 (Hanson).

²⁹⁹ Tr. at 426 (Hanson).

³⁰⁰ Tr. at 642 (Parent).

³⁰¹ Tr. at 428 (Hanson).

197. Ms. Hanson made clear to all of her students and their parents that they could contact her if they had questions or concerns about remote learning. The Parent did not do so between March 13, 2020 and the May 2020 meeting discussed below.³⁰²
198. In the online learning environment, the Student's behavior did not interfere with him being able to demonstrate his knowledge of the subject matter being taught.³⁰³ The Parent testified that he had some outbursts, and that he had trouble during the remote learning period (he ran away from home briefly), but she did not dispute that he was successful in his general education class.³⁰⁴
199. After March 13, 2020, measuring his behavior goals became difficult because the Student was at home. He was not in setting with other children, and he was not observed by Ms. Esget, Ms. Hanson or any other District staff member. There are no behavior charts and observations for the period after March 13, 2020.³⁰⁵
200. At some point after March 13, 2020, the Student engaged in socially distanced in-person activities at the Boys and Girls Club.³⁰⁶ There is no evidence in the record regarding his interactions with children at the Boys and Girls Club.
201. The District did *not* provide synchronous (at the same time) instruction to the Student. However, synchronous instruction would not have been perfect either. Measuring the Student's progress in his IEP behavior goals in a synchronous online learning environment would not be the same as measuring his progress if school were held in person. Differences between synchronous online instruction and in-person instruction include the ability of a paraeducator to give nonverbal cues and software limitations like only having one person talk at a time. Synchronous learning does not provide the same setting in which the earlier problem behaviors for the Student occurred, so real progress on his behavior with other students after March 13, 2020 was not measurable, at least not in a practical, real-life setting, even if synchronous learning had occurred.³⁰⁷
202. After March 13, 2020, Ms. Esget provided asynchronous videos and assignments to target calming strategies and self-regulation strategies.³⁰⁸ The videos lasted between 7

³⁰² Tr. at 427 (Hanson).

³⁰³ Tr. at 486 (Sepler).

³⁰⁴ J-10 ("The IEP identifies the target behaviors having the most impact on [the Student's] access to education as noncompliance with directions and physical aggression. Parent reports that those behaviors are not seen in the home setting."); tr. at 647, 664-65 (Parent).

³⁰⁵ Tr. at 266-68, 302 (Esget).

³⁰⁶ Tr. at 635.

³⁰⁷ Tr. at 267-71, 348, 350-51, 353 (Esget).

³⁰⁸ Tr. at 270 (Esget).

and 15 minutes. The videos were of Ms. Esget providing the Student SDI in behavior and social-emotional. She sent one video to the Student a week.³⁰⁹ She designed the videos only for him, not for any other student.³¹⁰

203. The content of the videos was targeted at skills that would facilitate the Student's interactions with other students once school reopened for in-person learning. Ms. Esget coordinated with Ms. Hanson in her production of them.³¹¹ Each of Ms. Esget's videos had an attached assignment that would take the Student longer to complete than just watching the video.³¹² Oftentimes he would post his responses to the assignments in a video format.³¹³

204. The Parent was not happy with the quality of the videos, nor the asynchronous method of teaching the Student the social-emotional and behavior skills he would need, especially given his history of traumatic experiences. In the Parent's words,

there's no support surrounding this, watching the video, how do you feel about the video, what's going on in your mind, nobody asking him these questions like from Lowell. It's literally independently watch the video, fill it out yourself, do your self-assessment, do your self-reflection. This is a 10 year old kid who's been traumatized, and they know that.³¹⁴

205. After March 13, 2020, the Student was not provided with 15 minutes, five times a week of "check-in / check-out" services from a special education teacher. He was not provided 60 minutes per week of concurrent behavioral and social-emotional SDI.³¹⁵

206. After March 13, 2020, the Student did not receive the services of a paraeducator. The paraeducator had been helping him in the general education classroom, which no longer existed in its pre-pandemic form.³¹⁶

207. After March 13, 2020, Ms. Esget did not ensure that the Student's general education teacher was providing the Student extra practice for handwriting. This was a change

³⁰⁹ Tr. at 275-77 (Esget).

³¹⁰ Tr. at 288 (Esget).

³¹¹ Tr. at 432 (Hanson).

³¹² Tr. at 344 (Esget).

³¹³ Tr. at 423 (Hanson).

³¹⁴ Tr. at 649 (Parent).

³¹⁵ Tr. at 276-77 (Esget).

³¹⁶ Tr. at 278-80 (Esget).

from before, when the instructional assistant had been providing the Student extra practice for handwriting.³¹⁷

208. The Student was not provided synchronous learning. Ms. Esget did not do synchronous role play with him to talk through situations that might occur later, when he was back in school in person.³¹⁸
209. The BIP was created for the school environment, not the home environment. After March 13, 2020, Ms. Esget did not discuss with the Parent how the BIP should be modified (or whether it should be disregarded) for the home environment.³¹⁹
210. Ms. Esget kept a record of her contacts with the Parent after March 13, 2020.³²⁰
211. At no point before the end of the school year did the District issue a PWN reflecting that the District was seeking to amend the IEP after it was adopted on January 10, 2020.³²¹
212. In May 2020, there was a meeting regarding the Student's progress in online learning. It was held remotely.³²² The Parent was notified of the meeting and she accepted the time proposed. The meeting was held by videoconference.³²³ The Parent, District Special Education Director Michael Haberman, Ms. Sepler, and Ms. Hanson attended. Attorneys for the Parent and the District attended. They reviewed his work in general education. Ms. Hanson reported that his attendance was wonderful and his completed work was of a higher quality than what he had submitted prior to online learning. The Parent expressed pride in the quality of the Student's work and reported that he was excelling with remote learning. She did not express any concerns regarding his behavior during online learning, and her legal counsel did not either. Ms. Sepler did not directly ask about behavior concerns at home.³²⁴
213. During the May 2020 meeting, the Parent expressed her preference for live synchronous instruction for the Student to work on his emotional regulation with other students. The

³¹⁷ Tr. at 275 (Esget).

³¹⁸ Tr. at 269 (Esget).

³¹⁹ Tr. at 289-90 (Esget).

³²⁰ J-9; tr. at 334 (Esget).

³²¹ Tr. at 549 (Haberman).

³²² J-10; tr. at 290-91 (Esget).

³²³ D-9.

³²⁴ J-10; tr. at 335-36, 338, 346 (Esget); 466-69, 481, 491-92 (Sepler); tr. at 545, 554 (Haberman). Michael Haberman has been the District's Special Education Director since 2013. Before that he served as Special Education Director for two different districts in Idaho, and before that he was a school psychologist. He has earned a master's degree in school counseling and an educational specialist degree in school psychology. Tr. at 559 (Haberman).

team decided against live synchronous instruction with other students for four reasons: (a) asynchronous instruction was going well; (b) not everyone in the District had the ability to participate in synchronous instruction, and the District did not want to do things unfairly; (c) privacy interests of other students; and (d) the possibility of the Student disrupting a synchronous environment with peers. If the Student did something that was disturbing to other students, there were fewer ways for a teacher to intervene in an online environment.³²⁵ The team also did not consider having a one-to-one paraeducator working with him in his home during remote learning, because of COVID transmissibility concerns.³²⁶

214. During the team meeting, there was some conversation about creating frustrating situations for the Student to overcome, but the team decided that was not an appropriate way to deliver instruction to him.³²⁷
215. As a result of the May 2020 meeting, the team added more video training regarding situations where escalation could occur.³²⁸ It is unclear from the record what this video training consisted of.
216. After the May meeting, a PWN was prepared with Ms. Sepler's input.³²⁹
217. The District did not consider offering extended school year (ESY) services for the Student, and it was not discussed during the May 2020 meeting.³³⁰
218. On June 10, 2020, the District issued a progress report for the Student. It said that he was making sufficient progress on his IEP goals, with a footnote.³³¹ The footnote said that:

Goal progress monitoring has been impacted due to the closure of school during the COVID-19 outbreak acknowledged by the Governor's proclamation of emergency. Prior to the school closure, data indicated progress on this goal. After the school closure, goal progress could not be obtained because monitoring requires the school environment. Instruction

³²⁵ Tr. at 469-71 (Sepler).

³²⁶ Tr. at 484 (Sepler).

³²⁷ Tr. at 347 (Esget).

³²⁸ Tr. at 472 (Sepler).

³²⁹ J-10; tr. at 471-72 (Sepler).

³³⁰ See tr. at 552 (Haberman) (responding to a question about how extended year services can possibly be determined to be necessary if a student has become initially eligible after a break: "The IEP team look at what data it has.")

³³¹ J-11.

was provided through asynchronous instruction targeting emotional regulation skills and self-regulation because these are skills that will help increase success with following directions when school resumes.³³²

219. The last day of the school year in the District was June 19, 2020.³³³
220. After the 2019-20 school year ended, the Parent enrolled the Student in another school district. She submitted the transfer request on August 4, 2020. The Student unenrolled from the District on August 21, 2020.³³⁴
221. The Parent no longer trusts the District. She asks that any relief be provided by contracted professionals and not by District personnel.³³⁵

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 pursuant to these federal and state statutes, 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.³³⁶ The burden of proof in issue 1, whether the December 19, 2019 evaluation was appropriate, is on the District. The burden of proof on all the other issues is on the Parent.
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 *Board of Education of Hendrick Hudson Central School District v. Rowley*, the Supreme Court established both

³³² J-11.

³³³ Tr. at 571 (Haberman).

³³⁴ March 23, 2021 Stipulation.

³³⁵ Tr. at 674-75 (Parent).

³³⁶ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

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.³³⁷

For a school district to provide a free appropriate public education (FAPE), it is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity” that provides “some educational benefit” to the Student.³³⁸

The Supreme Court 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...³³⁹

Issue 1: Whether the District's December 20, 2019 evaluation of the Student was appropriate, and, if not, whether an independent educational evaluation of the Student should be conducted at public expense.

4. Washington Administrative Code sections 392-172A-3015 through -3040 apply to special education evaluations.
5. To meet its burden, the District must show that its March 2020 evaluation was appropriate.³⁴⁰ To be appropriate, a school district's evaluation must be sufficiently comprehensive to identify all of the student's special education and related service needs.³⁴¹ When a school district conducts a special education evaluation, a “group of qualified professionals selected by the school district” must 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[.]”³⁴² The group cannot use “any single measure or assessment as the sole criterion” for

³³⁷ 458 U.S. 176, 206-07 (1982) (footnotes omitted).

³³⁸ *Id.* at 200-01.

³³⁹ *Andrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. ___, 137 S. Ct. 988, 999-1000 (2017).

³⁴⁰ WAC 392-172A-05005(2)(c).

³⁴¹ WAC 392-172A-03020; *see also* 34 CFR §300.304.

³⁴² *Id.*

determining eligibility or educational programming. The group must use technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical and developmental factors.”³⁴³ “Trained and knowledgeable personnel” must administer the assessments and do so “in accordance with any instructions provided by the producer of the assessments.”³⁴⁴ Students must be assessed “in all areas related to the suspected disability” and the evaluation must be “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.”³⁴⁵

Under WAC 392-172-03020(2)(a), the District must “[u]se 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 and (ii) the content of the student’s individualized education program.”

In this case, Dr. McHale, the school psychologist who gathered the information for the assessment and summarized the results is a qualified professional, as is Ms. Esget, who performed the functional behavior assessment.

Dr. McHale and the rest of the team reviewed and appropriately considered input from the Parent. She was present for all meetings and invited to provide input regarding the Student.

Dr. McHale reviewed the report from Dr. Holland, and compared her results with his on the norm-based assessments they each administered. Dr. McHale was aware of the reports regarding the Student’s behavior in school at the outset of his evaluation of the Student. Although he may not have spoken with all the people who had done reports or created documents regarding the Student, there is no legal requirement to do so. He got their information from their reports, and it was reasonable of him to assume they were professionally done.

Dr. McHale also gathered good information from the assessments. He used objective assessments, including the BASC-3, the WJ-Academic and the WJ-Cognitive-4. He reasonably decided to not give the student rating scale of the BASC-3 to the Student, given that it was 163 items long and would likely prove of limited reliability. He also gathered information from Dr. Holland’s report, which was only a year old. That report had other objective assessments that assessed the Student for affective disorders,

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

schizophrenia, depression, anxiety, and autism. Dr. Holland's evaluation is thorough and Dr. McHale appropriately considered it.

The Parent argues that, because some interventions that Lowell was using with the Student were not documented in the evaluation, the evaluation was not sufficiently comprehensive. She points to the noise-cancelling headphones, and the fidget-type materials, and the additional help the Student was receiving in music class. But Parent's argument fails in this regard because these interventions *were* listed in the evaluation. An accommodation that was listed was "sensory supports in the room," which would include both fidget-type materials and a wireless headset. The listed interventions also included "counselor support during music" and "[e]stablishing a reset routine when [the Student] enters the classroom (ex. 'Listen to this piece of music and pick out the instruments') during transitions." These interventions are the additional help that he was receiving in music class. They were documented in the evaluation.

The Parent argues that two areas of suspected disability were not fully assessed in 2019: (a) communication, specifically receptive and expressive language; and (b) fine motor. Despite these arguments, the District has met its burden to show that in all areas related to any suspected disabilities, the Student has been assessed.

With regard to the Student's expressive and written language, the evidence strongly suggests that the "expressive-receptive language" wording on some documents was an unfortunate error due to lack of proofreading. However, an unfortunate proofreading error does not require the District to assess an area that is *not* a suspected disability. The Student had no suspected disability in communication; he had no suspected disability in receptive or expressive language skills.

The Parent argues that a more detailed assessment of the Student's fine motor skills was required because there was a suspected disability in the area of "dysgraphia." According to the evidence in the record, "dysgraphia" is an amorphous term that signifies poor handwriting.³⁴⁶ In December 2019, OT Erik Wermus gave the Student the same assessment, the Beery VMI-6, that Dr. Holland had given him a year earlier and that she used to diagnose him with dysgraphia. The second test was valid even though it was given only a year after the first. On the earlier assessment by Dr. Holland, the Student tested in the low average range. In the assessment by Erik Wermus, he tested in the average range. This is not unusual. A student's handwriting sometimes improves over the course of a year, especially if they show an interest in drawing or writing, as the

³⁴⁶ Administrative law judges are forbidden from looking outside the record in making their findings of fact and conclusions of law. RCW 34.05.476. While "dysgraphia" may have other definitions, in the closed universe of this hearing dysgraphia is defined according to Dr. McHale's definition.

Student does. In addition, Dr. McHale chose the WJ-Academic partly because it provided information on the Student's ability to spell and handwrite, legibly, under timed conditions.

In summary, neither the Parent nor the District identified the Student's fine motor skills at the time of the assessment as an area of suspected disability. After reading Dr. Holland's report, Dr. McHale wisely decided to task an OT with running a screening tool. The Beery VMI-6 showed that the Student was average in handwriting, and these results were shared with the team on December 19, 2019. Nobody asked for more assessment. The District has met its burden to show that fine motor was not an area of suspected disability as of the time of the evaluation.

6. If the parent of a student eligible for special education disagrees with a school district's re-evaluation, the parent has the right to obtain an independent educational evaluation (IEE), which is an evaluation conducted by a qualified examiner not employed by the school district. If a parent requests an IEE at public expense, the district must provide the parent with certain information on obtaining IEEs, and must either initiate a due process hearing within 15 days to defend the appropriateness of its evaluation, or else ensure that a publicly-funded IEE is provided without unnecessary delay. If the district initiates a hearing, and the final decision is that the district's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense.³⁴⁷
7. The District has shown by a preponderance of the evidence that it met the requirements of WAC 392-172A-03020 and 03025 and that the December 2019 re-evaluation was appropriate. Therefore, the Parents are not entitled to an IEE at District expense.

Issue 2: Whether the District violated its obligations under the Individuals with Disabilities Education Act (IDEA) and its implementing regulations by failing to provide the Student with a free appropriate public education (FAPE) since his enrollment in the District, by failing to meet its Child Find obligations under WAC 392-172A-02040 and WAC 392-172A-03005(1), by its staff not referring the Student for a comprehensive special education eligibility evaluation any sooner than October 23, 2019.

8. Under Washington Administrative Code 392-172A-2040(1), school districts are required to "conduct child find activities calculated to reach all students with a suspected disability for the purposes of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability." A

³⁴⁷ WAC 392-172A-05005; *see also* 34 CFR §300.502.

disability is “suspected,” “when the district has notice that the child has displayed symptoms of that disability.”³⁴⁸

Once a district is on notice that a Student may have a disability that requires special education services, a District must decide whether or not to evaluate a student within a reasonable time period.³⁴⁹

In this case, the Parent has met her burden to show that the District has violated the IDEA by failing to meet its child find obligation. The District determined it was appropriate to evaluate the Student in October of his third-grade year. The Parent indicated that she would withhold consent if an evaluation were officially proposed in writing. The parent said that she would have the Student privately evaluated, and she followed through. The assessment was done by Dr. Holland in December 2018. The District did not show any curiosity about the result of the private evaluation. There is no record of the District reaching out to her in the spring of 2019 to see if the private evaluation had been completed.

The child find activities place the burden squarely on districts to find children who are suspected of needing special education and related services. Here, there was a student who the District strongly suspected needed services in his third-grade year. But the District put the burden on the Parent to get the evaluation done and report back before it took any further action. It did not follow up with the Parent about the private evaluation for almost a whole year. No District witness was able to identify exactly when Dr. Holland’s evaluation was received by the District.

9. 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.³⁵⁰ “A procedural violation denies a FAPE 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.”³⁵¹

Here, the District’s choice to not follow up with the Parent after it put the burden on her to report back with the results of Dr. Holland’s evaluation resulted in the loss of SDI and accommodations. That was a loss of educational benefits and therefore a denial of a FAPE. The record is not clear enough to establish when exactly Dr. Holland’s report was received, but when exactly the report was received is immaterial. Given what the District knew from his third-grade year, its prior consideration of a District evaluation the previous year, and the Parent’s decision to also have the child evaluated, the District

³⁴⁸ *Timothy O v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9th Cir. 2016).

³⁴⁹ See *W.B. v. Matula*, 67 F.3d 484, 501 (3rd Cir. 1995).

³⁵⁰ See *Timothy O.*, 822 F.3d at 1124.

³⁵¹ *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 953 (9th Cir. 2010)(citations omitted).

certainly should have begun the evaluation process in the spring of 2019. That was enough time for the District to either have Dr. Holland's evaluation in hand, or, if it did not have it, to start the evaluation process on its own. Based on all the evidence in the record, I conclude that the District violated its child find duties starting March 1, 2019.

The evaluation process started on October 14, 2019. The IEP went into effect on January 13, 2020. Based on that timeline, if the evaluation process had started on March 1, 2019, it would have completed by the end of the school year and an IEP would have been in place starting for the Student's fourth grade year. Given the success of his subsequent IEP, the Student missed out on about four and a half months (September 2019 to mid-January 2020) of very helpful SDI and accommodations. This was a denial of FAPE.

Issue 3: Whether the District violated its obligations under the IDEA and its implementing regulations by failing to provide the Student with FAPE since October 23, 2019, by not following the evaluation procedures set forth in WAC 392-172A-03005, and WAC 392-172A-03020 through WAC 392-172A-03080, with respect to conducting the Student's initial special education eligibility evaluation, dated October 23, 2019, specifically by: failing to evaluate the Student in all areas of need as identified by the District's own referral; failing to use the Behavior Assessment System for Children – 3rd Edition (BASC-3) assessment tool in the manner it is required to be used in order to be valid; failing to consider data provided by the Parent, including the Kornerstone Kids Therapy Center occupational therapy (OT) assessment of March 2018 and the psychological assessment from the Senden Center; and failing to consider data from the District's claim to have implemented strategies with the Student since September of 2017.

10. This issue is largely a repeat of the first issue. The District evaluated the Student in all areas of need. The District used the BASC-3 properly. The District considered data provided by the Parent, including the psychological assessment from the Senden Center. While there is little information in the record regarding the content of the Kornerstone Kids Therapy Center OT assessment, what is known about it shows that it would not have been helpful to the evaluation process anyway. The report from Kornerstone Kids did not identify any behavioral concerns, but reported that he is working on building upper body strength and handwriting with his left hand. Dr. Holland's assessment provided more current information. Further, gross motor (upper body strength) was not a concern, and the team considered the Student's handwriting.

11. The District's evaluation was not deficient under applicable rules.³⁵²

³⁵² WAC 392-172A-03005; WAC 392-172A-03020 through WAC 392-172A-03080.

Issue 4: Whether the District violated its obligations under the IDEA and its implementing regulations by failing to provide the Student with FAPE from October 23, 2019, to his enrollment in the Hoquiam School District in September of 2020, by conducting a substantively inappropriate and insufficient initial special education eligibility evaluation that failed to identify the nature and extent of the special education and related services that the Student needs as required by WAC 392-172A-01070, specifically by: failing to address receptive and expressive language, writing skills, and social-emotional skills; looking only at behavior and failing to use the BASC-3 appropriately by not having the Student complete the self-report; failing to conduct an OT or communication evaluation despite the Student's dysgraphia and the District's awareness of OT reports; failing to include an OT report in the evaluation; failing to have a speech-language pathologist and an occupational therapist assess the Student's receptive/expressive language, adaptive, fine motor, and sensory processing skills; and failing to assess the Student in social-emotional functioning.

12. As discussed above, the District's evaluation did not violate Washington Administrative Code 392-172A-01070 or Washington Administrative Code 392-172A-03005 through -03080.

The District's evaluation was appropriate and sufficient, for the reasons discussed above. Receptive and expressive language (communication) was not an area of suspected disability. The areas of social-emotional and behavior were evaluated. The BASC-3 was conducted and scored appropriately, and the decision not to have the Student complete the self-report was appropriate. The information gathered during the assessment was enough to confirm the team's earlier decision to not have a full OT assessment. The Beery VMI-6 showed that his handwriting had improved. Nobody at the evaluation meeting asked for a full OT assessment, or felt it to be necessary. Adaptive was not an area of concern.

"Sensory processing skills" was not an area of suspected disability. Before his IEP was in effect, the District provided noise-cancelling headphones, a fidget device and some assistance in music class. However, the use of these devices and strategies does not call into question the Student's ability to process information coming from his senses. They are evidence only of the District's attempt to provide him distractions at certain times of day to manage his behavior. Further, there is no evidence that any of these strategies were necessary at home. If the Student had neurological or other physical problems with his ability to process the information coming from his senses, that problem would appear in contexts other than music class. There was evidence that the Student was sometimes provided distraction devices. But there was no evidence that his use of distraction devices means there is a more than hypothetical possibility of a sensory processing issue.

Issue 5: Whether the District violated its obligations under the IDEA and its implementing regulations by failing to provide the Student with FAPE from January 10, 2020, to his enrollment in the Hoquiam School District in September of 2020, by not providing him with an Individualized Education Program (IEP) developed, reviewed, and revised in accordance with WAC 392-172A-03090 that was appropriate and reasonably calculated to meet his unique needs, including:...

Issue 5a: ... a consideration of the strengths of the Student and the concerns of the Parent for enhancing the education of the Student that were provided by the Parent at the IEP meeting; and the academic, developmental, and functional needs of the Student, as is required under WAC 392-172A-03110(1)

13. Washington Administrative Code 392-172A-03110(1) provides that:

- (1) In developing each student's IEP, the IEP team must consider:
 - (a) The strengths of the student;
 - (b) The concerns of the parents for enhancing the education of their student;
 - (c) The results of the initial or most recent evaluation of the student; and
 - (d) The academic, developmental, and functional needs of the student.

Related services are services required to assist a student eligible for special education to benefit from special education and can include [REDACTED]

[REDACTED]³⁵³

An IEP must include a statement of the special education *and related services* to be provided to the student to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students.³⁵⁴

In this case, the District did not consider the Student's functional need for [REDACTED]. Dr. Holland indicated that [REDACTED] was of primary importance to the Student. She indicated that [REDACTED] and consistent behavioral interventions from the Parent and the Student's school were the two most important strategies to help Student improve his behavior in class. There is no dispute that the Student is [REDACTED]. The evaluation team incorporated Dr. Holland's

³⁵³ WAC 392-172A-01155.

³⁵⁴ WAC 392-172A-03090(1)(d); 34 CFR §300.320.

report as one of the attachments to the evaluation report, so the IEP team had access to Dr. Holland's report. At the time of the IEP's formulation, the Student was in counseling at [REDACTED]. But there is no evidence whether that counseling was [REDACTED]. The District did not offer to pay for the Student's counseling at [REDACTED], nor did it offer to provide [REDACTED].

The District does not cite any rule or law that relieves a district from its obligation to provide necessary related services on the grounds that the Parent was already providing the same services. Therefore, even if [REDACTED], the District would still have to offer to pay for it as a related service.

The District was obligated to consider Dr. Holland's recommendations incorporated into the evaluation, and the history of the Student's [REDACTED], when considering whether it would offer related services to the Student. [REDACTED] was essential to this Student, and the District did not consider information regarding this need. Because the District did not offer [REDACTED] to the Student after he became eligible for special education, and because [REDACTED] was necessary for him to access his education, the District violated WAC 392-172A-03110(1).

14. Under *Endrew F.*, "a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."³⁵⁵ As discussed above, [REDACTED] was necessary for the Student to make progress appropriate in the areas of social-emotional and behavioral. By not offering [REDACTED] as a related service to the Student between January 10, 2020 and the time he left the District, the District violated its duty to provide a FAPE to the Student under *Endrew F.*

Issue 5b: ...a consideration of information provided by the Parent, specifically reports from private providers as is required by WAC 392-172A-03110(3)(b)(iii)

15. Washington Administrative Code 392-172A-03110 (3) provides that

[e]ach public agency must ensure that, subject to subsections (4) and (5) of this section the IEP team...

...

(b) Revises the IEP, as appropriate, to address:

...

(iii) Information about the student provided to, or by, the parents.

³⁵⁵ *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. ____, 137 S. Ct. 988, 999-1000 (2017).

The Parent has not shown that any information from private providers given by the parent to the District required the District to *revise* the IEP. There is no evidence of any reports from private providers being given to the District after January 10, 2020.

The Parent has not met her burden of proving the District has violated WAC 392-172A-03110(3).

Issue 5c: ...a consideration of the Student's anticipated needs and other matters as is required by WAC 392-172A-03110(3)(b)(iv) and as is required by WAC 392-172A-03110(3)(b)(v) as it relates to the Student [REDACTED]

16. Washington Administrative Code 392-172A-03110(3)(b) concerns *revision* of an IEP. As discussed above, there is no evidence of any change in circumstances that would have required revising the Student's IEP after January 10, 2020.

17. To the extent that this issue is just a restatement of the Parent's arguments that the District did not consider the effect of the Student's [REDACTED] at the time the IEP was drafted in January 2020, these arguments are addressed above.

18. The Parent has not proven a violation in this regard.

Issue 5d: ... any measurable goals under WAC 392-172A-03090 (neither of the two goals in the January 10, 2020 IEP are measurable);

19. Under Washington Administrative Code 392-172A-3090, the IEP must include "a statement of measurable annual goals" and "how the district will measure the student's progress toward meeting the annual goals." A goal does *not* fail this test – to be measurable – just because it is based on subjective observations.³⁵⁶

In this case, the goals set out in the IEP are specific, measurable and understandable. He was given a goal to follow a direction 70% of the time, to reduce incidents of aggression from 2.5 to zero per week, and to choose a calming strategy 90% of opportunities when presented with a frustrating situation. The IEP indicates that these will be measured by daily behavior charts completed by the teacher.

³⁵⁶ *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117 (2011).

The goals in the Student's IEP were measurable. The Parent has not proven a violation of WAC 392-172A-3090.

Issue 5e: ... all specially designed instruction the Student needs in the areas of academics, adaptive, behavior, executive functioning, and social emotional under WAC 392-172A-01175;

20. Washington Administrative Code 392-172A-01175 defines "Special Education." In this case, the IEP did provide for all of the Student's needs for SDI in the areas of behavior and social-emotional. In the areas of academics, adaptive, and executive functioning, the Student did not need SDI. Adaptive and executive functioning were not identified as areas of suspected disability. Neither the District's evaluation nor Dr. Holland's evaluation identified a need for SDI in academics.
21. The Parents did not prove a violation of the IDEA with respect to this issue.

Issue 5f: ... all related services the Student needs, including related services in the areas of counseling, medical services, occupational therapy, psychological, social work services in schools, and parent counseling and training under WAC 392-172A-01155;

22. This issue is related to issue 5a. The IEP team did not appropriately consider Dr. Holland's recommendation of ██████ for the Student as an integral part of the effort to improve his behavior at school. The District also did not provide or offer that related service to the Student, even though it was an integral part of meeting his behavior and social-emotional goals. This was a related service under 392-172A-01155, and the District had an obligation to offer it. The fact that it was not offered was a failure to provide FAPE under *Andrew F.*, since ██████ was necessary to allow the Student to make progress in light of the circumstances.³⁵⁷

Issue 5g: ...all the modifications, accommodations, supplementary aides and services that the Student needs under WAC 392-172A-02060(4), WAC 392-172A-01185 and WAC 392-172A-02025, including any modifications at all and a dedicated Certified Behavior Technician or Registered Behavior Technician working under the supervision of a Board Certified Behavior Analyst or Licensed Assistant Behavior Analyst, instead of a part-time dedicated para educator;

23. Washington Administrative Code 392-172A-02060(4) provides that "[a] student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum." It is unclear what the

³⁵⁷ See *Andrew F.*, 580 U.S. ___, 137 S. Ct. 988, 999-1000 (2017).

relevance of this rule has to do with the provision of a registered behavior technician or other qualified person providing in-person services in the classroom.

24. Washington Administrative Code 392-172A-01185 defines “Supplementary Aids and Services” as “aids, services, and other supports that are provided in general education classes or other education-related settings to enable students eligible for special education to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment requirements.
25. Washington Administrative Code 392-172A-02025 provides, generally, that each school district must make nonacademic activities available to special education students.
26. In this case, the Parent has not proven that the IEP was inappropriate because it did not include the services of a dedicated Certified Behavior Technician (CBT) or Registered Behavior Technician (RBT) working under the supervision of a Board Certified Behavior Analyst or Licensed Assistant Behavior Analyst in the IEP.

The IEP offered appropriate paraeducator support, and that paraeducator was supported by Ms. Esget, the special education teacher. The facts show that this was a *significant* change from what was occurring before. First, the Student had not had a one-to-one paraeducator working with him since the first two weeks of school, so he had not had one-to-one support for four months. Second, when a paraeducator was working with him before, it was not within the framework of an IEP and at the direction and guidance of a certificated special education teacher. Moreover, the paraeducator proved successful in working with the Student during the time the IEP was in place and the move to remote learning in March 2020.

The Parent argues that the use of a paraeducator had been tried and failed, and that therefore a higher level of one-to-one support was necessary. But there is no evidence that the paraeducator the first two weeks of fourth grade failed, even if the use of the paraeducator did not *eliminate* the Student’s problem behaviors. In addition, comparing the paraeducator support before the IEP went into effect with the paraeducator support after the IEP is like comparing apples with oranges – because the paraeducator used at the outset of the fourth grade was not working within the framework of an IEP under the direction and supervision of a special education teacher.

There was no evidence in the evaluation that supported the need to use a CBT or RBT. Dr. Holland also made no such recommendation. The evidence shows that he did not need a CBT or RBT in the classroom with him as a one-to-one aide. The IEP did not fail to provide FAPE by not providing for one.

Issue 5h: ... the training and supports necessary for school staff and/or the District's contract service providers to address behavior, social-emotional, communication and sensory processing needs, in order to be able to implement the specially designed instruction the Student needs as part of his educational placement under WAC 392-172A-03090(1)(d);

27. Washington Administrative Code 392-172A-3090(1)(d) provides that an IEP must contain:

A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:

(i) To advance appropriately toward attaining the annual goals;

(ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and

(iii) To be educated and participate with other students including nondisabled students in the activities described in this section;

It is unclear what the Parent's argument is in this regard. The IEP contains the required statement. Further, there is no evidence in the record that any professional working with the Student did not have proper training or required additional training. Neither the District's evaluation nor Dr. Holland recommended any special training for staff members working with the Student.

Issue 5i: ... the provision of specially designed instruction and related services that are based upon scientifically based research consistent with WAC 392-172A-01165;

28. The Parent has presented no evidence or argument that the SDI and related services were not based upon scientifically-based research.

Issue 5j: ... an educational placement for the Student that was his least restrictive environment, which would be his neighborhood school rather than the school at which he was placed, as mandated by WAC 392-172A-02050;

29. Washington Administrative Code 392-172A-02050 provides that

[S]chool districts shall ensure that the provision of services to each student eligible for special education, ..., shall be provided:

(1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and

(2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The issue as stated relates to the Student's IEP. The Parent appears to argue that the Student should not have been placed at Lowell. However, the Parent voluntarily placed the Student there and there is no evidence in the record as to which school was the Student's neighborhood school. The IEP did not require the Student to stay at Lowell. Further, the IEP provided that his education took place 92% of the time in the general education classroom.

The Parent has not proven a violation of WAC 392-172A-02050.

Issue 5k: ... individualized and appropriate extended school year (ESY) services under WAC 392-172A-02020.

30. Under Washington Administrative Code 392-172A-02020,

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

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

(a) Regression means significant loss of skills or behaviors if educational services are interrupted in any area specified on the IEP;

(b) Recoupment means the recovery of skills or behaviors to a level demonstrated before interruption of services specified on the IEP

31. In the Ninth Circuit case of *N.B. v. Hellgate Elementary School District*, the court held:

Under the IDEA, schools are required to provide ESY services as necessary in order to provide a child with a FAPE. A school must provide these services, however, only if the child's IEP team determines that such services are necessary for the provision of FAPE to the child. A claimant seeking an ESY must satisfy an even stricter test, because providing an ESY is the exception and not the rule under the regulatory scheme. ESY services are only necessary to a FAPE when the benefits a disabled child's gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months.³⁵⁸

32. In this case, there was no evidence available to the IEP team that suggested that the Student's gains in the spring semester of 2020 would be significantly jeopardized if he did not attend ESY in the summer of 2020. Because there was no such evidence, the Parent has not proven a violation.³⁵⁹

Issue 6: Whether the District violated its obligations under the IDEA and its implementing regulations by failing to provide the Student with FAPE, from his enrollment in the District until his enrollment in the Hoquiam School District in September of 2020, by not providing him with a behavior intervention plan (BIP) that was based upon an appropriate functional behavior assessment (FBA).

33. Under Washington Administrative Code 392-172A-01031,

A behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes:

(1) The pattern of behavior(s) that impedes the student's learning or the learning of others;

³⁵⁸ 541 F.3d 1202, 1211 (2008) (quotation marks and citations omitted).

³⁵⁹ See 392-172A-02020; *Hellgate*.

(2) The instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team;

(3) The positive behavioral interventions and supports to:

(a) Reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors;

(b) Ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities;

(4) The skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student.

The Parent does not argue that the BIP as written violates WAC 392-172A-01031. As I found above, the BIP has all of these required elements for each of the two target behaviors.

Instead, the Parent argues that the FBA upon which the BIP was based was invalid because the observers were not trained by Dr. McHale. The Parent has not pointed to any rule or case law that requires observers collecting data for an FBA to be specially instructed by a school psychologist.

The evidence shows that the FBA was led by a special education teacher with 21 years of experience, Ms. Esget. She appropriately instructed the observers before their observation sessions, and they got information that was helpful in drafting the FBA. There is no evidence that the lack of Dr. McHale's involvement caused the FBA to be invalid.

The Parent has not proven a violation of WAC 392-172A-01031.

Issue 7: Whether the District violated its obligations under the IDEA and its implementing regulations by denying the Student FAPE, from his enrollment in the District until his enrollment in the Hoquiam School District in September of 2020, by failing to comply with WAC 392-172A-05145 with respect to removing the Student from his education placement for disciplinary purposes, specifically by: removing the Student from his educational setting as discipline for the behaviors now identified as the basis of his special education eligibility category, including numerous suspensions, in-house suspensions, being sent

to the Principal's office, and his Parent being asked to pick him up from school without any form of due process.

34. Washington Administrative Code 392-172A-05145(2)(a) provides

School personnel may remove a student eligible for special education who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension for not more than ten consecutive school days to the extent those alternative are applied to students without disabilities under this section, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement[.]

There is no evidence of the Student being disciplined by the District after the District's evaluation found him eligible for special education. However, WAC 392-172A-05170 provides that:

(1) A student who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this chapter if the school district had knowledge as determined in accordance with subsection (2) of this section that the student was a student eligible for special education before the behavior that precipitated the disciplinary action occurred.

(2) Basis of knowledge. A school district must be deemed to have knowledge that a student is eligible for special education if before the behavior that precipitated the disciplinary action occurred:

...

(c) [t]he teacher of the student, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other supervisory personnel of the school district.

The District had knowledge that the Student was eligible for special education as defined by WAC 392-172A-05170(2)(c) by the time of the August 20, 2019 meeting because personnel of the school district met with principal Mary Sepler, a supervisory personnel of the school district, to express specific concerns about a pattern of the Student's

behavior. The pattern was so concerning that Ms. Sepler agreed to place a one-on-one instructional aide in the general education classroom with the Student for the first two weeks of school, a step unprecedented for a non-special education student in the 34-year teaching experience of Ms. Hanson. The August 20, 2019 team also put in place other accommodations for the Student. Further, the District had suggested (but had not formally proposed) evaluating the Student in October 2018. The District must be deemed to have knowledge of his eligibility for special education, for purposes of WAC 392-172A-05170(2)(c), on August 20, 2019.

Under WAC 392-172A-05170(1), the Student was entitled to the protections of WAC 392-172A-05145 for his entire fourth-grade year. However, the District did not violate WAC 392-172A-05145. Although he had many behavioral incidents in his fourth grade year, he was only suspended six times for a period exceeding 20 to 30 minutes, and only twice was his parent asked to pick him up. His placement was not changed. The District did not remove him for more than ten school days. There is no evidence that the in-school suspensions and other disciplinary actions that he experienced were not also applied even-handedly to students without disabilities.

The Parent has not proven a violation in this regard.

Issue 8: Whether the District violated its obligations under the IDEA and its implementing regulations by denying the Student FAPE, from his enrollment in the District until his enrollment in the Hoquiam School District in September of 2020, by committing both procedural and substantive violations of the IDEA by repeatedly disciplining the Student for manifestations of his disabilities and removing him from his educational placement as a result of conduct that was a manifestation of his disabilities, in violation of WAC 392-172A-05147 through -05155.

Issue 9: Whether the District violated its obligations under the IDEA and its implementing regulations by failing to provide the Student with FAPE, from his enrollment in the District until his enrollment in the Hoquiam School District in September of 2020, by not conducting manifestation determination reviews when issuing discipline to the Student, including failing to implement and appropriately adjust FBAs and BIPs as required by WAC 392-172A-05147.

35. Washington Administrative Code 392-172-5155 provides that a “change of placement” occurs in the context of a disciplinary removal if

(a) The removal is for more than ten consecutive school days; or

(b) The student has been subjected to a series of removals that constitute a pattern:

(i) Because the series of removals total more than ten school days in a school year;

(ii) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in a series of removals; and

(iii) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of removals to one another.

There is no evidence that the Student was removed from class for any amount of time close to ten days during his entire tenure in the District. In his fourth grade year, he had six in-school suspensions of more than 20 to 30 minutes each, and his Parent was asked to pick him up twice. His placement did not change under WAC 392-172A-05155.

36. Washington Administrative Code 392-172A-05147 provides that, “[i]f the school district, the parent, and relevant members of the student’s IEP team determine the conduct to be a manifestation of the student’s disability, the IEP team must” take one or more actions, including conducting a FBA, or modifying a BIP – and must return the student to their placement except in certain circumstances. Washington Administrative Code 392-172A-05148 addresses the actions a district must take when it has determined that a student’s conduct was not a manifestation of his disability.

However, under Washington Administrative Code 392-172A-05146, a district is only obligated to conduct a manifestation determination review when there has been a disciplinary change of placement. As there was no such change of placement here, the District was not obligated to conduct a manifestation determination review or to take the actions required based on the results of the determination.

37. Washington Administrative Code 392-172A-5149 provides for “special circumstances” under which a district may remove a student to an interim alternative educational setting. There is no evidence that the District removed the Student to an interim alternative educational setting. This rule does not apply to this case.

38. The Parent has not proven a violation of WAC 392-172A-05147 through -05155.

Issue 10: Whether the District failed to provide the Student with FAPE, from January 10, 2020 until his enrollment in the Hoquiam School District in September of 2020, by not providing him with all the specially designed instruction, related services, and supplemental services called for in the District’s initial IEP for the Student.

39. From January 13, 2020, to March 12, 2020, the evidence shows that the District provided the SDI, related services, and supplemental services called for the District’s initial IEP.
40. The Parent argues the District failed to implement the Student’s IEP after March 12, 2020 because the Student was not provided all SDI and related services required by his IEP. The District contends that it was following the guidance of the Office of Superintendent of Public Instruction and the federal Department of Education.

The District was ordered to stop all in-person educational programs on March 12, 2020, by an emergency declaration of Governor Inslee. The U.S. Department of Education (DOE) issued guidance that same day stating,

If [a district] closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, than an LEA would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the LEA must make every effort to provide special education and related services to the child in accordance with the child’s individualized education program (IEP)....³⁶⁰

The Washington Office of Superintendent of Public Instruction also issued guidance stating, “There remains an expectation that individualized education program (IEP) services will be delivered to the maximum extent possible during the pandemic while adjusting delivery methods to comply with state and local health/safety restrictions.” This guidance further recognized that there have been no changes made to the IDEA or its implementing regulations.

The question is whether the services provided satisfied the District’s obligation to implement the Student’s IEP, and if not, whether any failure to implement the IEP was a material failure.³⁶¹

³⁶⁰ U.S. Dep’t of Education, Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak (March 2020) at 2.

³⁶¹ See *Van Duyn v. Baker Sch. Dist.* 5J, 502 F.3d 811 (9th Cir. 2007).

In this case, the Student received a total of 7 to 15 minutes of asynchronous SDI from his special education teacher a week. He received no “check-in / check-out” meetings from his special education teacher. Even counting an additional 15 minutes of time for him to produce his response to the videos, he only received 30 minutes of SDI a week. Counting the “check-in / check-out” times, the Student’s IEP called for 135 minutes of SDI during a five-day school week. Thus, after March 12, 2020, the Student’s SDI time was reduced by over 75%, even counting the Student’s time to respond to the short videos.

Further, the format of the SDI was not the format agreed by the team. As aptly summarized by his mother, this Student is [REDACTED], and he has significant problems in the areas of social-emotional and behavior, and this format of getting work from and giving product to a computer screen was not working for him to develop and learn in the areas of behavior and social-emotional. The IEP was designed to help him by providing human interaction, in the form of talking and interacting with his paraeducator, his special education teacher, and others. The District presented no evidence that 15 minutes weekly of asynchronous learning was an evidence-based approach to working with the Student to resolve his significant behavior and social-emotional problems. This was a significant change in the IEP, and it took place without any consultation with the Parent.

When the Parent requested synchronous learning with other students, the District reasonably declined, concerned about the ability to avoid or minimize a potential traumatic event for other students on the remote call if the Student were to become aggressive with them. The District was also reasonably concerned about the privacy of other students.

But the District’s concern about other students does not mean that Ms. Esget or his paraeducator could not have created synchronous learning opportunities for the Student to receive his SDI in social-emotional and behavior. There is no reason why Ms. Esget could not have “checked in” and “checked out” with the Student every school day. There is also no reason that his 60 minutes of SDI could not have been given synchronously. The District has cited no policy from OSPI or DOE that advises against providing synchronous learning. The District seems to have had a belief that if everyone could not access synchronous learning, then nobody (including this Student who desperately needed human interaction) would have access to synchronous learning. That choice by the District did not comply with the IDEA because it denied the Student a FAPE.

Calculating that he lost approximately 105 minutes a week of SDI due to the District’s material failure to comply with the IDEA, the Student lost approximately 1470 minutes of SDI in the 14 weeks between March 16, 2020 and June 19, 2020.

The District might argue that its failure to provide the required SDI after March 12, 2020 was of no consequence since the Student was doing well in his general education classes. But the SDI in behavior and social-emotional was an integral part of his education – not separable from mathematics, reading or the other “academic” subjects. And schools will return to in-person learning at some point in the future. The Student needed the skills he was learning in the SDI from Ms. Esget not only to access his education in fourth grade, but also in fifth grade and beyond. By failing to provide the SDI in the format and for the length of time required in the IEP, the District potentially set the Student up for failure when he returns to class.

Issue 11: Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student with FAPE from March 11, 2020, until his enrollment in the Hoquiam School District in September of 2020, by materially and substantially changing the Student’s educational placement to one that is not designed to ensure that he will be able to make meaningful educational progress or meet his unique needs.

41. Due to the Governor’s order, the District closed schools for in-person instruction on March 13, 2020. This was effectively a change in placement for the Student.

The evidence shows that this change of placement actually *improved* the Student’s general education progress. He did better in class than he had before. He completed all his assignments. There was no doubt in Ms. Hanson’s mind that he was ready for fifth grade.

This improvement when the Student learns from home is anticipated by the results of the BASC-3. The BASC-3 shows the Student to be “clinically significant” and “at risk” in several areas of social-emotional and behavioral functioning *when at school*. The BASC-3 shows that, when the student is home, those problems evaporate. In the home environment, the Student’s social-emotional and behavioral functioning is average – much better than his functioning at school.

However, as was discussed in regard to Issue 11, even if one assumes that the District had no choice but to close its schools to in-person instruction, the method by which it delivered the Student’s SDI in social-emotional and behavior did not provide the Student with a FAPE. The District’s implementation of asynchronous learning, with no live interaction between the Student and any teacher or counselor for several months, was a material failure by the District to ensure that the Student made meaningful educational progress in behavior and social-emotional.

Issue 12: Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student with FAPE from March 11, 2020, until his enrollment in the Hoquiam School District in September of 2020, by materially and substantially changing the Student's educational placement absent the existence of any evaluative data to support the same.

42. As discussed above, Governor Inslee's order of March 13, 2020, effectively closed all schools to in-person learning, necessitating that the Student receive his education from home. To the extent it was a procedural violation to change the Student's placement without conducting an evaluation, that violation is addressed through the discussion of the District's failure to implement the Student's IEP above.

Issue 13: Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student with FAPE from March 11, 2020, until his enrollment in the Hoquiam School District in September of 2020, by unilaterally changing the Student's educational placement outside of the IEP team setting and without meaningful parental participation.

43. As discussed above, Governor Inslee's order of March 13, 2020 effectively closed all schools to in-person learning. To the extent it was a procedural violation to change the Student's placement outside the IEP team setting, that violation is addressed through the discussion of the District's failure to implement the Student's IEP above.

Issue 14: Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student with FAPE from March 11, 2020, until his enrollment in the Hoquiam School District in September of 2020, by unilaterally changing the Student's educational placement without providing prior written notice of the same to the Parent.

44. Under Washington Administrative Code 392-172-A-05010, written notice must be sent to the parents of a student eligible for special education a reasonable time before the school district proposes to initiate or change a student's educational placement.

As discussed above, Governor Inslee's order of March 13, 2020 effectively closed all schools to in-person learning. To the extent that it was a procedural requirement to provide PWN to the Parent of this change, that violation is addressed through the discussion of the District's failure to implement the Student's IEP above.

Issue 15: Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student FAPE during the summer of 2020 by failing to

make a determination as to what ESY services the Student was entitled for the summer of 2020 based upon his unique and individual needs.

45. Under Washington Administrative Code 392-172A-02020,

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

46. In the Ninth Circuit case of *N.B. v. Hellgate Elementary School District*, the court held:

Under the IDEA, schools are required to provide ESY services as necessary in order to provide a child with a FAPE. A school must provide these services, however, only if the child's IEP team determines that such services are necessary for the provision of FAPE to the child. A claimant seeking an ESY must satisfy an even stricter test, because providing an ESY is the exception and not the rule under the regulatory scheme. ESY Services are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months.³⁶²

47. In this case, there was no evidence presented that the Student's gains during the regular school year would be significantly jeopardized if he was not provided with an educational program during the summer months. There was no evidence of regression and recoupment time, and so the Parent has not proven that the District erred by failing to offer ESY services to the Student in the summer of 2020.

Issue 16: Whether the District failed to comply with procedural requirements of the IDEA and in turn failed to provide the Student FAPE by issuing materially false progress reports from January 10, 2020, until his enrollment in the Hoquiam School District in September of 2020, specifically on or around March/April of 2020 and June of 2020.

48. The IEP calls for progress reports every semester. The District issued a progress report in June 2020. It was not materially false, when one reads the footnote explaining the report. It explained that the Student had been making sufficient progress until progress

³⁶² 541 F.3d 1202, 1211 (2008) (quotation marks and citations omitted).

had become not measureable in the ways anticipated in the IEP during remote learning. The Parent has not proven that the District issued a materially false progress report, and thus has not proven a violation of FAPE for this issue.

Issue 17: Whether the District failed to comply with procedural requirements of the IDEA by failing to timely offer a resolution session to the Parent including relevant IEP team members, as determined by the Parent and the District, and after the Parent had received all educational records of the Student that she had requested on August 17, 2020.

49. The Parent has withdrawn this issue.

REMEDIES

1. When a parent proves a violation of the IDEA, a tribunal may “grant such relief as the court determines is appropriate.”³⁶³
2. “Compensatory education is an equitable remedy that seeks to make up for ‘educational services the child should have received in the first place,’ and ‘aim[s] to place disabled children in the same position they would have occupied but for the school district’s violations of the IDEA.’”³⁶⁴ “Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.”³⁶⁵ Compensatory education is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case.³⁶⁶
3. The Parent has shown that [REDACTED] is necessary for the Student to receive the benefit of his education. If the District had complied with its child find obligations, the Student would have been a special education student starting on the first day of school in 2019. The District did not offer [REDACTED] for approximately 50 weeks, from the first day of school in 2019 until the Student was unenrolled. There is no evidence about how long these [REDACTED] sessions would be, or how frequently they would be held. Based on a computation of ½ hour a week every week, the Student is entitled to **25 hours of [REDACTED] at the District’s expense.** The District shall contract with a [REDACTED] with expertise in [REDACTED] to provide this service.

³⁶³ 20 U.S.C. § 1415(i)(2)(C)(iii).

³⁶⁴ *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir 2011)(quoting *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005)).

³⁶⁵ *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994).

³⁶⁶ *Reid v. District of Columbia*, 401 F.3d 516, 523-24 (D.C. Cir. 523-24).

4. The January 10, 2020 IEP put in place 135 minutes of SDI per week, an amount that turned out to be appropriate and helpful for the Student in the two months that followed. If the District had complied with its child find duties, the Student would have been receiving those 135 minutes of SDI since the first week of September, 2019 (Labor Day was September 2, 2019; there is no school calendar in the record). It was 19 weeks inclusive between Labor Day and January 10, 2020, or 16 school weeks (considering two weeks for winter break and one additional week for Thanksgiving and other fall holidays). Therefore, the Student did not receive approximately 2,160 ($135 \times 16 = 2,160$) minutes of SDI from a special education teacher for the period of September 2, 2019 to January 10, 2020.

Between March 16, 2020 and until June 19, 2020, the Student did not receive approximately 1,470 minutes of SDI that he was entitled to under his IEP, because he was receiving only 30 minutes of the 135 minutes required weekly.

$1,470 + 2,160 = 3,630$ minutes of SDI not provided, total.

55.6 percent of the SDI in the IEP is dedicated to “check-in/check-out.” That means that, of the 3,630 minutes of SDI that the Student was not provided, about 2,020 of those minutes would have been in the form of “check-in / check-out,” and about 1,610 of those minutes would have been in the form of planned half-hour lessons. It is equitable to require the District to provide all of the minutes in the planned half-hour lessons that the Student did not receive – on a minute-for-minute basis. In addition, it is appropriate to order a percentage of the missed “check-in / check-out” time. An appropriate percentage of the missed “check-in / check-out” time to be compensated is 25%. This percentage is appropriate because the core of the instruction was occurring during the planned half-hour lessons, and the “check-in / check-out” time was meant to supplement that planned instruction and reinforce it. Twenty-five percent of 2,020 is 505.

The compensatory SDI awarded is 2,115 minutes (1,610 + 505).

The District shall contract with the Hoquiam School District, with another entity that employs special education teachers, or directly with a teacher at the District’s discretion. This special education teacher shall communicate with the Student’s IEP team at his current district and shall coordinate the compensatory SDI with the SDI that his current district is providing.

The compensatory services described above shall be provided outside the Student’s regular school day and within a reasonable distance of the Student’s current residence. The services shall be provided at times mutually agreed between the Parent and the providers. The services shall be provided within two years of the date of this order.

ORDER

1. The District violated the IDEA and denied the Student a FAPE as set forth above.
2. The District did not otherwise violate the IDEA or deny the Student a FAPE.
3. The District shall provide the compensatory relief set forth in the Remedies section above.
4. The Parent's other requested remedies are denied.

Served on DATE OF MAILING.



JASON KINN
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



Michael Haberman
Bellingham School District
1306 Dupont Street
Bellingham, WA 98225

Alexander Hagel
Shannon M. McMinimee
Cedar Law PLLC
113 Cherry Street
PMB 96563
Seattle, WA 98104-2205

Lynette M. Baisch
Christina Weidner
Porter Foster Rorick LLP
800 Two Union Square
601 Union St
Seattle, WA 98101

Dated April 22, 2021 at Seattle, Washington.

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

cc: Administrative Resource Services, OSPI