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OAH – SEATTLE

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
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November 12, 2019

Parent



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In re: Shoreline School District
OSPI Cause No. 2018-OSPI-0115
OAH Docket No. 11-2018-OSPI-00625

Dear Parties:

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

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

Sincerely,

Anne Senter
Administrative Law Judge

cc: Administrative Resource Services, OSPI

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

IN THE MATTER OF:

OSPI CAUSE NO. 2018-SE-0115

OAH DOCKET NO. 11-2018-OSPI-00625

SHORELINE SCHOOL DISTRICT

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

A due process hearing was held before Administrative Law Judge (ALJ) Anne Senter on March 1, 5, 6, 7, 15, and 18, and April 2 and 3, 2019, in Shoreline, Washington. The Mother of the Student whose education is at issue¹ appeared and was represented by Nicholle S. Mineiro, attorney at law. The Shoreline School District (District) was represented by Lynette M. Baisch and Tevon Edwards, attorneys at law. Also present was Scott Irwin, District director of secondary services.

STATEMENT OF THE CASE

The Mother filed a Due Process Hearing Request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on October 31, 2018. The Complaint was assigned Cause No. 2018-SE-0115 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered November 2, 2018, which assigned the matter to ALJ Anne Senter. The District filed its Response to the Complaint on November 13, 2018.

Prehearing conferences were held on December 14, 2018, January 17 and 24, and February 20, 2019. Prehearing orders were entered December 17, 2018, January 25, February 19 and 25, and March 4, 2019.

As agreed at the conclusion of the hearing, the parties submitted post-hearing briefs on April 29, 2019.

Due Date for Written Decision

As set forth in the first Prehearing Order, the due date for a written decision in this case was continued to 30 days after the close of record, at the Mother's request, in order to accommodate the requested hearing dates. As the record closed on April 29, 2019, when the parties submitted their post-hearing briefs, the due date for a written decision in this case is **May 29, 2019**.

¹ To ensure confidentiality, names of parents and students are not used.

Evidence Relied Upon

Exhibits Admitted:

District's Exhibits: D1 - D61; and

Parent's Exhibits: P1, P2, P7 - P12, P14 - P24, P28 - P31, P33 - P35, P37, P39, P42 - P47, P50, P51, P57 - P67, P70 - P75, P80, P82 - P84, P87 - P105, and P107.

Witnesses Heard (in order of appearance):

Karen Toth, Ph.D., private clinical psychologist;
The Student's Mother;
Michael Fabrizio, Ph.D., Organization for Research & Learning;
Susan Small, dean of students of upper school, Yellow Wood Academy;
Matthew France, teacher, Yellow Wood Academy;
Nancy Elder, District assistant principal;
Kellie Stitch, District general education teacher;
Wendy Crocker, District general education teacher;
Stacy Cha, District school psychologist;
Kathryn Zwack, District school psychologist;
Tammy Ceesay, District special education teacher;
Alicia Favreau, District special education teacher;
Scott Irwin, Ph.D., District director of secondary student services; and
Thomas Powers, Ph.D., Brooks Powers Group.

ISSUES

As set forth in the Fifth Prehearing Order, the issues for the due process hearing are:

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:
 - i. Failing to provide appropriate related services or timely initiate a reevaluation for the Student during the 2016-2017 or 2017-2018 school years after the Student self-harmed, engaged in bulimia, eloped classes and the school building, and attempted to commit suicide while at school insofar as:
 - A. The February 14, 2018 individualized education program (IEP) did not contain appropriate mental health, therapeutic, or any related services appropriate for the Student to be proven at hearing;
 - B. The March 14, 2017 IEP amendment did not contain appropriate mental health, therapeutic, or any related services appropriate for the Student to be proven at hearing;
 - C. The February 22, 2017 IEP did not contain appropriate mental health, therapeutic, or any related services appropriate for the Student to be proven at hearing;

- D. The District did not reevaluate the Student until October 20, 2017, in response to severe functional decline and academic decline of the Student from October 2016 until June 2017;
 - E. The District's October 20, 2017 reevaluation did not assess the Student in emotional and behavioral areas;
 - F. The District did not conduct a functional behavioral assessment of the Student from October 2016 until the date of filing the due process hearing request in response to stark behavioral decline at school;
- ii. Failing to provide an appropriate placement for the Student during the 2016-2017 and 2017-2018 school years insofar as:
- A. The District has at all times maintained the Student should have less challenging courses, a reduced schedule, and attend high school for additional years, rather than providing the Student with appropriate placement for her individual circumstances so that she can learn, to be proven at hearing;
 - B. The Parent² requested part-time placement on an IEP at Yellow Wood Academy for the Student on August 18, 2018, and this was rejected without prior written notice (PWN);
 - C. The February 14, 2018 IEP does not contain a description of the placement, but the District did not provide 1:1 placement due to resources available;
 - D. In the summer of 2017, in response to the Student's academic and functional decline and Parent's request for academic remediation, the District offered Student a non-academic class;
 - E. [withdrawn]
 - F. The March 14, 2017 IEP amendment placed the Student in some special education pullout classes and co-taught classes, but the District did not provide 1:1 placement due to resources available;
 - G. The February 22, 2017 IEP placed the Student in some special education pullout classes and co-taught classes, but the District did not provide 1:1 placement;
- iii. Significantly excluding the Parent from the educational process by failing to provide timely PWNs, and failing to reconvene the IEP team in response to chronic

² As the Mother filed the Complaint, references to the Parent in the issue statement are to the Mother.

and recurring school problems throughout the 2016-2017 and 2017-2018 school years insofar as:

- A. The Parent was not provided PWN created on June 22, 2018, until August 24, 2018, rejecting the Parent's request for paraprofessional support in additional classes for the Student;
 - B. [withdrawn]
 - C. The February 17, 2017 IEP meeting was held in spite of illness of the Parent and was not rescheduled, the Parent had to attend by phone despite being ill, and the Student's biological father was not able to attend;
- iv. Failing to offer IEPs in 2017 or 2018 that were reasonably calculated to allow the Student to make progress according to her circumstances insofar as:
- A. The IEP was not amended in June 2018 in response to further functional and academic decline of the Student, as communicated to school staff throughout the semester and in a meeting of IEP team members;
 - B. [withdrawn]
 - C. The March 14, 2017 IEP amendment only added a modification for grading notebooks and planners but did not address the larger issue of failure to make progress in executive functioning and the Student's processing issues; nor did it amend the IEP to address functional and academic deficits of the Student;
 - D. The February 22, 2017 IEP did not address cutting, purging, and elopement at school;
 - E. The IEP team was not reconvened to amend the IEP in response to severe functional decline of the Student from March 9, 2017, until February 7, 2018;
 - F. [withdrawn]
- b. Whether Yellow Wood Academy has been and is appropriate for the Student;
- c. And, whether the Parent is entitled to her requested remedies:
- i. Prospective placement at Yellow Wood Academy based on the inappropriateness of the most recent IEP and/or as compensatory education;
 - ii. Transportation to and from Yellow Wood Academy for the Student;
 - iii. Reimbursement to the Parent of sums paid for tuition and related services associated with the unilateral Yellow Wood Academy placement;
 - iv. Declaratory relief that the District has denied the Student a FAPE;

- v. And/or other equitable remedies, as appropriate.

FINDINGS OF FACT

Background

1. The Student was 15 years old and in the tenth grade at the time of the hearing's conclusion.
2. The Student began receiving special education and related services as a student with developmental delays in preschool. Exhibit D3, p. 1. Her eligibility category was changed to "other health impairment" after she was diagnosed with attention deficit hyperactivity disorder (ADHD) in kindergarten. *Id.*
3. The Parents requested an independent educational evaluation (IEE) of the Student in 2015. The District granted this request and the evaluation was conducted by Karen Toth, Ph.D., who provided a report entitled "psychological and educational evaluation." Exhibit P1. The stated purpose, as set forth in the report, was to identify any underlying processes contributing to the Student's school challenges, to complete a comprehensive assessment of her cognitive, academic, executive, social, and adaptive functioning, and to make recommendations to the Student's school team for her individualized education program (IEP) to help her succeed in the school environment. *Id.*
4. Dr. Toth determined that the Student's behavior met the criteria for autism spectrum disorder (ASD) and ADHD-combined type. *Id.* at 12. Additionally, she determined the Student had a learning disorder of mathematics and a learning disorder not otherwise specified (NOS) in some aspects of reading and spelling. *Id.*
5. Dr. Toth's report included specific recommendations for the Student at school. Exhibit P1, pp. 12 - 13. She recommended that the Student's IEP reflect her ASD diagnosis and provide supports for her slow processing speed, working memory deficits, and other executive function challenges, and support her learning challenges. *Id.* at 12. She recommended math supports and gave recommendations for writing. *Id.* She recommended supports for the Student's executive functioning deficits, including problems with cognitive flexibility, planning, and organization. *Id.* With respect to social skills, she recommended continued small group instruction through the District program. *Id.* at 13. Dr. Toth did not recommend the District provide counseling, therapeutic services, or speech language therapy (SLP) services or that the District conduct any further testing to determine any additional needs. *Id.* at 12 - 13.
6. Dr. Toth recommended that the family work with a child psychiatrist to explore options for managing the Student's ADHD and that her mood should be monitored. Exhibit P1, p. 13. Dr. Toth also recommended, to the family, treatment related to the Student's adaptive functioning and participation in programs to support her social skills. *Id.*
7. The District conducted an evaluation in June 2016, in part to incorporate information from Dr. Toth's report and to look at the Student's behavior. Exhibit D3, p. 1. The District's evaluation report identified the Student's eligibility category as autism. *Id.* The evaluation recommended specially designed instruction (SDI) in 1) math, 2) study skills and organization to increase the

Student's executive function skills, including work completion and organization, and 3) social emotional skills to increase her emotional and behavioral regulation and positive interactions with peers. *Id.* at 3.

8. The District contracted with the Brooks Powers Group, a private organization, to observe the Student's behavior and make recommendations, focusing on the Student's task avoidance and refusal behaviors. Exhibits D3, pp. 16 - 21; P96, p. 19. This resulted in the conclusion that the Student's task avoidance behavior, such as leaving the area or becoming aggressive, was maintained by the need to escape challenging or uninteresting tasks or overwhelming social demands. Exhibit D3, p. 20. It was recommended the Student might benefit from an emotion regulation curriculum to access appropriate coping skills and from having a designated break space she could access when she feels overwhelmed. *Id.* It also recommended the Student be reinforced when she engages in desired behaviors and that she might benefit from a self-management system in which she tracks her own behaviors. *Id.* Additionally, it was recommended that the Student's academic tasks be scaffolded to address her executive functioning deficits and that testing formats be modified. *Id.*

2016-2017 School Year - Eighth Grade

9. During the first quarter in the eighth grade, the Student received an A, two Bs, a C, and two C-minuses. Exhibit D6, p. 1. Her second quarter grades were much lower, resulting in the following semester grades at the end of January 2017: A in teacher assistant, C in social skills, D in science, D in math, F in Washington State history, and B in English skills. *Id.*; Exhibit D61, p.3. With the exception of having 12 tardies in her social skills class for the semester, she did not have any significant attendance issues this semester. *Id.* Nor is there evidence of significant behavioral issues at school during the first semester.

10. In late January 2017, the school nurse, Joni Wishaar, and school psychologist, Kathryn Zwack, contacted the Parents about the Student's self-injurious behaviors. Exhibit D8, p.2. The Student had reported to Ms. Zwack that she had started "cutting" a few months earlier after reading about it on the internet as a method for coping with stress. *Id.* The Student had reported to Ms. Zwack that it was not related to school. *Id.* The Mother responded to Ms. Zwack in an email, explaining that the Student has a friend who cuts as well and that she is influenced by YouTube. *Id.* The Parent stated there were some challenging family dynamics, but she believed the Student's primary stress was social anxiety at school. *Id.* The Mother also mentioned she was looking for a counselor for the Student. *Id.* Ms. Zwack mentioned the Student had been enjoying herself at gay student alliance (GSA) and making some connections with peers and that she saw "a lot of progress" in that area. *Id.* at 1. The Mother also mentioned the Student had seemed "happier. . . overall" that year but not in recent weeks. *Id.* There is no evidence that the District knew of the Student's cutting before January 2017 or that it had ever taken place at school. See Mother, Tr. 126.³

11. By this time, the Mother was concerned about the Student's cutting, vomiting, withholding food from herself, difficulty sleeping, negative self-talk, and the Student's reports that she felt

³ Citations for witness testimony in the hearing transcript are to the witness and page number. For example, Mother, Tr. 126, refers to the Mother's testimony at page 26 of the transcript.

isolated and stigmatized at school. Mother, Tr. 121, 127. At home, the Mother was having a difficult time getting the Student to do homework, and the Student would respond by leaving the house, screaming, and throwing things. *Id.* at 123-24. Other than the emails detailed above about cutting, there is no evidence the Parent communicated any of these concerns to the District at the time. Nor is there evidence that the Student had engaged in self-harming behavior or vomiting at school at this point.

February and March 2017 IEPs

12. The Student's annual IEP was due in February 2017. On February 14, 2017, the Mother agreed that she could attend a meeting on February 28, 2017. Exhibit D9, p. 3. On February 21, 2017, during midwinter break, the Mother notified Tristie McJilton, the Student's case manager, that her advocate was not available at the agreed time and asked if she could reschedule. *Id.* at 2; Exhibit D61, p.3. Ms. McJilton informed the Mother on February 27, 2017, immediately after midwinter break, that the IEP needed to be completed the next day and asked if they could hold the meeting to complete the IEP and then schedule another when the advocate could attend. *Id.* The Mother responded that she had the flu as well and should not go to a meeting. Exhibit D9. Ms. McJilton stated she had to submit the IEP to the District office to get funding for the Student's special education services. She again proposed holding the meeting as scheduled to complete the IEP with the understanding it would be a draft and then scheduling another meeting in early March when the advocate could attend and the Mother was feeling better. *Id.* The Mother agreed. The Mother attended the IEP meeting as scheduled by phone as she did not want to make anyone sick.⁴ The Father was unable to attend. Exhibit D10. There is no evidence as to whether the Father had wanted to attend or requested that the meeting be rescheduled so he could attend.

13. The Mother understood that the IEP from the February meeting was essentially a draft. Mother, Tr. 129. The prior written notice (PWN) noted that another meeting would be held within two weeks because the Mother had been unable to attend the meeting in person due to illness and because her advocate could not attend. *Id.* at 18.

14. Another IEP meeting was held on March 9, 2017, with both Parents and the Mother's advocate participating. Exhibit D11, p. 1.

15. The March 2017 IEP amendment⁵ identified that the primary parent concern at the time was the Student's ability to maintain focus during instruction. Exhibit D11, p. 2. With respect to behavior, the IEP noted that the Student had begun using a daily point sheet to help her focus on self-regulation strategies and that it had helped her focus on more pro-social behaviors. *Id.*

16. The IEP provided additional minutes of SDI in math, social/emotional skills, and study skills/organization from the prior IEP. Compare Exhibit D1, p. 10 with Exhibit D11, p. 13. The

⁴ The IEP and prior written notice (PWN) both indicate that the IEP meeting was held on February 17, 2017. Exhibit D10, pp. 1, 18. This is inconsistent with the emails between the Mother and Ms. McJilton on February 27, 2017, about holding the IEP meeting on February 28, 2017. Exhibit D9.

⁵ As only minor changes were made to the February 2017 IEP in the March 2017 IEP amendment, the two meetings were held so close together, and the Mother essentially considered the February 2017 IEP to be a draft, the contents of the February 2017 IEP are not separately discussed.

Student was placed in special education and/or team-taught classes for math, social skills, and organization and study skills. *Id.* at 14. Additionally, although she did not receive SDI or have goals in English, she was placed in a special education English class due to her increased productivity in a smaller class setting. *Id.* She was otherwise served in general education classes. *Id.*

17. The Student had two social/emotional skills goals. Exhibit D11, p. 6. One of them involved asking questions and gathering information in new or uncomfortable social situations to improve her self confidence and social engagement. *Id.* The other involved completing a checklist about social situations or academic expectations to improve her self-reflection. *Id.* She also had two study skills/organization goals. One was to record assignment and test dates in a planner to improve her organization skills and the other was to follow organizational/procedural expectations with a decreasing need for prompts. *Id.*

18. The March 2017 IEP contained many accommodations, including a “safe person” adult for the Student to check in with, extra time to respond, extra time on tests, frequent breaks during testing, modified homework or length of assignments when unmanageable, pre-assigned role in partner work, preferential seating with peers, task sheets for multi-step work, use of study guides, and a “work, time, and material management system.” Exhibit D11, pp. 8-9. As a modification, the IEP provided that, for classes with interactive notebooks, the Student would be graded on a pass/no pass basis for her notebooks. *Id.* at 9.

Events following the development of the of the IEP

19. For the third quarter, the Student received an A- in health and fitness, a B+ in English skills, a B- in painting and drawing, and a C+ in social skills, but received an F in both science and math. Exhibit D17. The teacher comments for math indicated the Student was missing assignments or required class work. *Id.* The science comments indicated she was finishing very little during class time. *Id.*

20. During this time period, the Student began eating disorder treatment at Seattle Children’s Hospital. Exhibit P7. In April, the Student burned herself, requiring a trip to the emergency room. Exhibit P9. This did not take place at school. *Id.* After this incident, the Mother took the Student to see a therapist, Wendy Nystrom, for treatment. *Id.* It is not clear how much of this information was conveyed to the District at this time. The Mother signed a release of information in April, allowing the District to communicate with the providers, but the record does not reflect why this took place or whether there was any contact between the District and the providers. Exhibit P99.

21. On May 2, 2017, the Mother sent an email to Amy Vujovich, District director of student services. Exhibit P17, p. 3. The Mother requested an IEP team meeting be held as soon as possible. She stated that she did not believe the Student was receiving a free appropriate education (FAPE), because the Student was intellectually capable of doing grade-level work but the District was not sufficiently accommodating her need for assistance with executive functioning. *Id.* The Mother identified that the Student was failing classes like science although she was capable of understanding them and was motivated to do well. *Id.* The Mother requested the Student’s education be supplemented with small-group or one-on-one classes at a private school, like Spring Academy, in selected academic areas. *Id.* The Mother suggested science would be a good class to start with as the Student was failing it. *Id.* She suggested that one class would demonstrate whether that type of instruction would be successful and would also build the

Student's confidence and organizational skills. *Id.* The Mother proposed starting the class immediately and then continuing it through the summer. *Id.* She did not mention any social or emotional needs of the Student in her email. *Id.*

22. A meeting was set for May 24, 2017. Exhibit P15. In the meantime, the Mother was communicating with the Student's science teacher, Adrienne Houck, about how "stressed" the Student was about an assignment. *Id.* The Mother stated that the Student's belief she is not intelligent enough to understand science, along with her executive functioning problems, were causing an obstacle. *Id.* Ms. Houck responded that she observes the Student's anxiety in class related to feeling like other students are watching when they interact in class. *Id.* She asked the Mother to relay that she was on the Student's side and would help her if she let her. *Id.*

23. The record does not contain meeting notes or a PWN related to the meeting held on May 24, 2017. The team decided to have Dr. Tom Powers of Brooks Powers conduct observations of the Student at school, instruct her in a one-on-one setting, and make academic recommendations for her. Exhibit D18.

24. On May 25, 2017, Ms. Zwack, the school psychologist, reported to the Parents in an email that she had talked with Ms. Nystrom about whether the Student had expressed any concerns about school during their counseling sessions. Exhibit D13. Ms. Nystrom shared that the Student had concerns about physical education (PE) and feeling uncoordinated and self-conscious about her body. *Id.* Ms. Zwack conferred with the Student, who agreed PE was awful. *Id.* Ms. Zwack informed the Parents that she would look into another option for that class period, if possible, and that there were also other options for PE the following year, such as walking or yoga, that the Student might find less stressful. *Id.*

25. On June 1, 2017, the Student was assigned to the "tardy tank" because of her attendance issues. Exhibit P18.

26. On or about June 7, 2017, the Student cut herself in the school restroom after a negative interaction in her math class. Exhibit P20.

27. The Mother emailed Ms. Vujovich and Scott Irwin, District director of special education, on June 11, 2017. Exhibit P20, p. 2. She stated that the Student could not be allowed to continue to fail or barely pass classes due to inadequate SDI and that her mental health, her safety, and her future were at risk. *Id.* She stated that she would be placing the Student at a private school, Spring Academy, at public expense, beginning in the summer. *Id.*

28. Dr. Irwin responded in an email on June 14, 2017. Exhibit P20, p. 1. He stated that Dr. Powers was finishing his observations and was ready to discuss his findings. *Id.* Additionally, he stated that the team needed to discuss the recent events and how the Student's mental health was affecting her educational program. *Id.* He noted the team may want to consider a reevaluation in specific areas to support the Student's transition to high school. *Id.* Accordingly, he proposed an agenda for the next IEP team meeting to include Dr. Powers reporting on his observations and the team discussing a possible reevaluation. *Id.*

29. Dr. Powers observed the Student twice in her general education science class and once in the smaller special education English class. Exhibit P92. He also conducted a one-one-one tutoring session with her to pre-teach material for her upcoming science class. *Id.* He concluded

that the Student was only engaged in her science class when given an explicit direction to do so and that the pacing of the class was too fast for her. *Id.* He determined that the self-paced nature of the English class as well as the wide range of products that were acceptable to fulfil assignments allowed the Student to succeed in that class. *Id.* Based on his one-on-one tutoring session, he determined the Student can produce accurate responses by taking additional time and going back over the text even though she does not encode new material easily or quickly. *Id.*

30. As a result of his observations and work with the Student, Dr. Powers identified the following needs: 1) significantly different performance expectations and grading requirements in subjects that load cognitive skills in which she tested below average, including science and math; 2) a reduced academic course load to allow for additional study skills and academic supports needed to overcome the challenges posed by her working memory and processing speed; 3) keyboarding instruction to ensure her work is not reduced by a motor component; 4) open book tests and access to correct notes when assignments and tests are to access understanding rather than memorization; and 5) the opportunity to participate in an academic class over the summer to maintain academic focus and behavioral momentum. *Id.*

31. Additionally, Dr. Powers recommended evaluating the Student in executive functioning and memory, written expression, and mental health. *Id.* With respect to the Student's science class, Dr. Powers recommended that the Student have 1) the opportunity to participate in class, listen to instruction, and absorb material without having to fully complete written exercises in class; 2) follow-up tutoring by someone who had attended the class to review the material and help with completing the written exercises; 3) open book tests and quizzes; 4) the opportunity to explain incomplete test and quiz answers orally, and 5) access to well-organized notes of a teacher or peer she could copy into her own notebook. *Id.*

32. An IEP team meeting was held on June 21, 2017. Exhibit D18. The team agreed to initiate a reevaluation of the Student with an emphasis on executive functioning, written expression, and mental health. Exhibit D18, p. 1. The team agreed that the Brooks Powers Group would conduct the executive functioning and written expression portions of the evaluation and the District would provide the mental health evaluation by an outside provider. *Id.* The team also agreed to provide a keyboarding class during the summer but declined the Parent's request for a summer science class at a private school. *Id.* It was agreed that Student would have a one-on-one paraeducator for her science class as well as 30 minutes for science support in her study skills class. *Id.* The PWN noted that the paraeducator support would be added to the Student's IEP in the fall and that another meeting would be held by phone so the Parents could ask more questions of Dr. Powers to better understand his findings. *Id.*

33. A phone conference took place on June 29, 2019, with the Parents, their advocate, Dr. Powers, and Dr. Erwin. Exhibit D19. Dr. Powers discussed his recommendations and the team confirmed it was offering the one-on-one paraeducator for the science class and for 30 minutes of additional time in study skills, three hours of keyboarding for four weeks at the high school as extended school year (ESY) services to help address the Student's anxiety towards school, and a reevaluation with respect to executive functioning, written expression, and a mental health evaluation. *Id.* This was memorialized in a PWN. *Id.* The Parent had requested that the Student take a science class at a private school over the summer but Dr. Powers thought it was important to take a class at the high school she would attend in the fall to address her anxiety. *Id.*

34. For the second semester, the Student earned an A in painting and drawing, a B in English skills, a B- in social skills, a C- in science, and an F in math. Exhibit D17, p.2.

35. Allison Brooks from the Brooks Powers Group evaluated the Student over the summer with respect to executive functioning and writing. Exhibit D20. Dr. Brooks's evaluation confirmed challenges with several aspects of memory and executive functioning. *Id.* at 10. Dr. Brooks explained that the Student's difficulties with encoding and recall of complex visual information is highly unusual and likely to negatively impact her learning pace and capacity. *Id.* She opined that the Student's unusual performance profile, combined with her working memory and processing speed deficits and social communication disorder suggest that it takes a tremendously greater effort for her to get through a school day than her peers. *Id.* at 11. Dr. Brooks recommended shortened assignments and school days and considering a plan for using an extra year or more to work through high school. *Id.* She noted that, although the Student would likely be more successful at working on skills in isolation, such as in a 1:1 or tutoring context, she was greatly in need of practicing skills and learning in contexts that are analogous to those she will encounter in post-secondary academic and work settings. *Id.* Dr. Brooks recommended supports related to executive functioning, memory and working memory, and writing. *Id.* at 11-12.

36. Although the team had agreed to a mental health assessment of the Student by an outside provider, this did not take place. Dr. Irwin testified that the District was prepared to offer the testing but the Mother declined it in the June meeting. Irwin, Tr. 1163. The Mother testified that she never declined such testing. Mother Testimony. The PWN for the June meeting stated the team had agreed to initiate a reevaluation including an emphasis on mental health and expressly stating the District had agreed to provide the mental health evaluation by an outside provider with no mention of the Mother declining it. Exhibit D18, p. 1. Likewise, the PWN from the follow-up phone conference confirmed the team's commitment to provide a mental health assessment, again with no mention that the Mother had refused it. Exhibit D19. The report prepared after the conclusion of the reevaluation did not reference the mental health evaluation at all. Exhibit D28.

37. Dr. Powers sent an email to the Mother dated June 30, 2017, after the follow-up phone conversation, stating that he had spoken with Allison Brooks about completing the executive functioning assessment, written expression testing, and "possibly doing the mental-health evaluation." Exhibit P107. He reported that she would take on "this work." *Id.* The Mother responded, "Thank you, this sounds like a good plan." *Id.* The Mother argues that this demonstrates she wanted a mental health evaluation to be completed, but the District argues that Dr. Powers's use of the word "possibly" meant that Dr. Brooks would be available to perform the mental health testing if the Mother later decided she wanted it done. The ALJ does not accept the District's argument. The record demonstrates that the IEP team determined a mental health evaluation was appropriate for the Student and agreed to have an outside provider conduct one. It is found as fact, based on a preponderance of the evidence, that the Parent did not decline it.

2017-2018 School Year – Ninth Grade

38. A meeting was held on September 5, 2017, to go over the results of the Brooks Powers evaluation and discuss the upcoming school year. Exhibit P29. Dr. Powers's recommendations at the meeting included that the District be in contact with the Student's mental health counselor. *Id.* at 3. The meeting notes reflect that the Mother stated the Student had started "really restricting her food" at the beginning of August, that she has a history of cutting, and that the behaviors typically happen in a new environment. *Id.* The meeting notes reflect a discussion of the

accommodation recommendations made by Brooks Powers, but the IEP was not amended to include them or to incorporate the one-one-one assistance agreed upon the prior spring. *Id.*

39. In early October, a District school counselor instituted a safety plan for the Student because of concerns about suicidal ideation. Exhibit D28, p. 22; Elder, Tr. 784. The counselor forwarded the plan to the Student's teachers with an email stating the Student had been having a difficult time as she continued to develop friendships and adjust to the school work. Exhibit P35, p. 2. Under the safety plan, teachers were to monitor the time she was gone from class if she left to use the restroom and to call the office if there is concern about how long she was out of class. Exhibit D28, p. 22.

40. Prior to this time, the Mother had shared with District staff about the Student's anxiety about her social and academic activities and her feelings she was not intelligent enough to succeed at school. Exhibit P28. Later in October, Alicia Favreau, the Student's special education teacher, contacted the Parents by email, because she had noticed a decline in the Student's focus and engagement. Exhibit D25, p. 2. The Parent responded, indicating the Student's eating disorder was getting worse, that she was upset because she believed she was failing two classes, and that she gets distressed when she looks at her planner. *Id.* at 2. Dr. Powers, who was also on the email chain, commented that the Student "looked very different" than when he had observed her a few weeks earlier. *Id.* at 1. He recommended to the Mother a therapist who has experience with eating disorders as well as teens with anxiety, depression, and autism. *Id.* In another email with Dr. Powers, the Mother questioned where the Student goes when she is not in class. Exhibit P37.

41. Despite these concerns, the Student's therapist's notes document a report from the Student on October 17, 2017, that school was going "better this year than last." Exhibit D26, p. 2.

October 2017 Reevaluation

42. The District concluded its reevaluation in October 2017. Exhibit D28. The reevaluation incorporated the Brooks Powers Group assessments conducted over the summer. *Id.* Stacy Cha, District school psychologist, assessed the Student in math as well. *Id.* The team changed the Student's eligibility category to "other health impaired" to better reflect her multiple diagnoses. *Id.* at 2. The team recommended SDI in math, study skills/organization, and social/emotional skills and a one-on-one paraeducator as a supplementary aid and service. *Id.* at 3. Dr. Powers had observed the Student in her science class and been pleased with the instructional delivery, pacing, and the use of a paraeducator in the classroom. *Id.* at 30.

43. As part of the evaluation, Ms. Cha communicated with Ms. Nystrom, who noted that she was working on emotional regulation and alternatives to purging and cutting with the Student. *Id.* at 35. As suggestions for school support, Ms. Nystrom noted:

Moved her out of PE because she was getting picked last and made fun of for physical traits. Resulted in cutting every time. If any class/situation that can be source of embarrassment – any way to modify her schedule. Other alternative – letting her break by herself in open area to reduce chance of cutting. If goes to bathroom and embarrassed, tendency to cut. Doing some problem solving may help.

Id.

44. The District did not update the Student's IEP after the meeting. Exhibit D28, p. 42. The PWN following the evaluation stated that the Student's one-on-one paraeducator support would be added into the IEP during the annual review in February. *Id.*

45. In late October, the Student was leaving school during the day without District staff or the Parent knowing where she was. Exhibit P42. It turned out, on at least one occasion, she had gone home for lunch and fallen asleep. *Id.* Ms. Favreau made arrangements for the Student to nap in the nurse's office instead of going home. *Id.* On other occasions the Student fell asleep in different places on campus, including on the stairs and in the restroom. Exhibit P100, p. 4; Mother, Tr. 218.

46. For first semester the Student received an A in study skills, an A- in math skills, and a Pass in both jewelry/metals and school service. She received an F in English skills for the second quarter but a D+ for the semester. Exhibit D34. Confusingly, the Student's grade report stated that she was making satisfactory progress toward her IEP goal and was expected to complete it, yet the Student was supposedly receiving general education instruction in that class and had no IEP goal. *Id.* The Student received a D in science for the second quarter but a Pass for the first semester because the Student's science class had been changed to pass/fail grading because of her anxiety about grades. *Id.*; Powers, Tr. 1222. The Student's IEP did not call for modified grades (except for planners) and the IEP was not amended to incorporate this change. Exhibit D11, p. 9. The Student's grade report reflected that she had earned 53% in science, with 50% being a passing grade, and that she had scored 37.5% on the final exam. Exhibit P89, p. 17.

47. The second quarter grade report reflected 9 absences and 11 tardies in English skills, 8 absences and 2 tardies in math skills, and 5 absences in science. Exhibit D34.

February 2018 IEP

48. The Student's annual IEP team meeting took place on February 7, 2018. Exhibit D35.

49. The IEP noted that the Mother's concerns were that the Student was very confused about what work she needed to do at home and identified that she was so disorganized she did not know what to do and seemed panicked at these times. *Id.* at 3. The Mother also expressed that she continued to be concerned about the Student's negative self-assessment leading to panic and stopping her work. *Id.* Similarly, she described the Student had quit the school musical because she thought she would "ruin" it for the other students. *Id.* The IEP noted that the Student's behavior had impeded her learning and that she could improve on getting to class on time and work on strategies to improve getting back on focus after being distracted. *Id.*

50. The PWN reflects that, at the time of the meeting, the Student was "making the turn" the schools sees with freshmen, sitting with friends and being more lively. Exhibit D37, p. 2. The Mother reported she was not in therapy at the time and improving without it. She had been taking better care of herself and taking action rather than getting down on herself. *Id.*

51. The IEP continued to provide for SDI in math, social/emotional skills, and study skills/organization. Exhibit D34, p. 14. Additionally, it continued to provide for the Student to receive her English instruction in a special education in a team-taught or resource room setting

as an accommodation. *Id.* at 11. There was no reference in the IEP to paraeducator support. Exhibit D34. The accommodations remained the same. *Id.*

52. Following the meeting, Ms. Favreau, the Student's case manager, emailed the Parents to "check in on changes" for the IEP. Exhibit D36. The Mother responded that she wanted to make sure the IEP included sufficient paraeducator staffing to support the Student's more challenging classes like what was in place for science. *Id.* She mentioned another meeting might be necessary to discuss this. *Id.* Ms. Favreau responded on February 15, 2018, that was "for sure a priority," and stated she would make sure it was explicit in the IEP and provide another draft. *Id.*

53. Ms. Favreau forwarded the IEP on March 5, 2018. Exhibit D38. The IEP still did not address any paraeducator support, even that previously agreed to for science. *Id.* The Mother emailed, stating the IEP did not appear to include the paraeducator for her science and other challenging classes. *Id.* at 2. Ms. Favreau responded that it was in the PWN where it said the paraeducator would stay with the Student for science and study skills the following year. *Id.* The Parent stated that she also wanted to discuss whether the Student needs that assistance for other classes, like history, a class that was new to the Student in the second semester. *Id.* Ms. Favreau suggested the team revisit that issue at a meeting in May. *Id.* There is no evidence that a meeting was scheduled or held in May.

Events after the development of the February 2018 IEP

54. The Student's troubling behaviors continued in the spring. In March, she left campus, reportedly with the intent to kill herself, after a miscommunication with a peer at school. Exhibit P 57. Also in March, she was observed vomiting multiple times at school. Her attendance problems and tardiness problems continued. *See, e.g.,* Exhibit P66. In May, Ms. Favreau wrote the Parent and saying she was getting to a point where she was not sure how to proceed with the Student skipping class. Exhibit P67. She told the Student that it was "effecting other people's jobs by having to look for her." *Id.* She offered the Student several strategies and asked her to choose one. *Id.* The Student's attendance report reflects 15 unexcused absences and 62 tardies for the ninth-grade year. Exhibit P101.

55. The Student's grading for history and science was changed to pass/fail because of the Student's anxiety about failing and her perception that low grades other than F constituted failure. This change was not incorporated into the Student's IEP or memorialized in a PWN. She earned 57% in science for the second semester following receipt of 40% on her final exam despite the increased assistance. Exhibit P89.

June 2018 Meetings

56. On June 7, 2018, the Mother requested an IEP meeting in an email. Exhibit D48. She again expressed concern the Student needed one-on-one assistance in history and other classes like she had in science as she was having difficulty understanding her assignments. *Id.* She also wanted to discuss summer school classes and assistance. *Id.*

57. An IEP team meeting was held in June, sometime prior to June 22, 2018. Exhibit D48. The parties disagree about the tone of the meeting. District representatives recalled it as celebratory. The Mother disagreed and recalled the Student was failing classes at the time. The Mother did

not recall that any decision was made about her request for additional paraeducator support. No changes were made to the IEP as a result of this meeting and no PWN was issued in June or July.

58. By August 16, 2017, the Mother had still not received a PWN from the June meeting. The Mother sent a letter to Dr. Irwin that date, notifying the District of the Parents' intention to place the Student half-time at Yellow Wood Academy and seek reimbursement from the District. Exhibit D70. She explained that she intended the Student be dually enrolled at the District high school and at Yellow Wood. *Id.* The Mother explained she had been hopeful the extra paraprofessional support and reduced course load offered by the District would be helpful but the Student's "poor performance and concerning behavior" demonstrated it was not sufficient. *Id.* The Mother stated she hoped the District would agree that part-time enrollment at Yellow Wood was warranted but, if not, she would seek reimbursement. *Id.*

59. Dr. Irwin responded in an email on August 24, 2018, attaching for the first time the PWN for the meeting on June 22, 2018. Exhibit P71, p. 2. The PWN stated the District would not be providing the additional paraeducator support the Parent had been requested. Exhibit D48. Rather, the PWN stated that the team had determined that more co-taught classes would be the appropriate level of support. *Id.* The PWN stated the IEP team would meet again in October to see how the Student was doing in the fall. *Id.* No detail is provided about that decision, no changes were made to the Student's IEP, and there were no plans for the team to meet before school started to address additional supports. *Id.*

60. The Mother noted in an email to Dr. Irwin that one problem with receiving the PWN so long after the meeting was that they may remember the meeting differently. Exhibit P71, p.2. The Mother recalled that the Student was failing several of her classes at the time of the meeting. *Id.*

2018-2019 School Year - Tenth Grade

61. The first day of school was August 29, 2018. Exhibit D61, p.1.

62. An IEP team meeting was held on September 21, 2018, after the Student had started attending both schools. Exhibit D51. The PWN for this meeting, which was not provided to the Parents until November 7, 2018, stated the meeting's purpose was to check in on the Student's progress so far that school year. Exhibit P74, p. 8. The PWN did not document the team's decision regarding the Mother's request for a part-time placement at Yellow Wood. *Id.* The meeting notes, however, reflect that this subject was discussed and the request rejected. Exhibit D51.

63. The Student took two classes at Yellow Wood, both as one-on-one instruction. She received an A in world literature and a B+ in algebra I for the first semester and the Student has not had attendance problems there. Exhibit P94; Small, Tr. 483. The Yellow Wood teachers delivered instruction at the Student's pace, and the English teacher designed coursework around her interests. Most of instruction at Yellow Wood is one-on-one, although there is also some small-group instruction. Most of the students there are or were previously on IEPs. There are minimal opportunities for peer interaction in the short breaks between classes and on field trips and other scheduled events.

64. The Student continued to take some classes at the District high school, where her problems with skipping, tardies, and leaving campus continued up to the time the Complaint in this case was filed.

65. The tuition for the Student's 2018-2019 year at Yellow Wood totaled \$18,944.00. Exhibit P95. This included tuition for the world literature and algebra 1 courses for two semesters as well as an enrollment fee and an application fee. *Id.* "Full-time" at Yellow Wood for parentally-placed students ranges from four to five hours per day at least four days per week. Small, Tr. 515.

Expert testimony

66. Dr. Toth evaluated the Student again in 2019, after the Complaint in this case was filed. She recommended that the Student receive all her academic education at Yellow Wood because she needs a long period of educational process and stable mental health that hasn't been possible at the District. Exhibit P103.

67. Michael Fabrizio, BCBA, who evaluated the Student after the Complaint in this case was filed, opined that the Student requires a placement outside the District where she can avoid failure and experience success. Fabrizio, Tr. 396.

68. Mr. Fabrizio did not observe the Student at her District placement and Dr. Toth did so only briefly under limited circumstances. For that reason, their opinions about whether the Student could be properly served in a District school as her least restrictive environment are given limited weight. Their testimony about the what instruction would be helpful to the Student is given greater weight and considered in developing the compensatory education award.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

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

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

The IDEA

3. The IDEA and its implementing regulations provide federal money to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *Board of Education of Hendrick Hudson Central School District 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 IDEA, 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.

Id. at 206-07 (footnotes omitted).

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

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

Id. at 188-89. A district is not required to provide a "potential-maximizing" education" in order to provide FAPE, but only a "basic floor of opportunity" that provides "some educational benefit" to the Student. *Id.* at 200-01.

5. 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).

Evaluations

Failure to reevaluate between October 2016 and October 2017

6. A reevaluation must be conducted at least every three years unless the parent and the district agree that a reevaluation is unnecessary. WAC 392-172A-03015(2)(b); 34 CFR §300.303(b)(2). A reevaluation must also be conducted if a district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation or if the child's parent or teacher requests a reevaluation. WAC 392-172A-03015(1); 34 CFR §300.303(a)(1)-(2).

7. There is no evidence the Parents or a teacher requested a reevaluation of the Student during this time period and, because the District had evaluated the Student in June 2016, no triennial reevaluation was due. Accordingly, a reevaluation was only required if the Student's educational or related services needs warranted one.

8. The Student's first quarter grades in the fall of 2016, her eighth-grade year, were strong, and there is no evidence of significant behavioral or attendance issues during that time. The Student's second-quarter grades were significantly lower. While the Parent had a number of concerns about the Student's behavior at home during this time, the District was only aware the Student had been cutting, which the Student had reported was not related to school, and there were no significant behavioral issues at school. The District increased services for the Student in the February/March 2017 IEPs to address the new academic concerns. In May, when the Student was still struggling, and the Parent had suggested one-on-one instruction might be more effective, the District agreed to have Dr. Powers observe the Student, instruct her one-on-one, and make academic recommendations. After the Student cut herself at school in early June and after learning of Dr. Powers's recommendations, the team agreed in June to initiate a reevaluation, which was completed in October 2017. The Mother has not met her burden of proving that the Student's needs warranted an earlier reevaluation.

October 2017 reevaluation did not assess in emotional or behavioral areas

9. When conducting evaluations, districts must ensure that a child is assessed in "all areas of suspected disability." WAC 392-172A-03020(3)(e); 34 CFR 300.304(c)(4). But a district need not evaluate in the areas in which it does not suspect a disability. See, e.g., *Razzaghi v. Dist. of Columbia*, 44 IDELR 271 (D.D.C. 2005); *Moses Lake Sch. Dist.*, 109 LRP 26490 (SEA WA 2009).

10. Here, the District identified that a mental health assessment was warranted and committed in two PWNs that it would provide one, yet did not do so. While the District contends the Mother declined the mental health evaluation, it did not document that refusal and it was found as fact that she did not. Accordingly, the District's failure to evaluate the Student's mental health constitutes a procedural violation of the IDEA.

Not conducting an FBA between October 2016 and the filing of the Complaint

11. The Mother argues the District should have conducted an FBA regarding the Student's self-injurious behavior. Because the Student's cutting and vomiting occurred so infrequently at school, it would not have been practical to conduct an FBA as there were little to no opportunities to observe and form hypotheses about the specific behaviors once the District knew of their existence at school. The Mother has not proven a violation regarding the District's failure to conduct an FBA related to the Student's cutting and vomiting separate from the failure to provide a mental health assessment.

12. The Student's attendance was a problem on and off up to October 2018, when the due process hearing request was filed. At some point between October 2016 and the filing of the Complaint, the behavior was recurring frequently enough that the IEP team should have made some effort to identify the source of the problem so it could be more systematically addressed. The IEP team's failure to provide for an FBA or otherwise address the Student's recurring attendance issues was a procedural violation of the IDEA.

Individualized Education Plans (IEPs) and Placement

February/March 2017 IEPs

13. The Mother argues that the February/March IEPs were deficient because they did not provide appropriate related services after the Student engaged in self-harm, bulimia, eloping, and suicide attempts. Specifically, the Mother argues the Student should have received counseling, therapeutic services, and SLP services related to pragmatic language. However, there is no evidence that self-harm or vomiting had taken place at school at this point, that eloping was a current problem at school, or that the Student had made any suicide attempt at this point. Additionally, no evaluation called for counseling or therapeutic or SLP services at this time.

14. The Mother also argues these IEPs were inappropriate because they did not provide for a one-on-one placement for the Student. There is no evidence that any evaluator or educator had recommended a one-on-one setting for the Student's education at this point or that the Parents had requested it. The Student had done well during the first quarter and removing her to a very restrictive one-on-one setting would not have been warranted as a first measure to address her decline in grades.

15. Additionally, the Mother argues these IEPs did not address the Student's failure to make progress in executive functioning and processing issues or address her functional and academic deficits. To the contrary, the District significantly increased the Student's minutes of SDI in study skills/organization and included goals to improve her organization.

16. The Parents have not proven that the February/March 2017 IEPs were not reasonably calculated, at the time, to provide the Student an educational benefit.

Offering only a nonacademic class in the summer of 2017

17. The purpose of extended school year services is the maintenance of a student's skills or behavior, not the teaching of new skills or behavior. WAC 392-172A-02020. The keyboarding class provided in the summer served the dual purpose of assisting with the Student's writing and reducing her anxiety about the transition to high school by offering the course at the school she would attend in the fall. The Mother has not demonstrated that that the failure to also provide an academic course at a private school, as she had requested, constituted a denial of FAPE.

IEP team not reconvened between March 2017 and February 2018

18. An IEP team must review a student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved and must revise an IEP, as appropriate, to address 1) any lack of expected progress toward annual goals and in the general education curriculum, 2) the results of any reevaluations, 3) information about the student provided to or by the parents, 4) the student's anticipated needs, and 5) other matters. WAC 392-172A-03110(3).

19. The IEP team did not reconvene to revise the IEP based on the October 2017 reevaluation, the recommendations made in that reevaluation, or the concerns about the Student's academic decline, mental health issues, and concerns raised by the Parents. It did not

revise the IEP to include or define the paraeducator services it offered as a result of the October 2017 reevaluation or to comprehensively consider and memorialize the other ad hoc services it was sometimes providing for the Student such as additional paraeducator and behavioral specialist assistance. This failure to reconvene the team and to incorporate provided services was a procedural violation of the IDEA.

February 2018 IEP

20. The Mother argues the 2018 IEP was not appropriate because it did not provide for a one-on-one placement for the Student. She also argues that the District maintained that the Student should have less challenging courses, a reduced schedule, and spend more time in high school rather than providing her an appropriate placement.

21. School districts must ensure that special education students are served in the “least restrictive environment” (LRE). WAC 392-172A-02050. This means they should be served “[t]o the maximum extent appropriate in the general education environment with students who are nondisabled” and that “special classes . . . or other removal of students eligible for special education from the general education environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. *Id.*

22. In response to the Mother’s request for a private placement at the end of eighth grade, the District had brought in Dr. Powers in to observe the Student in class and one-on-one. At the conclusion, he recommended the plan in which the Student would have a combination of a one-on-one paraeducator in class and tutoring outside the class. After Dr. Powers observed the implementation of the program in the fall, he opined that it should be effective for her. Additionally, Dr. Brooks had recommended it was important for the Student to learn in a setting comparable to future employment even though she would benefit from one-on-one instruction.

23. However, by February 2018, the team knew that, despite implementing Dr. Powers’s recommended supports for science, the Student had barely passed that class in the first semester. Additionally, despite receiving her general education English in a special education class, she received a D+. When the Mother requested paraeducator support for classes other than science, she was first told they would be included and then told the matter could be addressed in May. Moreover, even the agreed-upon supports for science were not included in the IEP and were only referenced in the PWN without detail about how often or when they would be provided.

24. The Mother also argues the IEP was inappropriate because it did not provide appropriate related services after the Student engaged in self-harm, bulimia, eloping, and suicide attempts. Specifically, she argues the Student should have received counseling, therapeutic services, and SLP services related to pragmatic language. There is no evidence of any suicide attempt before this IEP was developed. The District was aware by February 2018, however, of the Student’s cutting, vomiting, leaving campus during the day, and suicidal ideation. While no evaluation had recommended counseling, therapeutic services, or SLP services, the District had failed to evaluate for mental health after determining it was appropriate, so it lacked the information necessary to determine if counseling or therapeutic services were appropriate. Additionally, the IEP failed to provide for the needs identified by the Student’s private counselor to address situations that embarrassed the Student and to provide a public area for her to take breaks.

25. The Mother has met her burden of proving that the February 2018 IEP was not reasonably calculated, at the time, to provide the Student an educational benefit because it carried through the same supports that had not provided successful during the first part of the school year, did not address her identified emotional and behavioral needs, including eloping from school and poor attendance, and did not even include the paraeducator support identified in the meeting and mentioned without detail about frequency in the PWN.⁶

IEP not amended in June 2018 after functional and academic decline

26. After requesting an IEP meeting, the Parent was finally provided the opportunity to have the team address her ongoing request for paraeducator support like that offered for science in her other challenging classes. According to the District's PWN, provided long after the fact, the team determined additional paraeducator supports were not appropriate but that additional co-taught classes would be an appropriate next level of support but no changes were made to the Student's IEP, including to add the existing paraeducator support and no plans were made for the team to meet again until October 2018, after school would already have been in session for over a month. Nor did the team address the Student's mental health issues or elopement. The failure to amend the IEP in June 2018 (or before the start of the new school year) was a procedural violation that led to the inappropriate February 2018 IEP remaining in effect.

Parental Participation

27. Procedural safeguards are essential under the IDEA:

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, (9th Cir. 2001).

Prior written notice

28. A district must provide prior written notice (PWN) to the parents of a child eligible or referred for special education a reasonable time before it proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. WAC 392-172A-05010; 34 CFR 300.503(a).

29. The IDEA requires school districts to provide written notice to parents *prior* to the effective date of an action, not after the fact. See 20 USC §1415(b)(3) and (c)(1); WAC 392-172A-05010; 34 CFR §300.503. Moreover, written notice must be provided "a reasonable time" prior to the

⁶ There is no evidence the paraeducator support was not provided as promised. The District's error was not expressly including it in the IEP.

effective date. WAC 392-172A-05010(1); 34 CFR §300.503(a); *Letter to Chandler*, 59 IDELR 110 (OSEP 2012).

30. The Office of Special Education Programs (OSEP) interprets “a reasonable time” to be at least ten calendar days:

[T]he district must provide parents with a written notice of the proposed changes a reasonable time prior to implementing the proposed changes and must maintain the child in the current program and placement during this reasonable period of time.

...
We have interpreted a "reasonable time" to be at least 10 calendar days, although some fact situations would justify a more extended period of time. Whether a shorter period of time would be acceptable in the presence of parental consent is an issue not presented by your letter and remains to be addressed by this office.

Letter to Winston, 213 IDELR 102 (OSEP 1987). “The purpose of the notice is to provide sufficient information to protect the parents’ rights under the Act.” *Kroot v. District of Columbia*, 800 F. Supp. 976, 982 (D.D.C. 1992).

31. The Mother alleges a procedural violation because the District did not provide a PWN created on June 22, 2018, until August 24, 2018. The PWN did not include an implementation date but, as a practical matter, the District’s failure to provide additional paraeducator support would begin at the start of the school year, which was August 29, 2019. Because the PWN was provided less than ten days before implementation, it was not provided within a reasonable time.

32. The Mother also alleges a procedural violation because the District did not provide PWN of the District’s denial of her request that the District pay for the Student to attend Yellow Wood. The District did not issue a PWN for over two months from the request, while the Student was attending Yellow Wood based on the Mother’s unilateral placement, and even that written notice did not expressly deny the request. This is a procedural violation of the IDEA.

Holding the February 2017 IEP meeting when the Mother was ill and the Father could not attend

33. The IDEA requires that parents have the opportunity to “participate in meetings with respect to the identification, evaluation, and educational placement of the child.” WAC 392-172A-03100; 34 CFR §300.322. To comply with this requirement, parents must not only be invited to attend IEP meetings, but must also have the opportunity for “meaningful participation in the formulation of IEPs.” *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007).

34. Here, the Mother did attend the meeting, albeit by phone and when she did not feel well, and there is no evidence whether the Father indicated that he wanted to attend or would attend if the meeting was scheduled for another time. Additionally, the District planned to and did convene another meeting soon after when both Parents and the Mother’s advocate could attend. Under these circumstances, the Mother has not proven a procedural violation of the IDEA with respect to the timing of the February 2017 IEP meeting.

Procedural violations amount to a denial of FAPE

35. Procedural violations of the IDEA amount to a denial of FAPE only if the procedural inadequacies impeded the child's right to a free appropriate education, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate education to the student, or caused a deprivation of educational benefits. WAC 392-172A-05105; 34 CFR §300.513(2).

36. There were numerous procedural violations in this case. The District's failure to conduct a mental health evaluation and a functional behavioral assessment or other investigation into the Student's attendance problems prevented the Parents having important information to participate in the decision-making process and prevented the District from adequately addressing the Student's needs, causing a deprivation of educational benefits.

37. Likewise, the District's failure to reconvene the IEP team to incorporate information from the October 2017 reevaluation into the IEP and to address as a team supports the District was providing on an ad hoc basis impeded the Parents' opportunity to discuss the necessary supports and resulted in the District not adopting a new IEP addressing the Student's identified needs, depriving her of education benefits. Similarly, the District's failure to amend the Student's IEP in June 2018 or before the beginning of the 2018-2019 school year led to a deprivation of educational benefits.

38. The District's failure to timely provide PWNs, particularly of its response to the Mother's request that the Student receive additional supports beginning in the fall of 2018, impeded the Parents' opportunity to participate in the decision-making by understanding what supports the District would provide and its reasoning, leaving the Mother unsure of what, if any, additional supports would be offered for the new school year. Additionally, the team's failure to meet to address the Mother's request that the District pay for Yellow Wood and timely provide a PWN of its decision similarly prevented the Parents from discussing the matters with the IEP team, which might have led to the development of supports that would have made the Mother's unilateral placement of the Student unnecessary.

39. Accordingly, because the District's multiple procedural violations significantly impeded the Parents' opportunity to participate in the decision-making process and caused a deprivation of educational benefits, they constituted a denial of FAPE warranting a remedy.

Remedies

Reimbursement for placement at Yellow Wood

40. Parents who unilaterally enroll a student in a private school are entitled to reimbursement only if 1) the district placement violated the IDEA, and 2) the parents' private school placement is proper under the IDEA. *Florence County Sch. Dist. v. Carter*, 510 U.S. 7 (1993). Thus, parents who unilaterally change their child's placement do so at their own financial risk. *Burlington v. Dep't of Ed. of Mass.*, 471 U.S. 359, 374 (1985).

41. In order for a private placement to be proper, parents must demonstrate that it "provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction." *C.B.*

v. Garden Grove Sch. Dist., 635 F.3d 1155 (9th Cir. 2011). Parents do not need to show that a "private placement furnishes every special service necessary to maximize their child's potential." *Id.* (affirming a decision holding that a private placement was proper, even though it did not provide math instruction, because it met some, but not all, of the student's educational needs). But a private placement is not proper when instruction is not provided for "most" of a student's needs and the student does not show significant growth. *M.N. v. State of Hawaii*, 509 F. App'x 640, 58 IDELR 6 (D.C. Hawaii 2011), *aff'd*, 58 IDELR 6 (9th Cir. 2013).

42. A private placement does not have to be the Student's least restrictive environment to be appropriate for reimbursement purposes. *C.B. v. Special Sch. Dist. No. 1*, 636 F.3d 981 (8th Cir. 2011).

43. The Student's two classes at Yellow Wood were proper, in conjunction with the other services she received from the District. The one-on-one instruction was beneficial for her both academically, because she was able to work at her own pace, and because it was less anxiety-provoking than her classes at the District. That the Student's English coursework was less traditional and designed based on her interests does not make it inappropriate for purposes of reimbursement.

44. Accordingly, the District shall reimburse the Parents for the cost of the two Yellow Wood classes taken during the 2018-2019 school year, including the enrollment and application fee, upon proof of payment, not to exceed \$18,944.00.

Prospective placement at Yellow Wood

45. While the two Yellow Wood classes, in conjunction with the services the Student received from the District were proper for purposes of reimbursement, the full-time placement the Mother seeks at Yellow Wood is not an appropriate prospective placement. Not only is it not the Student's least restrictive environment, but it does not provide the interaction with typically developing peers necessary for her to develop her social skills. And while the District's existing IEP denied the Student FAPE, the Mother did not demonstrate that only a full-time private one-on-one placement is appropriate for the Student. Accordingly, the Mother's request that Yellow Wood be the Student's prospective placement is denied.

Yellow Wood as compensatory education

46. Compensatory education is a remedy designed "to provide the educational benefits that likely would have accrued from the special education services the school district should have provided in the first place." *Reid v. Dist. of Columbia*, 401 F.3d 516, 524, 43 IDELR 32 (D.C. Cir. 2005). It is an equitable remedy, meaning the tribunal must consider the equities existing on both sides of the case. Flexibility rather than rigidity is called for. *Id.* at 523-24. "There is no obligation to provide a day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497, 21 IDELR 723 (9th Cir. 1994).

47. Although full-time attendance at Yellow Wood is not an appropriate prospective placement, it is determined that a single additional semester of attendance at Yellow Wood is appropriate as compensatory education. This single semester will allow the Student to make academic gains and regain her confidence, as recommended by the Mother's expert witnesses. It will also allow

the Student to remain in a comfortable environment while the District conducts a reevaluation and develops an IEP to serve her in the future. As this is a compensatory education award, rather than a prospective placement, it is limited to one semester and would not be the Student's stay-put placement if a dispute exists as to the Student's placement following this semester.

48. As compensatory education, the District shall pay for the Student to attend Yellow Wood up to four hours per day up to five days per week for the fall 2019 semester. The District shall also provide transportation to and from Yellow Wood, which may be provided through mileage reimbursement and/or mileage . (If the Student attended summer classes at Yellow Wood at the Parents' expense, reimbursement for summer classes may be substituted on an hour-for-hour basis for a portion of this compensatory education upon proof of payment.)

49. Nothing in this order prevents the Student from also attending classes at a District high school or accessing District services there if the Parents wish. Likewise, nothing in this order prevents the IEP team from placing the Student at Yellow Wood beyond the fall 2019 semester if it determines that is her appropriate placement.

Evaluation

50. The District shall conduct a reevaluation of the Student to include a mental health evaluation and any other testing deemed necessary in order to develop an IEP that addresses the Student's needs, including her behavioral and social skills needs and any communication needs. The District shall convene a meeting for the purpose of discussing the evaluation within two weeks of the date of this decision to ensure completion of the reevaluation and the development of a new IEP to be in place for second semester. The District shall complete the reevaluation and the development of a new IEP by January 24, 2019. However, this time line will not apply to the extent it is held up by any outside evaluators. The District shall initiate any outside assessments by one week after the meeting to plan the reevaluation and make all reasonable attempts to facilitate the outside assessments being complete within this timeline, but the District will not be in violation of this order if it cannot complete the reevaluation and IEP under this timeline due to the timing of an outside assessment or the Parent's failure to provide consent for the reevaluation or timely meet with the District.

ORDER

1. The District violated the IDEA and denied the Student a FAPE as set forth above.
2. The District did not otherwise violate the IDEA or deny the Student a FAPE.
3. The District shall reimburse the Mother for the cost of Yellow Wood classes during the 2018-2019 semester as set forth above.
4. As compensatory education, the District shall pay for classes at Yellow Wood for the fall 2019 school year as set forth above.
5. The District shall conduct a reevaluation of the Student and develop a new IEP as set forth above.

6. The Mother's requested remedies are otherwise denied.

Signed in Seattle, Washington on November 12, 2019.

Anne K. Senter

Anne Senter
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

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

CERTIFICATE OF SERVICE

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

Parent

[REDACTED]

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cc: Administrative Resource Services, OSPI