

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

MAILED

MAR 07 2020

IN THE MATTER OF:

OSPI CAUSE NO. 2019-SE-0130

OAH - SEATTLE

OAH DOCKET NO. 09-2019-OSPI-00882

FIFE SCHOOL DISTRICT

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

A due process hearing in the above matter was held before Administrative Law Judge (ALJ) Matthew D. Wacker in Fife, Washington, over four days on November 18-20 and December 10, 2019. The Mother of the Student whose education is at issue<sup>1</sup> appeared and was represented by Jinju Park, attorney at law.<sup>2</sup> The Fife School District ("the District") was represented by Carlos Chavez, attorney at law. Also present for the District was Nancy Fitta, director of special programs.

**STATEMENT OF THE CASE**

*Procedural History*

The Mother filed a Request for Due Process Hearing (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on September 12, 2019. The Complaint was forwarded to the Office of Administrative Hearings (OAH) and was assigned to ALJ Matthew D. Wacker. On September 16, 2019, a Scheduling Notice was mailed to the parties, setting a prehearing conference for October 8, 2019, and a due process hearing for October 24, 2019. On September 18, 2019, the District filed its Response to the Complaint.

The prehearing conference was held on October 8, 2019, and the First Prehearing Order was entered on October 9, 2019. The First Prehearing Order set a due process hearing for November 18-20, 2019. The First Prehearing Order also set out a Statement of Issues and Remedies for the due process hearing.

Via email on October 14, 2019, the District requested that an additional half day be set for the due process hearing due to the unavailability of a District witness. The presiding ALJ and parties' counsel agreed to add the morning of November 22, 2019 to the already-scheduled three days. This was memorialized in the October 22, 2019 Second Prehearing Order. Later, by subsequent agreement of parties' counsel, the morning of November 22, 2019 was stricken, and the morning of December 10, 2019 was set for the last day of the due process hearing. See November 7, 2019 Third Prehearing Order.

<sup>1</sup> In the interest of preserving the family's privacy, this decision does not use the actual names of the parents or the student. Instead, they are identified as the "Mother," "Father," or "Parents," and the "Student."

<sup>2</sup> The Father of the Student appeared and was present for just the Student's testimony on November 20, 2019.

### *Due Date for Written Decision*

The due date for a written decision in the above matter is the close of record plus thirty (30) calendar days. See October 9, 2019 First Prehearing Order. The record in this matter closed with the filing of the parties' post-hearing briefs on February 7, 2020. Therefore, the due date for a written decision in the above matter is **MARCH 8, 2020**.

### **EVIDENCE RELIED UPON**

The following exhibits were admitted into evidence:

Parent Exhibits: P1 - P27.

District Exhibits: D1 - D27.

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

Jesse Michael Adams, MD, Student's treating neuropsychiatrist;

██████████; Friend of the Mother:

Laura Sullivan, District special education teacher, Discovery Primary School;

Aimee Nolan, District general education teacher, Discovery Primary School;

Kristyn Frazier, District general education teacher, Discovery Primary School;

Kellie Preisner, District special education assistant, Discovery Primary School;

Mother of the Student;

Viveca Tarrant, District special education paraeducator, Discovery Primary School;

Mary McLaughlin, District assistant principal, Discovery Primary School;

Vicky Franklin, District general secretary, Discovery Primary School;

Kadee Tuttle, District school psychologist, Discovery Primary School;

The Student;

Nancy Fitta, District executive director of student services;

Julie Bartlett, District principal, Discovery Primary School;

### **ISSUES AND REQUESTED REMEDIES**

The statement of the issues and requested remedies for the due process hearing is:

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

- i. Failing to conduct an appropriate and timely evaluation of the Student;
- ii. Failing to address bullying that caused the Student to avoid school and fear her classmates and peers
- iii. Failing to provide Applied Behavior Analysis (ABA) therapy in school in the form of a 1:1 behavioral technician with the support of a Board Certified Behavior Analyst (BCBA);

- iv. Failing to provide appropriate supervision of the Student to prevent and address dangerous elopement;
  - v. Failing to timely convene an Individualized Education Program (IEP) team meeting;
- b. And, whether the Parent is entitled to the requested remedies:
- i. Declaratory relief that the District violated the IDEA and denied the Student FAPE during her enrollment by:
    - a. Failing to conduct an appropriate evaluation of the Student;
    - b. Failing to provide the Student with related services necessary to access her education;
    - c. Failing to provide the Student FAPE;
  - ii. Compensatory education and supplemental services for the Student to provide the educational benefit she would have received during her enrollment in the District but for the District's violations and denial of FAPE, including:
    - a. \$8,000.00 for summer tuition at the Gersh Academy;
    - b. \$50,000.00 for tuition for one school year at the Gersh Academy;
    - c. \$360.00 in reimbursement for copays for therapy targeted to treat anxiety-related school refusal;
    - d. \$900.00 in reimbursement for transportation to and from therapy to treat anxiety-related school refusal;
  - iii. An Order that includes whatever additional relief the tribunal may find just and equitable, including an award of attorney's fees.

See October 9, 2019 First Prehearing Order.

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## FINDINGS OF FACT

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

### General Background

1. The Student had a neuropsychological evaluation by Dr. Skip Hrin in May 2016 when she was 4½ years old and residing in Alaska with the Parents. P1p1.<sup>3,4</sup> Dr. Hrin noted the Student had significant behavioral issues in both the school and home settings, “seemed to have extreme difficulty with (low) frustration tolerance,” and was “highly distractible.” *Id.* at p2. It was reported that the Student began to exhibit “meltdowns” approximately 18 months earlier. *Id.* Dr. Hrin remarked that the Student’s “social skills and behaviors appeared below age and situation appropriateness, whereas pragmatic language skills were seemingly above age and situation appropriateness.” *Id.* The Student’s full-scale IQ (FSIQ) and verbal reasoning skills were in the average range. *Id.* at p3. However, “sustaining attention or staying on tasks in a vigilant manner for a period of time was performed at a profoundly deficit level,” and “[the Student’s] profile indicates that she is required to engage in effortful processing too much” which leads to fatigue. *Id.* at pp4, 6.
2. Dr. Hrin concluded that the Student did not demonstrate the symptomology necessary for an autism diagnosis. He diagnosed the Student with attention deficit hyperactivity disorder (ADHD) combined type, generalized anxiety disorder (GAD), and provisionally diagnosed the Student with a neurodevelopmental disorder due to a hypoxic-ischemic event. *Id.* at p8.
3. At the hearing, the Mother asserted that Dr. Hrin recommended Applied Behavior Analysis (ABA) therapy for the Student. Mother T614.<sup>5</sup> However, careful review of Dr. Hrin’s evaluation report does not identify any mention of ABA therapy, and Dr. Hrin did not appear as a witness. Given the lack of independent corroboration, and the self-serving nature of the Mother’s assertion, no finding is made with respect to any recommendation Dr. Hrin may have made for ABA therapy.
4. In October 2016, the Mat-Su Borough School District in Palmer, Alaska, conducted an evaluation to determine if the Student was eligible for special education services. D1.

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<sup>3</sup> Citation to the exhibits of record are by the party (“P” for the Parent and “D” for the District) and page number. For example, citation to P1p1 is a citation to Parent Exhibit P1 at page 1.

<sup>4</sup> The copy of Dr. Hrin’s report that is Exhibit P1 is missing page 4. This is the only copy of Dr. Hrin’s report offered by the Parent.

<sup>5</sup> Citation to the testimony of record is by last name of the witness, except in the case of family members, whose given names are not used, and the transcript page number (Txxx) where the testimony appears. For example, citation to “Mother T614” is a citation to the Mother’s testimony at page 614 of the transcript.

5. On November 8, 2016, a meeting was held at Machtetanz Elementary School to consider the results of the Student's evaluation. See D1p1 (Date of Meeting: 11/08/2016).

6. The evaluation team determined the Student was eligible to receive special education services under the Early Childhood Developmental Delay category. D1p3. However, the Parents "chose to decline services and keep (the Student) in a private preschool setting where she was doing well." D1p3.

7. In December 2016, the Student fell off a horse and suffered a head injury. Mother T338, T539. The Student would eventually be diagnosed with a traumatic brain injury (TBI) from the fall. Adams T25, P4p2. After the fall, the Student developed "severe impulsivity and aggression," especially in the family household, which sometimes resulted in injury to the Parents. Adams T24-T25. The Student's impulsivity led to her running out into the woods and becoming lost, requiring assistance from the Alaska State Patrol to find her. Adams T25.

8. In April 2017, Melissa Dobbs, Board Certified Behavior Analyst (BCBA), produced a Behavior Assessment/Treatment Plan for the Student.<sup>6</sup> P3. The Parents referred the Student to Ms. Dobbs for ABA services. *Id.* at p1. Contrary to Dr. Hrin's evaluation only six months earlier, Ms. Dobbs opined that the Student "presents with significant delays in pragmatic communication and paralinguistic skills." Ms. Dobbs remarked that the Student "is limited in her access to the community due to her elopement and aggressive behaviors." *Id.* at p3. "When her wants/needs are not met in a timely manner (because she is unable to communicate them effectively), [the Student] will have a 'meltdown' which consist of screaming, hitting, and kicking others." *Id.* at p2.

9. Following this assessment and treatment plan, Ms. Dobbs began providing ABA services to the Student. Mother T543. The Mother believed the Student required ABA services for her "safety" with respect to the Student's eloping, social/emotional/behavioral functioning, and pica. *Id.*

10. In a statement dated April 16, 2017, Occupational Therapist Andrea Rapson noted she provided the Student with occupational therapy services beginning August 2016. P2p1. Ms. Rapson noted the Parents reported that the Student exhibited "extensive behaviors and meltdowns at home that can last for hours and had recently become aggressive, defiant, and resistive. *Id.*

11. On May 22, 2017, Karen Toth, PhD, completed a neuropsychological evaluation of the Student. D1p1.<sup>7</sup> Dr. Toth diagnosed the Student with autism spectrum disorder (ASD), ADHD-combined type, and pica. *Id.*, Mother T544. This was the Student's first diagnosis of autism. Mother T615-T616.

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<sup>6</sup> The Mother asserted at the hearing that Ms. Dobbs is also a speech-language pathologist (SLP). Mother T444. However, Ms. Dobbs did not appear as a witness and the Behavior Assessment/Treatment Plan reflects no credential(s) to support finding she is an SLP. No finding is made with respect to whether Ms. Dobbs possesses the education, training, experience, or credentialing for an SLP.

<sup>7</sup> The evidence does not include a copy of Dr. Toth's evaluation of the Student. All the evidence regarding Dr. Toth's evaluation is found in references to her evaluation in the Mat-Su Borough School District evaluation of the Student (D1), and in the Mother's testimony.

12. On August 18, 2017, the Mat-Su Borough School District held a team meeting to review and consider the results of Dr. Toth's neuropsychological evaluation of the Student. D1p6. The Team determined the Student continued to qualify for special education services under the Early Childhood Developmental Delay category. *Id.* The Mother reported the Student's nurse practitioner had diagnosed the Student with obsessive-compulsive disorder (OCD). *Id.*

*The Seattle Children's Hospital – Autism Center, Biobehavioral Assessment Clinic*

13. On October 23, 2017, the Student had a "comprehensive inter-disciplinary evaluation due to concerns for disruptive behaviors" through the Biobehavioral Assessment Clinic at Seattle Children's Hospital Autism Center. P4p1. The "chief complaints" noted were aggression, self-injurious behavior, property destruction, pica, and "elopement: runs from parents in community." *Id.* The evaluation consisted of a communication assessment, a medical assessment, and a behavioral assessment, along with recommendations in each area. *Id.*

14. The communication assessment consisted of an "informal observational assessment" and a report from the Mother. *Id.* The Student's language abilities were judged to be within normal limits, though she presented with some challenges in the area of language development. *Id.* She was overly literal and had challenges with abstract language or the use of expressions. *Id.* She demonstrated difficulty in the area of social communication, which was consistent with her diagnosis of ASD. *Id.* She demonstrated a decrease in ability to communicate verbally when stressed, overwhelmed, or agitated, which can lead to disruptive behavior. *Id.*

15. Jesse Adams, MD, conducted the medical assessment. *Id.* at pp1-2. Dr. Adams is a licensed physician in Washington State, and is board certified in Psychiatry, Behavioral Neurology & Neuropsychiatry, and Child & Adolescent Psychiatry. P25p1. This was the first time Dr. Adams met the Student. Adams T24. Dr. Adams noted the primary concerns at that time were "angry tantrums which can last 45-90 minutes and include aggression to self/others, as well as hyperactivity, impulsivity leading to dangerous situations, distractibility/inattention, and a smattering of anxiety." P4p2.

16. It is difficult to determine, from either the evaluation report or Dr. Adams' testimony, the precise manner in which the medical assessment was conducted. It appears as through Dr. Adams spoke with the Mother and perhaps the Student. It cannot be determined what, if any, of the Student's medical records or prior evaluations Dr. Adams may have reviewed. The entirety of Dr. Adams' medical assessment consists of two paragraphs totaling approximately one-half page in the evaluation report. P4p2. Although Dr. Adams acknowledged that, "specific diagnoses are beyond the scope of today's evaluation, based on the evidence available" he concurred with the Student's prior diagnoses of ASD and ADHD combined subtype. *Id.*

17. The behavioral assessment consisted of a functional behavioral analysis (FBA) which "was conducted via an interview with [the Student's] care provider." *Id.* at p2. The "care provider" is not further identified in the evaluation report. The results of the FBA reflected in the evaluation report consist entirely of the follow:

The results of the FBA conducted today suggests (sic) that, in part, [the Student's] disruptive behavior, is maintained by positive reinforcement in the form of gaining access to attention and preferred items, and negative reinforcement in the form of escape from nonpreferred tasks. Pica may be partially maintained by automatic reinforcement in the form of gaining access to preferred sensory input.

*Id.* at p2.

18. While the evaluation report included multiple recommendations for the Student, few expressly touch upon the Student's education. One of the recommendations from the communication assessment included participation in a social-skills group, and that social-skills training should take place in both the school and community setting. *Id.* at p3. Another recommendation is for the use of structure and predictable activities, including at home and for "academic" activities. *Id.* None of the medical recommendations are expressly related to the Student's education. *Id.* at p4. The recommendations from the behavioral assessment reference written "function-based behavioral strategies" that can be implemented by parents and in school, but those written strategies are not part of the evidence. *Id.* at p5. Of the recommendations most clearly related to the Student's education, the most detailed is the following:

It is recommended that [the Student] continue to participate in the educational programming her parents have organized for her. Characteristics of the classroom should include a low teacher-student ratio, use of predictability and routine during educational activities, use of visuals to facilitate participation and communication, opportunities to engage in peer interactions, and goals that target social communication abilities. Services should include special education services utilizing behavioral methodology, individual speech and language therapy, and occupational therapy services. Special attention should be paid to providing predictable routines and consistency during educational programming.

*Id.*

19. The evaluation does not recommend assignment of a 1:1 aide or paraeducator for the Student at school. The evaluation does not speak to whether the Student requires assignment of a 1:1 instructional aide or paraeducator in order to assure the Student's safety at school due to any concern for the Student eloping from school. This is despite the fact that one of the "chief complaints" reported concerns elopement and the Student running from the Parents in the community. *Id.* at p.1.

20. The Mother is unsure whether the Parents ever shared the evaluation from the Biobehavioral Assessment Clinic with the Mat-Su Borough School District. Mother T550.

#### *Mat-Su Borough School District Individualized Education Program*

21. On February 6, 2018, the Student's Individualized Education Program (IEP) team met to develop a new IEP for the Student. D2pp1, 11. The Mother attended the IEP meeting. See Parent's signature at D2p1, and D2p9. By this time, the Student was attending school in the district at Machtetanz Elementary School. *Id.*

22. The IEP team noted the Student had eloped in the past, and now wore a "Project Lifesaver bracelet."<sup>8</sup> *Id.* at p2. The Mother confirmed the elopement occurred, in part, at Machtetanz Elementary School. Mother T557. The IEP noted that the Student required "supervision" for her safety, especially on the playground or at recess, citing an incident where the Student was found

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<sup>8</sup> The bracelet included, at least, a GPS feature to remotely locate the Student.

face down in the snow on the playground, eating the snow along with rocks mixed in the snow. *Id.* at pp3, 5, 7; Mother T556.

23. Under the Present Levels of Academic Achievement and Functional Performance section of the IEP, the team noted that, “[The Student] is able to express her feelings of upset very well when she is at home. Those feelings often manifest themselves as yelling, screaming, hitting, kicking, and running away. When she is upset at school [the Student] does not verbalize nor demonstrate it.” *Id.* at p2. Later, the team remarked that, “we do not see the anger and aggression at school currently.” *Id.* at p9.

24. While the IEP determined the Student required supervision for her safety, it did not assign the Student a 1:1 aide or paraeducator at school. It did not require line-of-sight or arms-length supervision of the Student at school. The IEP did not provide the Student with a behavior technician or ABA therapy/instruction at school.

#### *Student's Entry into the Fife School District – Discovery Primary School*

25. On February 14, 2018, the Parents withdrew the Student from the Mat-Su Borough School District. D4. The family relocated and began residing within the Fife School District.

26. On February 28, 2018, the Mother enrolled the Student in kindergarten at the District's Discovery Primary School (DPS). P5, *See* 2/28/18 entry at D23p1; Mother T603, Sullivan T184.

27. The Mother brought the Student with her to DPS when she enrolled the Student on February 28. D23p1. While at DPS, the Mother met Laura Sullivan. Mother T346, Sullivan T184-T185. Ms. Sullivan is a special education resource room teacher at DPS. Sullivan T136, T183. Ms. Sullivan spoke with the Mother and gave her and the Student a tour of DPS over the course of approximately 30 minutes. *Id.* at T204.

28. There was conflicting testimony offered by the Mother and Ms. Sullivan about whether the Mother requested an IEP meeting be scheduled during their conversation on February 28. The Mother testified she asked Ms. Sullivan for an IEP meeting in order to change the Student's eligibility category from developmental delay to autism, and expected an IEP meeting would be scheduled within 30 days. Mother T346-T347, T559. Ms. Sullivan testified the Mother did not identify any concerns about the Student's IEP from Alaska, and did not ask for an IEP meeting during their discussion and tour. Sullivan T185, T154. There is no other evidence of any request by the Mother for an IEP meeting before April 12, 2018, well more than a month after the Parent asserted she requested a meeting on February 28. *See* April 12, 2018 entry at D11p2; Nolan T252. Given the Mother's assertion she expected an IEP meeting would be held within a month, when more than a month passed without an IEP meeting, it is reasonable to expect the Mother would have taken action before April 12. Absent any evidence of such further action, the Mother's assertion she requested an IEP meeting with Ms. Sullivan is less credible. However, this is not the only reason the Mother's testimony is suspect.

29. Ms. Sullivan made notes documenting her meeting with the Mother on February 28, 2018. *See* 2/28/18 entry at D23p1. There is no mention of the Mother requesting an IEP meeting in Ms. Sullivan's notes.

30. In resolving this conflicting testimony, the undersigned ALJ also considered the testimony of the Mother when she described an incident that would occur later on April 19, 2018, involving

the Student running out of her classroom. See Mother T398-T400. The Mother's testimony describing that incident was compared with the testimony of two other witnesses at the due process hearing; the testimony of LaKetha Grayer, a friend of the Mother, and Aimee Nolan, the Student's general education teacher at that time. Both Ms. Grayer and Ms. Nolan were present along with the Mother during the incident on April 19, but their recollection of the events that day differed materially from the Mother's recollection. See Grayer T116-T128, Nolan T240-T248. After careful review of the testimony of these three witnesses who were all present, the undersigned ALJ found Ms. Nolan and Ms. Grayer's recollection of the incident on April 19 more likely to be true and accurate than the Mother's recollection. See Finding of Fact 66, below.

31. After careful review and consideration of the evidence, it is found as fact that Ms. Sullivan's recollection of what occurred during her conversation with the Mother on February 28, 2018 is more likely true and accurate than the Mother's recollection. It is found as fact that the Mother did not ask Ms. Sullivan for an IEP meeting on February 28, 2018.

32. On March 2, 2018, the Mother and the Student went to DPS to meet the Student's new teacher, Aimee Nolan. D23p1. Aware of the concerns raised in the Student's IEP from Alaska regarding her possible elopement, Ms. Sullivan assigned a special education assistant to the Student for her first week at DPS to help insure a successful transition and to insure the Student would be safe. See 3/2/18 entry at D23p1; Sullivan T186.

33. The Student attended her first day of school at DPS on March 5, 2018. D23p1. The Student attended four of the five school days that week, missing Friday, March 9 for unknown reasons. D22p1, D25p1. On one of the four days she attended, the Student had one early dismissal on March 6 at 1:51 p.m. *Id.* The Student appeared to be transitioning well and doing okay during the week. Mother T350-T351, T562. Ms. Sullivan reported that the Student "had a great first week of school and made a good transition to her new classroom...[The Student] stayed with her class at all times." See 3/9/18 note at D23p1.

34. Although the exact date is not clear, during one of her first days at DPS, another kindergarten classmate "pushed" the Student. The details of what happened are also not clear. Ms. Nolan did not see the classmate push the Student, but the Student reported it to her. Nolan T227. The kindergarten classmate who pushed the Student was very young and immature, so what the Student told Ms. Nolan seemed plausible. *Id.* at T226-T227. Given her knowledge of the classmate, Ms. Nolan reasonably believed it was an inadvertent push. After the Student told her what happened, Ms. Nolan spoke to the classmate and reminded him to keep his hands to himself. *Id.* at T227. The Student never told Ms. Nolan the classmate ever pushed her again. There is no evidence to find the classmate ever pushed the Student again.

#### *District Review of the Student's Alaska Evaluation and IEP*

35. On March 12, 2018, Ms. Nolan, District School Psychologist Kadee Tuttle, and DPS Principal Julie Bartlett met to review the Student's November 8, 2016 evaluation and her February 6, 2018 IEP from the Mat-Su Borough School District. D7pp1, 3; Tuttle T528, Bartlett T665, Nolan T243. Apart from determining that the goals in the Student's Alaska IEP were "all clumped together" and should be separated into two discrete areas, which did not materially alter the goals, the District accepted the Alaska evaluation and IEP as "current and valid." Tuttle T530. The District determined that it would implement the Student's IEP from Alaska as her now-District IEP. *Id.*

36. The Parents were not invited and did not attend the review meeting. Bartlett T667.
37. On March 12, 2018, Ms. Tuttle wrote a Prior Written Notice (PWN) and mailed it to the Parents. D7p4, Sullivan T187. The PWN informed the Parents that the District verified and accepted the Student's special education records from the Mat-Su Borough School District. D7p4. The PWN also stated that an IEP revision would be done to separate out the goals into two areas. *Id.*
38. The Student attended one of the three school days during the week of March 12-16. D25p1, D22p1. The Student missed two of the three school days due to a fever. *Id.*
39. Via an electronic message between Ms. Nolan and the Mother on March 19, 2018, Ms. Nolan stated, "We are so glad that [the Student] is back!" D11p1. Ms. Nolan's reference to the Student being "back" is apparently a reference to the Student missing two days of school the prior week due to illness. The Mother replied to Ms. Nolan the same day, stating that "[the Student] is so happy to be back!" *Id.*
40. The Student attended all ten school days from March 19 to March 30, 2018. *Id.* The Student attended fifteen of the eighteen school days between her first day on March 5, 2018, and March 30, 2018, with only two early releases from school: at 1:51 p.m. on March 6, and at 2:09 p.m. on March 26. *Id.*
41. The District was on Spring Break during the week of April 2 through April 6, 2018. D27. Sometime prior to Spring Break, the Parents and the Student moved and began residing outside the District in the Puyallup School District. P11p2, D8p1.
42. On March 27, 2018, the Parents completed a Nonresident Student Transfer application. D8p1. The Parents wanted the Student to stay in the District for the remainder of the 2017-2018 school year despite no longer residing in the District because, "[The Student] just moved from Alaska to Discovery. Changing schools would have a negative effective (sic) on her mentally." *Id.* The District approved the Parents' application on April 6, 2018. *Id.*
43. The Student attended four of five school days during the week following Spring Break: April 9 through April 13, 2018. D22p1.<sup>9</sup> During that week, the Student had one early dismissal at 2:00 p.m. on April 11, and one late arrival at 9:39 a.m. on April 13. D22p1, D25p2.
44. Via an electronic message on April 12, 2018, the Mother informed Ms. Nolan that she was "setting up a (sic) IEP meeting" for the Student. D11p2. This was the only time Ms. Nolan recalled the Mother asking for an IEP meeting. Nolan T252.
45. Ms. Nolan and the Mother used an electronic messaging application to communicate with each other as needed between March 5, 2018, and April 17, 2018. D11. In none of those messages did the Mother or Ms. Nolan ever mention anything about the Student being harassed, intimidated, or bullied at school until April 16, 2018. *Id.*

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<sup>9</sup> The Student's District Attendance Report (D22p1) reflects the Student was absent on April 10, 2018, and that the District received a doctor's note concerning the absence. The District's demonstrative exhibit, D25p2, reflects the Student was absent on April 9, 2018, and that a doctor's note was received. It is found that the Student's District Attendance Report is more likely true and accurate than the demonstrative exhibit.

46. Vicky Franklin is the general secretary at DPS. Via email to Ms. Franklin on April 16, 2018, the Mother stated, in part, that she had not heard back from Ms. Sullivan in reference to scheduling an IEP meeting for the Student, and "We definitely need to get one on the books ASAP." P8p2.

47. Via email to Ms. Sullivan on April 16, 2018, with the "subject: set up iep meeting," Ms. Franklin asked, "Could you call [the Student's] mom." P8p1.<sup>10</sup>

*Incident at Recess on April 16, 2018*

48. The Mother picked up the Student at the end of the school day on April 16, 2018. The Student immediately began to tell the Mother about an incident on the playground at school during recess that day. The Student told the Mother that accordingly to Ms. Nolan, another student had "choked" her because she was running so fast with a "toy" that the other student could not catch her, and the only way the other student could get her to stop was by grabbing her hood. P11p3; Mother T389.

49. Ms. Nolan spoke with the Student after the incident during recess. Although she initially denied anything happened, the Student eventually told Ms. Nolan that her hood was pulled and she was choked. Nolan T222-T223. The Student did not ask Ms. Nolan to go see the nurse. *Id.* at T228. Until this conversation, the Student had never expressed to Ms. Nolan that she felt scared while at school. *Id.* at T246.

50. After this incident, the Student did not want to return to DPS, and wanted to switch schools. P11p3.

51. The Student was upset about the incident at recess on April 16, and woke up on April 17, 2018 with such panic and anxiety the Mother took her to a doctor. Mother T389. The Student did not attend school on April 17. P11p3, D22p1.

52. On April 17, 2018, the Mother also took the Student to get a "GPS tracker watch," which was also a cellphone. P11p3. The Mother told the Student to call her if the Student felt unsafe at school. *Id.*<sup>11</sup>

53. Via email on April 17, 2018, Ms. Franklin told the Mother that she was able to speak with Ms. Sullivan after school the day before, and Ms. Sullivan would call the Mother back as soon as Ms. Sullivan was able. P8p3.

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<sup>10</sup> Comparing the Date/Time of Ms. Franklin's email to Ms. Sullivan (P8p1) to that of the Mother's email to Ms. Franklin (P8p2), it appears as though Ms. Franklin sent her email to Ms. Sullivan *before* Ms. Franklin received the Mother's email the same day. This appears somewhat counterintuitive to the extent that it appears Ms. Franklin sent her email to Ms. Sullivan *in response* to receiving the Mother's email. The evidence is not clear if this is due to some sort of artifact of the email system(s), or in fact Ms. Franklin sent her email to Ms. Sullivan before Ms. Franklin received the Mother's email.

<sup>11</sup> The GPS tacker phone was similar to the Project Lifesaver bracelet the Student wore to school for some period of time in Alaska. In the event the Student eloped or ran away, her location could be determined remotely.

54. Via email on April 18, 2018, Ms. Sullivan asked Ms. Nolan if she could check with the Mother to see if the Mother was available for an "IEP revision meeting" on April 25, 2018, one week later. P9p1.

55. On April 18, 2018, the District mailed an invitation for an IEP meeting on April 25, 2018 to the Parents. D12p7.

*Incident with Ms. Nolan on April 18, 2018*

56. The Student returned to DPS on April 18, 2018. D25. The Mother had a difficult time separating from the Student in the morning, but finally got the Student to her classroom about 9:40 a.m. P11p3. Ms. Nolan believes the Student wore her GPS tracker watch to school for the first time that day. Nolan T231.

57. Shortly after leaving the Student at school, the Mother received a phone call from her. The Student was upset and wanted the Mother to return for lunch and recess. The Mother agreed. P11p3. During lunch with the Student, Ms. Sullivan introduced the Student to a specific recess monitor who the Student could go to if she had a problem at recess. *Id.* The Mother left school after lunch with the Student. *Id.* at p4. The Student later called the Mother, very upset, saying she was scared, and asked the Mother to return and pick her up. *Id.* The Mother agreed to pick up the Student, but then a few minutes later received a phone call from the DPS office. Someone told the Mother that the Student went to music class willingly and did not need to be picked up anymore. *Id.*

58. When the Mother picked up the Student at the end of the school day, the Student asked why the Mother had not returned to pick her up from school. The Mother told the Student that she did not come back because she was told the Student was okay. *Id.* The Student told the Mother that she was told to get her "stuff" and go to music, and that Ms. Nolan would text the Mother to come get her. *Id.* The Mother told her that Ms. Nolan had not texted about returning to pick her up. *Id.* This greatly upset the Student because she now believed she could no longer trust Ms. Nolan, and that Ms. Nolan would lie to her. *Id.*, See Mother's Testimony T390-T396 (Describing the events of April 18).

59. In a record prepared by either DPS Principal Bartlett or DPS Assistant Principal Mary McLaughlin on April 18, 2018, it is noted that the "Teacher had a conference with the Parent. Mom wants a 1:1 assistant and for [the Student] to have access to the special education room whenever she wants to go." See 4/18/18 note at D24p1.

*Dr. Adams' April 18, 2018 Letter*

60. After participating in the Student's inter-disciplinary evaluation at Seattle Childrens' Autism Center, Dr. Adams became the Student's treating psychiatrist. Adams T78. Dr. Adams sees the Student between once every three weeks to once every two months. *Id.* at T26. He prescribes all of the Student's medications, and at times has worked on behavioral plans and interventions related to the Student's anxiety. *Id.* at T26-T27. The focus of his care and treatment of the Student over the last two years had been to eliminate the Student's elopement. *Id.* at T32.

61. On April 18, 2018, Dr. Adams wrote a letter "To Whom It May Concern." D13p4. By this time, Dr. Adams had seen the Student approximately four times. Adams T85. Dr. Adams

apparently wrote this on his own initiative, as the Mother did not request that he write the letter. Mother T608-T609. He wrote the letter after the Mother showed him the Student's Alaska IEP. *Id.* at T584, Adams T101. Dr. Adams wrote the letter in support of "reevaluating [the Student's] IEP with a functional behavioral analysis and a (behavioral improvement plan) BIP." Adams T55. Dr. Adams believed an FBA was warranted based on the Student refusing to go to school, and due to the reports of incidents on the playground and conflicts with other students and teachers he received from the Mother and the Student. *Id.*

62. Dr. Adams did not make specific recommendations for a 1:1 aide for the Student at school, or for ABA therapy at school. *Id.* at T85-T86. He would have to assess or reevaluate the Student again, "before discussing specific interventions." *Id.* at T85. However, Dr. Adams did opine at hearing that the most appropriate intervention for the Student is ABA therapy, as it is "the most evidence-based treatment program for kiddos with autism and severe behavior." *Id.* at T103. It is unclear from the record if or when between April 18, 2018 and his testimony at hearing Dr. Adams conducted any further assessment or reevaluation of the Student.

63. Dr. Adams sent his letter directly to the Mother. Mother T620. It is undisputed that the Mother sent Dr. Adams' letter to Principal Bartlett via email six days later, on May 1, 2018. D13p1, Bartlett T739, Mother T585.

*Incident at Ms. Nolan's Classroom on April 19, 2018*

64. The Mother brought the Student to Ms. Nolan's classroom at DPS on the morning of April 19, 2018. That particular morning, the Mother happened to be accompanied by her friend, LaKetha Grayer.<sup>12</sup>

65. The Mother spoke with Ms. Nolan, who admitted that she told the Student on April 18 that she would text the Mother when the Student became upset after lunch, but in fact never texted the Mother. Mother T398.

66. There is conflicting testimony and documentary evidence about what occurred next. The Mother, Ms. Grayer, and Ms. Nolan, all of whom were present during this incident, testified at the hearing. In addition, the Mother recounted her recollection of the incident in a subsequent letter written the same day to District Superintendent Kevin Alfano. P11pp2-5. Notably, the details offered by the Mother through her testimony are inconsistent with her description of the incident in her letter to the superintendent. For example, in her letter to the superintendent, the Mother states that she "took [the Student] out [of] the class to try calm her down." P11p4. Nowhere in her letter does the Mother reference, refer to, or describe the Student eloping or running out of Ms. Nolan's classroom. Nor is the Mother's testimony consistent with the recollection of her friend, Ms. Grayer. Of the three witnesses who were present and testified about this incident, it is found that the testimony of Ms. Grayer and Ms. Nolan is more easily reconciled to determine the details of this incident. Accordingly and by a preponderance of the evidence, the following facts are found.

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<sup>12</sup> No further details of how Ms. Grayer came to accompany the Mother that morning will be provided, as those details are not relevant to resolution of the issues presented in this case, and implicate the privacy of Ms. Grayer's family.

67. After having the discussion with Ms. Nolan, the Mother and Ms. Grayer left the Student at the door to Ms. Nolan's portable classroom, and walked down a small ramp from the classroom door to the outside. As they reached the bottom of the ramp, the Student came out of Ms. Nolan's classroom and ran down the ramp towards the Mother and Ms. Grayer. Grayer T118, T128, Nolan T240. The Student was running *towards them*, as opposed to trying to run *past them*. Grayer T128. Ms. Nolan saw the Student run towards the Mother and Ms. Grayer, but she did not run after the Student because she could see through a classroom window that the Student was with the Mother. Nolan T247-T248. At that point, Ms. Nolan did not believe the Student was in danger or endangering others. *Id.* at T240. The Mother and Ms. Grayer tried to get the Student to return to Ms. Nolan's classroom for approximately 30 minutes, but could not. Grayer T115, T118. The Mother then took the Student home. *Id.* at T118.

68. The Mother confirmed that before the incidents over April 16-19, 2018, the Student "did okay." Mother T357. "In the beginning, she didn't reject going to school. I would get out, she'd give me a hug, we'd walk to class...Walk in, have a quick conversation with Aimee Nolan, give [the Student] a hug and kiss and leave." *Id.* at T383. "It changed...on or about the 18<sup>th</sup> or the 20<sup>th</sup>." *Id.* The Mother characterized the Student as believing her "trust was broken," apparently referencing the incident on April 18, 2018 when Ms. Nolan told the Student she would text the Mother, but then did not. *Id.*

69. Ms. Nolan holds a Master's in Education degree from Pacific Lutheran University. Nolan T236. She is certificated in early childhood education by Washington State. *Id.* She has been employed as a teacher at DPS since 2004, teaching full-day kindergarten for the last 9 years. *Id.* The Student was typically in her general education kindergarten class the entire day. *Id.* at T211.

70. Based upon her education, training, and experience as an educator, and her experience as the Student's general education kindergarten teacher at DPS, Ms. Nolan does not believe the Student requires a 1:1 aide throughout her school day. *Id.* at T241. Ms. Nolan never observed the Student having temper tantrums or meltdowns at school. *Id.* at T229. Nor does Ms. Nolan believe the Student required ABA to be successful in her classroom. *Id.* at T241-T242.

71. The Student was absent from DPS from April 19, 2018, with the incident at Ms. Nolan's classroom, through May 8, 2018, when she returned to Ms. Kristyn Frazier's classroom at DPS. D22p1, D25pp2-3, *See* 4/25/18 note at D23p2.

#### *The Student's Reports of Bullying at DPS*

72. Upset, at least in part, over the incident at Ms. Nolan's classroom on April 19, 2018, the Mother wrote and emailed a letter to District Superintendent Alfano the same day. P11. In her letter, the Mother recounted reports from the Student that "nearly every day...she was either being hit, pushed, kicked" or was subject to "some sort of assaultive behavior on the...playground at recess." P11p2.

73. The Mother believed this was the cause of the Student coming home and exhibiting "regressive behavior." *Id.* This regressive behavior included the Student becoming physically violent at home. Mother T361. The Student had tantrums and meltdowns at home. *Id.* However, the Mat-Su Borough School District IEP team had earlier noted that the Student "holds her feelings in (at school) and then 'explodes' at home." D2p2. The IEP team noted that, "We do not see the anger and aggression at school currently." D2p9. Dr. Adams also remarked that there was a lot of aggression, especially in the household. Adams T25.

74. Principal Bartlett asked her staff if they had witnessed any hitting, pushing, kicking or other assaultive behavior, or if the Student had reported anything like that, and was told no. Bartlett. T694. This was apart from the one report by the Student to Ms. Nolan about the incident with a kindergarten classmate pushing her on one of the first few days the Student attended DPS. *Id.* at T695.

75. On or about March 26, 2018, the Student began reporting to the Mother that the teachers and other students at DPS were being mean to her. Mother T360, T563. The Student reported that the other kids were "hitting and kicking her." *Id.* at T360. The Mother observed the Student coming home with "scrapes and cuts and bruises." *Id.* at T360.

#### *Reliability of the Student's Testimony*

76. The only witness with potential first-hand knowledge going to the Student's reports of being assaulted and bullied at DPS is the Student. While the Student appeared as a witness at the hearing, for the following reasons the Student's testimony is found more likely than not to be unreliable, and cannot be the basis for making findings of fact absent substantial independent corroboration.

77. The Student was approximately 6 years and 4 months old when she began attending DPS. The Student turned 8 years old the same month she testified at hearing. This means the Student was being asked to reliably and accurately recall events more than 18 months before her testimony. Setting aside for a moment the Student's disabilities, the impact of which is discussed further below, this alone raises significant questions regarding how reliable her testimony is.

78. Much of the Student's testimony was developed primarily through leading questions by the Parents' counsel, to the point where counsel was advised on the record to ask or restate questions in a non-leading form, as responses to those questions may be accorded more weight. See T632. Much of the Student's testimony was also extremely broad, with little to no detail about factors like who was involved, and where and when specific events took place. The Student's entire testimony regarding events while she attended DPS accounted for only two pages of the hearing transcript. See Student T631-T632.

79. The undersigned ALJ is also concerned regarding how much of the Student's recollection and hence testimony may have been influenced by other individuals. For example, in response to a question from Parents' counsel about DPS, "Did you want to go to school?" the Student responded, "No. Not for 27 days." See T632. Later, during cross-examination by the undersigned ALJ, the following exchange took place:

Q. You said you didn't want to go to school for 27 days. How do you remember it's just 27 days?

A. She always talks about 27 days.

Q. Who does?

A. My mom.

See T637. This response raises a very real concern that the Student's testimony may have been influenced, even innocently and without bad intent, not by her own recollection of events but by what she may have heard from others over the last approximately 18 months.

80. The Student's testimony is also inconsistent with other evidence of record. For example, the Mother testified that the Student still runs away or elopes from her current, unilateral private placement at the Gersh Academy. Mother T387. However, the Student testified that she never runs away at Gersh Academy. Student T633. If the Mother's testimony on this point is credited as true, the Student apparently cannot accurately recall even current events. This further erodes the reliability of the Student's recollection of events while at DPS. Finally, the impact of the Student's disabilities on her recollection of events must be considered.

81. With respect to the Student's reports of being bullied, pushed, and picked on at DPS, Dr. Adams believes the Student is "telling the truth from her perspective...this is what [the Student] perceived...her severe anxiety...is going to predispose her to negatively interpret those sort of interactions." *Id.* at T54. The Student was "fixated on her perception that everyone there – the teachers were all liars...And...essentially, all the other children there as being bullies...Again, [the Student] has a tendency to negatively misperceive things and interpret things in a threatening manner due to her anxiety, autism, and her brain injury." *Id.* at T57. Dr. Adams opined that it is "challenging to say that [the Student's] objectively correct" in reporting events. *Id.* at T97. In his opinion, the Student is "accurately reporting what her perception is...And it's that perception which drives her behavior." *Id.* In contrast, Dr. Adams opined that he would rely on the Student's report of an objective act (e.g. someone pushed her) but would not rely on the Student's interpretation or perception of the intent behind an objective act. *Id.* Finally, Dr. Adams opined that "it's really easy to underestimate how impaired she actually is." *Id.* at T66.

82. Given all of the above, it is found by a preponderance of the evidence that the Student's recollection of events and hence her testimony at hearing is not reliable. This in no way implies the Student was not sincere in her testimony, only that the testimony cannot be relied upon to establish as fact events which may or may not have occurred while she attended DPS.

83. With respect to whether or not the Student was subjected to bullying, harassment, intimidation, or assault while at DPS, the only events corroborated by evidence independent of the Student's unreliable recollection are the incident when the Student was pushed one time by a classmate early in her attendance in Ms. Nolan's classroom, and the incident on the playground during recess on April 16, 2018 when the Student's hood was grabbed by a classmate as she was running. And although the Mother observed "scrapes and cuts and bruises" on the Student when she came home from DPS, the underlying cause(s) of those are known only to the Student, who cannot be relied upon to accurately report what happened at school.

84. And with respect to the Mother's observations of scrapes, cuts and bruises on the Student, and what the Mother described as near daily reports from the Student of her being hit, pushed, kicked or subject to some sort of assaultive behavior, it strains credulity that the Mother did not bring this to the attention of staff at DPS earlier than her letter to the superintendent.

#### *The April 25, 2018 IEP Meeting*

85. The Student's IEP team met on April 25, 2018. D12p3. Present for the IEP meeting were the Parents, the Student, Ms. Sullivan, Ms. Nolan, Principal Bartlett, and Viveca Tarrant, a resource room paraeducator at DPS who worked with the Student. *Id.*, Mother T403, T579. The

purpose of the IEP meeting was to separate out the goals in the Student's Alaska IEP that were "clumped together." *Id.* at pp1, 4. The meeting lasted between 60-90 minutes. Mother T429.

86. During the meeting, the Parents asked for a certificated teacher to instruct the Student at home, or a 1:1 aide for Student all day at school. See 4/25/18 note at D23p2; Nolan T249-T250, Sullivan T168. The Parents wanted a 1:1 aide all day for the Student to, in part, protect her from elopement. Mother T417.

87. The team disagreed with the request for a 1:1 aide for the Student because there was no data to indicate the Student required a 1:1 aide, and because the Student "wasn't doing harm to herself, nor was she in danger. She was staying in the classroom." Sullivan T168, Bartlett T718.

88. There was conflicting testimony regarding whether the subject of the Student being bullied was discussed at the IEP meeting. The Mother asserted bullying was discussed. Mother T403. Ms. Sullivan asserted bullying was not discussed at the meeting. Sullivan T164-T165. However, whether bullying was a subject of discussion or not is not material to resolution of the issues in this case.

89. The subject of the incident at Ms. Nolan's classroom on April 18, 2018, when Ms. Nolan told the Student that she would call the Mother, but then did not, was discussed at the IEP meeting. Sullivan T164. Bartlett T704-T705. The Parents made it known that the Student no longer trusted Ms. Nolan. Bartlett T712.

90. In response to the Parents' concerns, Principal Bartlett offered to place the Student in a new kindergarten classroom. *Id.* Principal Bartlett believes that that if parents are not happy with a teacher, there will not be "positive results from the classroom." *Id.* at T738. The majority of the IEP meeting was spent discussing moving the Student to a new classroom. *Id.* at T712. By the end of the IEP meeting, the Parents agreed that a change from Ms. Nolan's classroom to a new general education teacher was a good idea for the Student. Mother T583. The decision was made to switch the Student to Kristyn Frazier's general education kindergarten classroom at DPS. Sullivan T164.

91. Principal Bartlett wanted to speak with the Mother about developing a "reentry plan" for the Student's return to DPS and placement in Ms. Frazier's classroom. Bartlett T712. Ms. Bartlett asked for a reentry meeting with the Mother, without the Student being present. *Id.* at T716, T720, Mother T423-T424. The Parents agreed to hold a reentry meeting on May 1, 2018, to develop a plan to get the Student back to school. See 4/25/18 note at D23p2.

92. There was conflicting evidence offered with respect to whether or not the Mother shared Dr. Adams' April 18, 2018 "To Whom It May Concern" letter with the other IEP team members. The Mother recalls passing around a copy of Dr. Adams' letter at the meeting. Mother T413-T414. Ms. Sullivan's notes about the meeting do not mention Dr. Adams' letter. See 4/25/18 note at D23p2. Principal Bartlett recalls the Mother looking for Dr. Adams' letter at the IEP meeting, but being unable to find it. Bartlett T739. However, the Mother sent Dr. Adams' letter to Principal Bartlett via email six days later, on May 1, 2018. D13p1, Bartlett T739, Mother T585. The Mother emailed a copy of Dr. Adams' letter so she had "proof" that the District had a copy of the letter. Mother T443.

93. After the IEP meeting, Ms. Sullivan assigned Kellie Preisner as the District educational assistant (EA) to monitor the Student during recess. Sullivan T196. Ms. Preisner worked as an

EA in a special education classroom. Preisner T313. Ms. Preisner was specifically assigned to monitor just the Student during recess. This arrangement was in place from when the Student was assigned to Ms. Frazier's classroom through the Student's last day in the District. *Id.* at T195.

94. After the IEP meeting but still on April 25, 2018, Principal Bartlett sent a meeting invitation for May 1, 2018 via email to DPS School Counselor Debbie Hartigan. The meeting was to include Principal Bartlett, Ms. Hartigan, Ms. Sullivan, and the Mother. This was the intended reentry meeting to develop a plan to bring the Student back to school at DPS in Ms. Frazier's classroom. P14; Bartlett T721.

95. After exchanging several emails regarding the reentry meeting, the Parents finally elected to participate in the May 1 reentry meeting by telephone. D14p1.

96. The evidence concerning events on May 1, 2018, is difficult to reconcile and ambiguous. Principal Bartlett believes there were two conference calls that day. Bartlett T745. One conference call appears to be the reentry meeting. Bartlett T721. Another conference call appears to address the District's receipt of Dr. Adams' April 18 "To Whom It May Concern" letter received by the District on May 1 via email from the Mother, wherein Dr. Adams requests that the Student be reevaluated. *See* D16 (PWN).

97. The telephonic reentry meeting appears to have included just the Parents and Principal Bartlett. Mother T426-T427, T588, Bartlett T724. The meeting lasted about 35 minutes. Mother T428-T429. The Mother recalls a discussion about a communication plan or school log. *Id.* at T430. The Parents learned that the Student would be placed in Ms. Frazier's classroom. *Id.* at T427. Notes prepared by Ms. Sullivan dated May 1, 2018, reflect that a plan was developed to help the Student with her "school anxiety." *See* 5/1/18 note at D23p2.<sup>13</sup> The plan included assigning an EA to meet the Student at the beginning of the day and to stay with her to provide support; developing a plan for recess issues (EA to stay with the Student during recess and provide social skills instruction before and after recess); social skills group with Ms. Hartigan; and a communication log between home and school. *Id.*

98. On May 1, 2018, Principal Bartlett sent an email to DPS staff, telling them that the Student would move from Ms. Nolan's classroom to Ms. Frazier's classroom, and the Student's first day with Ms. Frazier would be May 3, 2018. D17.

99. Switching to Ms. Frazier's classroom meant that the Student would have different peers during lunch and both recess periods. Sullivan T190, Nolan T242.

100. The second conference call to address Dr. Adams' request for a reevaluation of the Student included the Parents, Ms. Tuttle, Ms. Bartlett, Ms. Sullivan, and Ms. Hartigan. Tuttle T531, T533. Although the PWN identified both of the Parents as also participating, the Mother does not recall the telephonic conference call. Mother. D16p1, Mother T440. Given the Mother's testimony that she does not *recall* this meeting, as opposed to an *affirmative denial* that she ever participated in the meeting, the contemporaneous PWN stating the Parents were present by

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<sup>13</sup> Precisely how Ms. Sullivan came to write this note given she was apparently not on the conference call with Principal Bartlett and the Parents cannot be determined with certainty from the evidence.

telephone, and Ms. Tuttle's affirmative recollection of the individuals present on the call, it is found as more likely true than not that the Parents participated in this conference call on May 1, 2018.

101. After the conference call, Ms. Tuttle prepared a PWN. D16. The PWN sets out the reasons why Dr. Adams' request for a reevaluation was denied. The Student had an amendment reevaluation less than a year ago, and the District believed the data from that reevaluation was current and valid. The Student had four evaluations in a two-year span. Finally, the Student met her behavioral goals as demonstrated by behavior tracking sheets. D16p1.

102. The Parents were upset with Principal Bartlett after speaking with her over the phone on May 1, 2018. They were upset because Principal Bartlett denied all their same requests for services that they raised at the April 25 IEP meeting. Mother T588-T589. The Parents "decided the District needed absolutely none of [the Student's] records," and revoked their consent for the District to have access to the Student's medical, psychological, psychiatric, and dental records. D15. However, few days later Dr. Adams called the Mother and "made me give them permission back so he could talk with them." Mother T431. However, the District did not receive a release of information from Seattle Childrens' Autism Center until May 14, 2018. P21p5; *See also* 5/14/18 note P22p2.

### *Ms. Frazier's Classroom*

103. Ms. Bartlett briefed Ms. Frazier in preparation for the Student coming to her classroom. Ms. Frazier recalls being told that the morning drop-off in Ms. Nolan's classroom was "difficult" because the Student was having difficulty separating from the Parent(s). The plan for Ms. Frazier's classroom was to separate the Student from the Parent(s) "away from the classroom" at the drop-off area. T271-T272. Kellie Preisner was to meet the Student and the Parent(s) at the drop-off area and walk her to Ms. Frazier's classroom. T272.

104. The Parents met with Ms. Frazier for about 30 minutes on May 2, 2018 for a "meet the teacher meeting." P22p2, D23p2. The Parents visited Ms. Frazier's classroom. The Mother believed Ms. Frazier was a "sweet lady." Mother T431. When Ms. Frazier told the Mother the drop-off plan, the Mother insisted on walking the Student to Ms. Frazier's classroom herself. Frazier T264-T265.

105. The next morning, as the Student was getting ready for her first day in Ms. Frazier's classroom, she said she could not go to school because she had not met her new EA, Ms. Preisner. The Mother called DPS and set up an appointment for the Student to meet Ms. Preisner on Friday, May 4, 2018. Mother T431-T432. However, the Mother stated that the Student would only meet Ms. Preisner on May 4, and the Student would not start in Ms. Frazier's classroom until the following Monday, May 7, 2018. *See* 5/3/18 note at P22p2.

106. The Mother brought the Student to DPS on Friday, May 4, 2018, and they met Ms. Preisner. P22p2.

107. The Student did not start in Ms. Frazier's classroom until May 9, 2018 because she was absent from school with a doctor's note on May 7 and 8, 2018. D22p1, D25p3. May 9, 2018, was the Student's first day back attending DPS since April 19, 2018. *Id.*

108. Ms. Sullivan observed that the Student was “making a good transition to her new classroom” over the period from May 10 to May 14, 2018. D23p3. This period included three school days.

109. Ms. Frazier holds a Bachelor’s Degree in early childhood education from the University of Washington. Frazier T295. She is nationally board certified in early childhood education. *Id.* She is certificated in early childhood education by Washington State. *Id.* She is currently in her eighth year teaching at DPS. *Id.*

110. Ms. Frazier met the Student when the Student first entered her classroom. *Id.* at T263. During the time she was assigned to Ms. Frazier’s classroom, Ms. Frazier only ever observed the Student crying when she was dropped off by one of the Parents in the morning. *Id.* at T277. It is “very common” for kindergarten students to experience anxiety separating from a parent. *Id.* at T297, McLaughlin T485. The Student never tried to run after the Mother when the Mother dropped her off at school. Frazier T279. Apart from the “beginning of the day transition,” the Student was generally happy in her classroom. *Id.* at T299.

111. Ms. Frazier defines “elopement” as “Leaving the supervision of adults without permission.” *Id.* at T286. The Student never left her classroom alone, and never without permission. *Id.* at T278-T279. Ms. Preisner went with the Student to both daily recesses. *Id.* at T300.

112. The Student was academically “at or above where we expected her to be at that time of year.” *Id.* at T298. Her reading was especially advanced. *Id.* Ms. Frazier does not believe the Student required a 1:1 aide. Ms. Frazier was able to provide supports the Student needed, and was able to work through any Student/peer conflicts. T298-T299. Having another adult around would not serve any purpose. *Id.*

113. From her first day in Ms. Frazier’s classroom on May 9, 2018, through June 15, 2018, the Student attended 16 of 26 school days. D22pp1-2, D25pp3-4. On four of those school days she attended, the Student had a late arrival or early dismissal from school. *Id.*

114. Via email on May 9, 2018, the Mother asked Ms. Franklin, the general secretary at DPS, if Ms. Sullivan could schedule an “emergency” IEP meeting so the Student could be taken off the “behavior chart.” P19, D23p3. What the Mother identified as the behavior chart was part of the new communication log created as one piece of the Student’s reentry plan to facilitate communication between the home and DPS. D19; Mother T590. The log was “driven by a behavioral incentive, and that really made [the Student] anxious...it was causing a lot of anxiety for her...Instead of trying to focus on school, she was focused on the chart.” Mother T590.

115. Ms. Franklin replied via email on May 10, 2018, telling the Mother that she would forward the Mother’s request for an emergency IEP meeting to Ms. Sullivan and Ms. Bartlett. P19.

116. On May 10, 2018, Ms. Sullivan called the Mother and told her there was no need for an emergency IEP meeting because the behavior-chart component of the communication log could be removed from the communication log without the necessity of an IEP meeting. Sullivan T179. The behavior-chart component of the communication log was discontinued, and no IEP meeting was held. D23p3; Mother T591.

117. Although the exact date is not clear, Assistant Principal McLaughlin called and spoke with Dr. Adams. McLaughlin T480. Principal Bartlett was present for part of the telephone call. Bartlett

T740. During the call, Principal Bartlett told Dr. Adams that the child (i.e. the Student) that Dr. Adams was describing was not the child they were seeing at DPS. *Id.* at T741. Principal Bartlett invited Dr. Adams to come to DPS to observe the Student, but he did not. *Id.*

118. The Mother testified she requested an IEP meeting on May 23, 2018. Mother T406. She made the request via “a messenger app.” *Id.* The Mother testified she requested the meeting because the Student was having difficulty eating lunch at DPS, and she wanted to have an aide for the Student. *Id.* at T406-T407. However, the best evidence establishes the Mother made her request on April 12, not May 23, 2018. See first April 12, 2018 note D11p2. It is found as fact that the Mother did not request an IEP meeting on May 23, 2018.

119. The Student was absent from DPS from June 4 through June 8, 2018. D22p2, D25p3. The Student was absent because the Mother and Dr. Adams were trying to follow a “reentry plan.” Mother T437, T597.<sup>14</sup> Under this plan, the Student earned “incentives” by going to school and staying at school. *Id.* at T437. This “reentry plan” was not the reentry plan created by DPS staff and the Mother that was in place to facilitate the Student’s transition into Ms. Frazier’s classroom.

#### *Mother withdraws Student from DPS*

120. Via email on June 17, 2018, the Mother asked Ms. Franklin what she needed to do to withdraw the Student from DPS. D21. In her email, the Mother stated, “[The Student] obviously didn’t make it in Friday [June 15, 2018] for school. She couldn’t handle it. I’m just going to withdrawal (sic) her from school like o (sic) discussed with Mary, it’s not worth the struggle to her for a few days.” *Id.*

121. Ms. Franklin responded to the Mother via email on June 18, 2018, asking her to stop by and sign a withdrawal form that week, and that was all she needed to do to withdraw the Student. *Id.* The Mother withdrew the Student from DPS on June 18, 2018, because “It wasn’t worth the fight for a few days.” Mother T438.

122. The Mother defines “elopement” as “when [the Student] runs off, leaves a place or an area, or just gets away with doing something she shouldn’t be doing. She doesn’t have to be out of sight.” T338.

#### *Dr. Adams’ Opinion Regarding the Student’s Education*

123. Dr. Adams agrees that the goals in the Student’s Alaska IEP, which the District later adopted, were all appropriate for the Student as of October 2017. Adams T27-T29. It is unclear if Dr. Adams believes the goals were still appropriate for the Student upon her entry into the District. However, Dr. Adams does not believe the amount or number of minutes of services provided for in the Alaska IEP is sufficient to address his concerns about the Student’s aggression, elopement, and pica. *Id.* at T39, T45, T49.

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<sup>14</sup> The Mother appears to be referring to what Dr. Adams described as a “behavioral contingency plan” for the Student that he developed “on the fly” with the Mother and the Student during a clinical visit. Adams T56.

124. With respect to the Student's education in the District, Dr. Adams opined the Student needed ABA services, an FBA and BIP, and that the Student would "benefit from a 1:1 [Certified Behavior Technician] CBT." *Id.* at T49-50. Dr. Adams recommended "full-time" ABA services as necessary for the Student as of April 2018. *Id.* at T50. In addition, he opined that that Student needed a full-time behavior technician at school as the "bare minimum." *Id.*

125. Applied Behavior Analysis (ABA) is a type of "psychotherapy." *Id.* at T109. "It's a behavioral therapy...It's not inherently a teaching or... academic instructional technique, although it certainly can be integrated into working in the special education setting." *Id.*

126. Dr. Adams was surprised that the District did not conduct a further evaluation when the Student entered the District. Adams T44. However, Dr. Adams supported his opinion with a very brief and general rationale. Dr. Adams stated that:

Well, again, given my recommendations earlier on when I evaluated her prior to her move, and given both the complexity of her case and her diagnoses and the severity of her behaviors, I -- and the recommendations we made, I would have expected [the Student] would be reevaluated.

*Id.* Apart from this explanation, Dr. Adams did not clearly identify any change in circumstances or other specific factor(s) between October 2017, when he evaluated the Student at Seattle Childrens' Autism Center, and March 2018, when the Student entered the District, that support his opinion the District should have reevaluated the Student.

127. Dr. Adams has no education, training, or experience as an educator. *Id.* at T68, T93-T94. He has never observed the Student in a school classroom, in a group instructional setting, or outside of a clinical setting. *Id.* at T78-T79.

128. An IEP Progress Report for the Student through April 18, 2018, reflects that the Student attained her goals of staying with her class in the designated classroom, gym, music, or library with zero incidents of elopement as measured by teachers, and staying with her class during recess on the playground or field with zero incidents as measured by teachers. D20p1.

## CONCLUSIONS OF LAW

### The IDEA and Jurisdiction

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

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

3. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's

compliance with extensive goals and procedures. In *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982) (*Rowley*), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the Act, as follows:

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

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

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

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

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

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

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

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

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

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

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

(l) impeded the child's right to a free appropriate public education;

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

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

*Failing to Address Bullying That Caused the Student to Avoid School and Fear Her Classmates and Peers*

7. The IDEA recognizes that bullying can result in a denial of a free appropriate public education (FAPE) for a student. *Dear Colleague Letter*, 61 IDELR 263 (OSERS 8/20/14). In the Ninth Circuit, the legal standard that must be met to prove bullying has denied a student FAPE is set out in *M.L. v. Federal Way School District*, 394 F.3d 634 (9<sup>th</sup> Cir. 2005). The court in *M.L.* held that:

If a teacher is deliberately indifferent to teasing of a disabled child and the abuse is so severe that the child can derive *no benefit* from the services that he or she is offered by the school district, the child has been denied FAPE.

*M.L. supra*, 394 F.3d at pp.650-651 (Emphasis added). Concluding that a student has been denied FAPE by bullying is a two-part analysis. First, whether bullying has in fact occurred. Second, whether the bullying denied the student any benefit from the services provided in the student's IEP. *Colton Joint School District*, 117 LRP 52248 (SEA CA 2017).

8. There are only two incidents that have been proven by a preponderance of credible evidence going to whether or not the Student was bullied at DPS. The first incident occurred shortly after the Student began attending Ms. Nolan's classroom in March 2018. That incident involved the Student being "pushed" by another student. To the extent that this "push" could constitute bullying, the incident was a single, isolated occurrence. The evidence does not support that this "push" had any significant impact on the Student's receipt of, or benefit from, the services provided for in her IEP. The Student's attendance during April 2018 was generally good; she attended school fifteen of the first eighteen school days after starting on March 5, 2018. Two of the days she missed were due to a fever. This is quite reasonable attendance given the Student was a very young child with significant disabilities adjusting to a new residence, new school, new peers, and a new teacher. The Parents have simply failed to prove as fact that this isolated "push" resulted in the Student being unable to derive any educational benefit while at DPS.

9. The second incident occurred on April 16, 2018, when the Student was running on the playground at recess and had her hood grabbed by another student, which the Student characterized as "choking" her. Again, the evidence establishes this was another, single isolated occurrence, separated by a substantial period of time, likely weeks, from the Student being "pushed" by a classmate. While the Student's attendance suffered beginning shortly after the April 16 incident, it is concluded that the Student's declining attendance was more likely than not the result of her lack of trust in Ms. Nolan after the incident on April 18, 2018, when Ms. Nolan told the Student she would contact the Mother, but then failed to do so.

10. After careful review and consideration of all the evidence of record, it is concluded that the Parents have failed to establish the Student was in fact the subject of bullying while she attended DPS. Whether the only two incidents proven as fact to have occurred are considered separately

or jointly does not change this conclusion. It is concluded that the Parents have failed to prove the District violated the IDEA or denied the Student FAPE due to any bullying of the Student during her attendance in the District.

*Failing to Conduct an Appropriate and Timely Evaluation of the Student*

11. On March 12, District staff assembled to review the evaluation and IEP the Student brought with her from the Mat-Su Borough School District in Alaska. With the exception of the need to separate out some goals which were “clumped together,” which did not materially alter the Alaska IEP, the District staff determined the Alaska evaluation and IEP were “current and valid.”

12. There is no evidence the Parents initially requested that the District evaluate the Student. It was not until Dr. Adams, *totally unsolicited by the Parents*, wrote his April 18, 2018 letter “To Whom It May Concern,” in which he recommended the Student be evaluated, that the Parents raised the issue of an evaluation. The District did not receive a copy of Dr. Adams’ letter until May 1, 2018, after the Student was attending DPS for almost two months. Upon receipt of Dr. Adams’ letter, District staff met to consider the letter. Staff considered a number of factors set forth in the subsequent PWN, and after considering those factors, determined not to evaluate the Student. The District informed the Parents of its decision in the PWN. The Parents have not offered sufficient credible evidence to conclude the District’s consideration of multiple factors leading to its decision not to evaluate the Student was incorrect, or that Dr. Adams’ opinion should be accorded more weight than the opinions of the District staff who considered the request.

13. The Parents argue that the Student’s anxiety, school refusal, and truancy should have placed the District on notice of the need to evaluate the Student. Parents’ Post-Hearing Brief, p6. However, much of the “notice” the Parents seek to impute to the District was associated with events which occurred after the Student was attending DPS for a period of time. It is very important to observe that up until the incident on April 18, 2018, which caused the Student to suddenly develop a lack of trust in Ms. Nolan, the preponderance of the evidence paints a picture of the Student being reasonably successful at DPS; certainly successful enough to conclude the Student was receiving FAPE. Through March and into the first half of April, the Student’s attendance, while not perfect, was not objectively poor for, as noted above, a very young, significantly disabled child adjusting to many new circumstances in her life. That is not to say that the Student did not exhibit some anxiety at school. However, it is concluded that given the Student’s *known disabilities*, demonstrating some anxiety at school would not place a reasonable school district on notice of a need to evaluate the Student through at least mid-April 2018. Indeed, the extreme behaviors the Student was demonstrating, and that the Parents argue should have put the District on notice it needed to evaluate the Student, occurred outside of DPS in the family home. Furthermore, given the Student’s known disabilities, it was not unreasonable or inappropriate for the District to believe that the Student’s refusal to attend DPS starting mid-April was not simply a manifestation of those known disabilities. Once the Student’s attendance began to deteriorate, the District, reasonably attributing the poor attendance to the Student’s sudden failure of trust vis-à-vis Ms. Nolan, proactively offered the Parents a new classroom, new teacher, and new classmates with a transfer to Ms. Frazier’s classroom, which the Parents accepted. Once in Ms. Frazier’s classroom starting May 9, 2018, the Student once again had several weeks of reasonable attendance and success, interrupted by absences starting the school-week of June 4, but then rebounding the school-week of June 11-15. The Parents then suddenly withdrew the Student on June 18, 2018. When all the evidence is considered with a global perspective, it is concluded that the Parents have not proven that the District was or should have been on notice

of a need to evaluate the Student. It is concluded that the Parents have not proven the District violated the IDEA or denied the Student FAPE by failing to conduct an appropriate and timely evaluation of the Student.

*Failing to Provide Applied Behavior Analysis (ABA) Therapy in School in the Form of a 1:1 Behavioral Technician with the Support of a Board Certified Behavior Analyst (BCBA)*

14. This issue requires resolution of the professional opinion of Dr. Adams, who recommended both ABA therapy and a 1:1 certified behavior technician (CBT), with the professional opinion of the education professionals at DPS, who did not support either of those two services for the Student. In resolving these differing professional opinions, it is important to reflect on what the IDEA provides, and what it does not. Under the IDEA, a school district need only implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can make progress in the general education curriculum. A school district is not required to provide every service necessary to maximize a disabled student's potential, and the appropriateness of an IEP must be judged based upon what was known, or reasonably should have been known, to a school district at the time the IEP was developed. While very qualified in his own fields of expertise, Dr. Adams is not an expert in the area of education. He has no experience, education, or training as an educator. In order to prevail on a claim involving an instructional methodology, like ABA, where school districts are afforded considerable deference due to the applicable education, training, and experience of staff, the Parents must prove that ABA is the *only* instructional methodology by which the Student can receive an educational benefit. Similarly, the Parents have the burden of proof to establish that the *only* way the Student could obtain an educational benefit is through the provision of a full-time BT or CBT. The facts in this case do not support the Parents have proven either of these two things.

15. The Alaska IEP acknowledged the Student required supervision for her safety. However, that IEP did not assign a 1:1 aide of any type to the Student, nor did it require ABA therapy or instruction. There is little evidence to support the Parents' position that the Student was in danger at DPS without a 1:1, or could not obtain an educational benefit without the use of ABA. The Parents have not proven the Student was in danger of elopement while at DPS, or that she was not adequately supervised at recess. In fact, there is simply no evidence to find the Student eloped during her time at the DPS. The one incident the Parents point to, where the Student ran to, not away, from the Mother and Ms. Grayer, is not compelling. For all of Dr. Adams' concern for the Student's safety due to a perceived elopement threat, that threat did not materialize at DPS. In opposition, District staff credibly established the Student was progressing towards her IEP goals, and was not eloping while at DPS. Accordingly, the undersigned concludes the Parents have not proven that the Student could not obtain an educational benefit with anything other than the provision of ABA therapy and a 1:1 BT or CBT. The Parents have not proven the District violated the IDEA or denied the Student FAPE by failing to provide ABA therapy of a 1:1 BT or CBT.

*Failing to Provide Appropriate Supervision of the Student to Prevent and Address Dangerous Elopement*

16. To a significant extent, resolution of this issue is determined by the same analysis as the issue of assignment of a 1:1 BT or CBT. There is simply no evidence to find the supervision provided at DPS, by the Student's classroom teachers and/or recess staff, resulted in any danger to the Student. There is no evidence to find the Student in fact eloped or tried to elope at DPS.

The Student continued to make progress on her IEP goals, and clearly obtained an educational benefit. Again, it appears as though much of the Student's behavior concerning to the Parents was occurring at home, and not at DPS. A school district is not responsible for addressing behaviors at home, no matter how serious, unless that behavior results in a student being unable to obtain an educational benefit *at school*. It is concluded that the Parents have not proven any violation of the IDEA or denial of FAPE to the Student.

*Failing to Timely Convene an Individualized Education Program (IEP) Team Meeting*

17. District staff determined on March 12, 2018, that the District would accept and implement the Alaska IEP. There is no evidence to find the Parents did not agree with implementing the Alaska IEP at that time. There is no requirement that a new school district hold an IEP meeting to adopt a former IEP if the new district and the parents agree to its use. *See, e.g., In re: Student with a Disability*, 44 IDELR 83 (SEA MT 2005).

18. The evidence has been carefully considered, and it has been found as fact that the Mother first referenced wanting an IEP meeting on April 12, 2018. The District set and held an IEP meeting on April 25, 2018. *See Finding of Fact 44*. After the April 25, 2018 IEP meeting, the Mother again requested an IEP meeting on May 9, 2018, in order to remove the behavioral component of the communication log. *See Finding of Fact 115*. That did not require convening an IEP team meeting, and the Mother's request was honored by the District. *See Finding of Fact 117*. It is concluded the Parents have not proven the District failed to ever timely convene an IEP meeting, and has not violated the IDEA.

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

**ORDER**

The Parents have not proven that the Fife School District violated the Individuals with Disabilities Education Act or denied the Student a free appropriate public education.

Signed at Seattle, Washington on March 7, 2020.



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MATTHEW D. WACKER  
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 this final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Administrative Resource Services.

CERTIFICATE OF SERVICE

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

Parent



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