

Due Process Updates

SEAC Meeting
February 21, 2023



Washington Office of Superintendent of
PUBLIC INSTRUCTION



Quarterly Due Process Decisions

Due Process Decisions: Quarterly Update

2021-SE-0161 (Sumner-Bonney Lake) (Decision Date: Dec. 4, 2022)

Issue(s): Child find from January 2020-2022; IEP development, placement in least restrictive environment January 2020 and March 2022; Appropriateness of residential placement

Findings:

- **District failed to evaluate the Student when it was on “clear notice that the Student displayed symptoms of a disability”**
 - District on notice of symptoms of disability *and* that Student was struggling, there was a potential adverse impact on ability to engage in education
 - ADHD diagnosis “alone, coupled with the Student’s poor academic performance over practically the entirety of her enrollment in the District, could place a reasonable school district on notice that the Student was displaying the symptoms of a disability and should be evaluated.”
- **Second private residential placement is proper for reimbursement**

Remedy:

- Reimbursement of \$66,003 for the residential placement
- District shall conduct its own initial evaluation of the Student
- Student will remain in residential placement at District expense until the issues of the Student’s eligibility determined



2021-SE-0174 (Mary M. Knight) (Decision Date: Nov. 2, 2022)

Issue(s): Access to educational records; IEP implementation (appropriately qualified/trained staff); IEP development (reasonably calculated to enable the Student to make progress); IEP team members

Findings: Material failure to provide an accommodation, but no denial of FAPE warranting relief.

2022-SE-0045 (Tacoma) (Decision Date: Nov. 11, 2022)

Issue(s): IEP development; IEP amendment; IEP implementation; Change in placement; Parent participation; Appropriateness of private services and evaluations

Findings:

- **District failed to materially implement the IEP with the closure of school facilities in March 2020** due to COVID-19 pandemic and until the development of the February 9, 2021

Remedy:

- Reimbursement for tutoring and transportation March 2020-February 2021



2022-SE-0048 (Peninsula) (Decision Date Nov. 17, 2022)

Issue(s): IEP implementation (during 2020 school closures, 2020-2021 school year); Consideration of private evaluations; IEP development; Appropriateness of private services

Findings:

- **Material failure to implement the IEP during spring 2020 school facility closures** – “While the COVID-19 school closure is in no way the District’s fault, it is difficult to see how the limited services provided to the Student did not amount to a material failure to implement her IEP.”
- Failure to implement the IEP as written during the 2020-2021 school year; however, not a material failure or a denial of FAPE (SDI delivered by a paraeducator at times and not a special education teacher as written in the IEP)
- **Failure to adopt a specific methodology:** “a specific method of reading instruction was required for the Student to receive FAPE, and the District’s failure to adopt either an Orton-Gillingham program or similar methodology that was evidence-based, direct, sequential, multi-sensory, and implemented with fidelity resulted in an inappropriate IEP and denial of FAPE”
 - Note, next IEP – March 2021 IEP was reasonable as drafted as District agreed to use the “Seeing Stars” curriculum (met the criteria recommended in the evaluations)
- **Material failure to implement the Jan. 2021 IEP and March 2021 IEP denying the Student FAPE**

Remedy

- 20 hours tutoring in reading (District contracts with TLP or reimburses)
- Reimbursement for tutoring from Sept. 2020 through Sept. 2021, capped at \$5,000



2022-SE-0058 (Seattle) (Decision Date: Jan. 12, 2023)

Issue(s): IEP implementation; Extended school year (ESY); IEP development (reasonably calculated to provide educational benefit); Behavior intervention plan (BIP) development (appropriate) and implementation; Timely and appropriate evaluations; Appropriateness of residential placement; Parent participation

Findings:

- **Failure to implement several IEPs**
- February 2022 **BIP was inappropriate** and denied Student FAPE; **April 2022 FBA and BIP were inappropriate**
- Student “lost significant educational opportunity as a result of the District’s failure to provide him with FAPE”
- **Residential placement appropriate**, and prospective placement necessary

Remedy:

- Tuition reimbursement and prospective placement
 - Develop new IEP for Student placing him at residential placement for 1 year within 15 days of the date of the order
- Reimburse future reasonable travel expenses



2022-SE-0071 (Battle Ground) (Decision Date: Dec. 1, 2022)

Issue(s): Appropriateness of the District's reevaluation; IEE

Findings: Reevaluation appropriate, Parents are not entitled to an IEE

Parents also filed a due process, 2022-SE-0097, which was not consolidated with this matter. 2022-SE-0097 included allegations that the District improperly exited the student from special education, and failed to protect the student from harassment, intimidation, and bullying. That due process is still in progress.

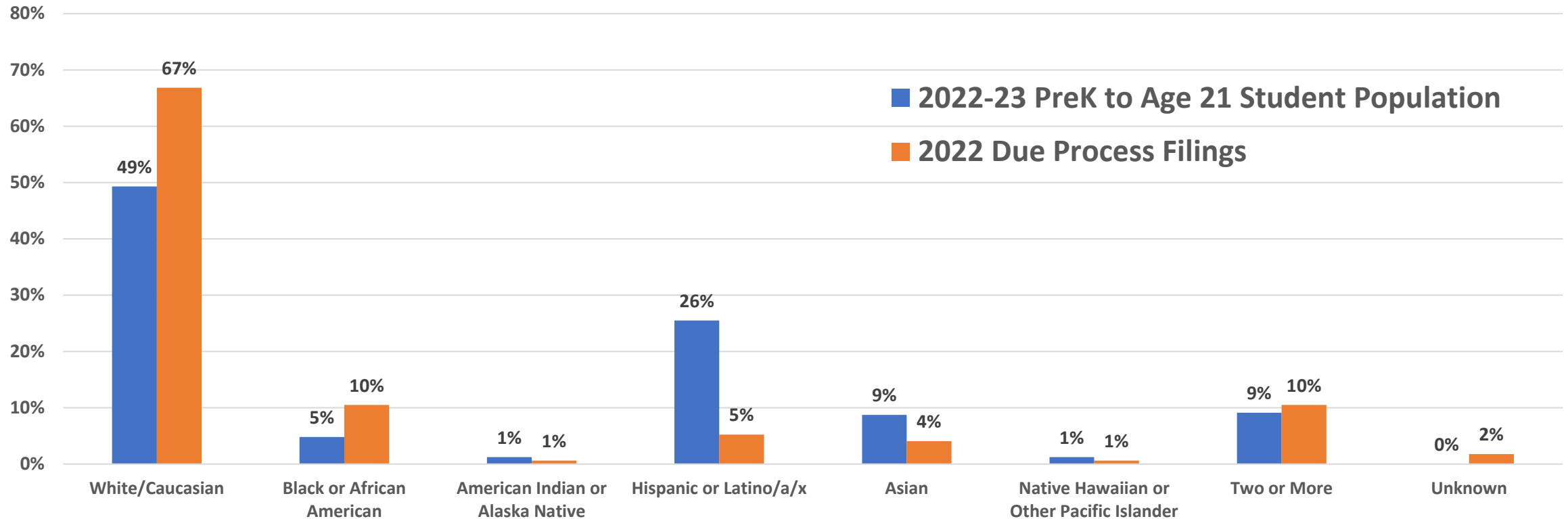
This case utilized a Vietnamese interpreter for the Parents who represented themselves at the due process.





Demographics & Language Access

2022 Due Process Filings by Race/Ethnicity



Language Access in Due Process

- Due Process Filed in 2021:
 - 1 Used a Spanish Interpreter
- Cases Filed in 2022:
 - 2 Used Vietnamese Interpreters.
 - Both 2022 cases involved the same Parent – one case has been decided and was included in the quarterly decision review



Accommodations (ADA)

- For new cases in 2022, 7 had ADA accommodations
- For 2021, 5 had ADA accommodations

- The accommodations information are harder to get at in OAH's case management system. They type of accommodations vary widely and are generally narrowly tailored to address the party's specific disability.

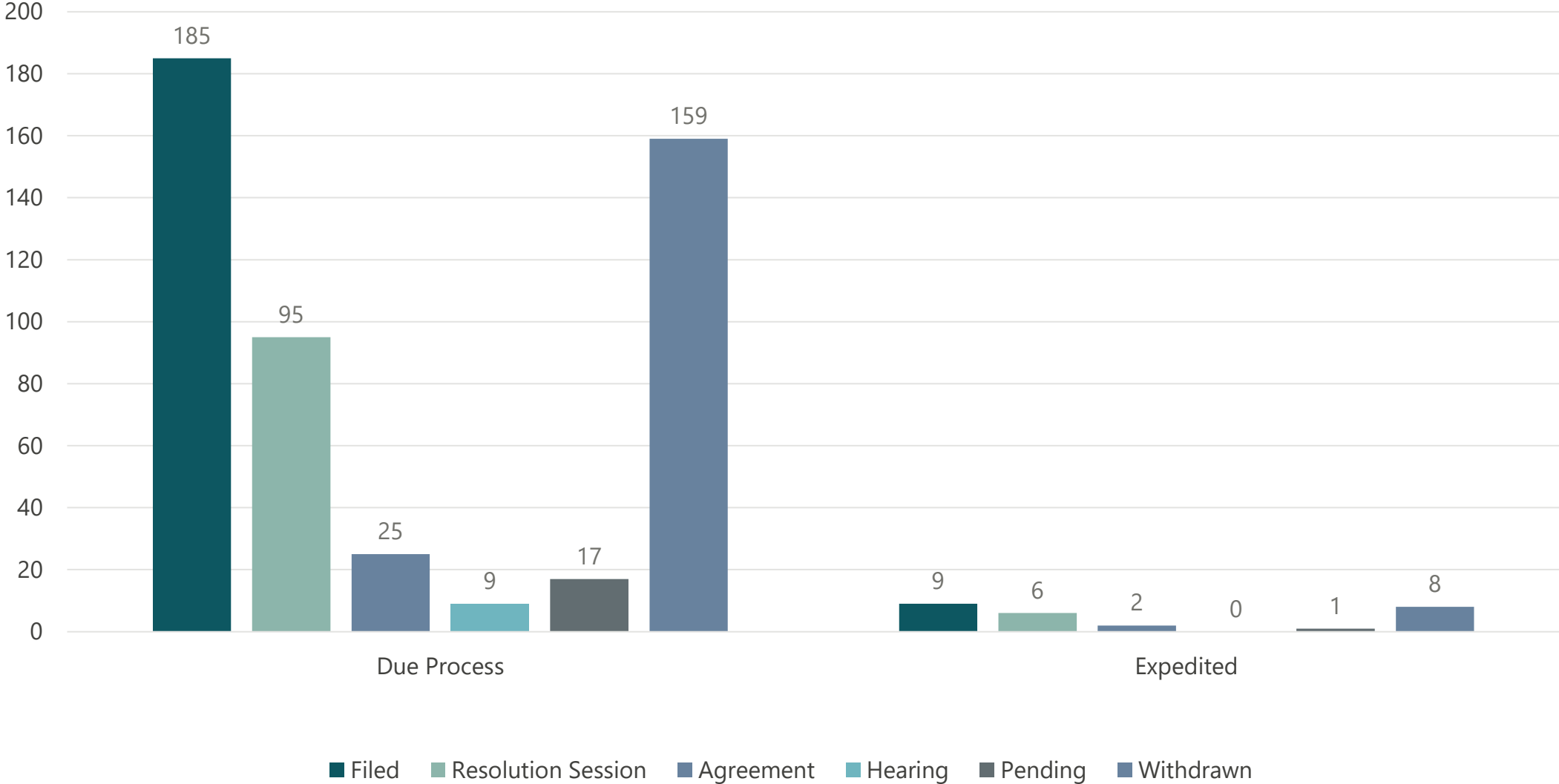
- Process for Requesting Accommodations
 - Party in a due process makes a request for an accommodation to OAH.
 - OAH either grants the accommodation or if there are questions (the request is more complicated), OAH consults OSPI's Office of Equity & Civil Rights.
 - As needed, Equity & Civil Rights consults with the Special Education Division





Trends

Due Process 2021-2022



Filed, Hearing, Withdrawn

