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MAILED
JAN 30 2019

SEATTLE-OAH

January 30, 2019

Parent
[REDACTED]

Heather Edlund, Executive Director of Special
Education
Bellevue School District
PO Box 90010
Bellevue, WA 98009-9010

Lynette M. Baisch, Attorney at Law
Porter Foster Rorick LLP
Two Union Square
601 Union Street, Suite 800
Seattle, WA 98101

In re: **Bellevue School District**
OSPI Cause No. 2018-SE-0060
OAH Docket No. 06-2018-OSPI-00536

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
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator

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

MAILED

JAN 30 2019

SEATTLE-OAH

IN THE MATTER OF:

OSPI CAUSE NO. 2018-SE-0060

BELLEVUE SCHOOL DISTRICT

OAH DOCKET NO. 06-2018-OSPI-00536

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

A due process hearing was held before Administrative Law Judge (ALJ) Anne Senter on November 19 - 21, 2018, in Bellevue, Washington. The Parent of the Student whose education is at issue¹ appeared and represented herself. The Bellevue School District (District) was represented by Lynette M. Baisch, attorney at law. Also present was Heather Edlund, District executive director of teaching and learning.

STATEMENT OF THE CASE

The Parent filed a Due Process Hearing Request (the Complaint) with the Office of Superintendent of Public Instruction (OSPI) on June 13, 2018. The Complaint was assigned Cause No. 2018-SE-0060 and was forwarded to the Office of Administrative Hearings (OAH) for the assignment of an ALJ. A Scheduling Notice was entered June 14, 2018, which assigned the matter to ALJ Anne Senter. The District filed its Response to the Complaint on June 22, 2018. The Parent filed an amended Complaint on July 6, 2018. Because the problems and facts identified were not substantially different than those alleged in the originally-filed Complaint, the Parent's request to amend the Complaint was denied.

Prehearing conferences were held on July 17, 23, and 27, and August 13 and 28, 2018. Prehearing orders were entered July 19 and 27, August 17, and September 5, 2018,

A statement of the issues was developed at the first prehearing conference on July 17, 2018. Additions and changes were made to the statement of the issues at the Parent's request at the second prehearing conference on July 23, 2018. At the third prehearing conference on July 27, 2018, the Parent stated she would be withdrawing some issues in hopes of eliminating the need for the District to file its motion for summary judgment. The Parent then submitted a separate proposed statement of the issues. A statement of the issues was developed at the fourth prehearing conference, on August 13, 2018, that incorporated issues from the Parent's proposed statement of the issues, issues from the previously developed statement of the issues the Parent still wished to pursue, and issues generated through discussion at the prehearing conference.

The District filed a motion for partial summary judgment seeking dismissal of claims arising before March 2018. This motion was granted, resulting in another amendment to the statement of the issues eliminating claims arising before that date. The Parent objected to the summary

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

judgment order. No changes were made to the order as a result of the Parent's objection, but the Parent raised one new issue at the oral argument, which was added to the statement of the issues. The Parent also filed a motion for summary judgment, which was denied. The Parent filed a motion for reconsideration, which was denied, and filed objections to the order. No changes were made to the order based on the Parent's objections. The Parent filed a petition for disqualification of the ALJ, which was denied as well.

The parties agreed that post-hearing briefs would be post-marked by December 20, 2018. The Parent later requested an extension to December 28, 2018, and the District did not object. The District's post-hearing brief was received by hand delivery on December 28, 2018. The Parent's prehearing brief was received by mail on December 31, 2018.

Due Date for Written Decision

As set forth in the Third Prehearing Order, the due date for issuance of a written decision was continued to 30 days after the close of record at the District's request. The record closed on December 31, 2018, when the Parent's brief was received. Accordingly, the due date for a written decision in this case is **January 30, 2019**.

Evidence Relied Upon

Exhibits Admitted:

District's Exhibits: D1 - D37; and

Parent's Exhibits: P1 (pages 3 - 9 only), P2 (pages 1 - 11 and 18 - 19 only), P3, P5 - P7, P8 (pages 10 - 16 and 18 - 26 only), P9, P10 (pages 1 - 9 and 11 - 21 only), P11 - P17, P18 (pages 1 - 34 and 37 - 40 only), P22 - P23, and P24-D (audio files labeled Exhibits 22, 23, and 52 on CD only).

Witnesses Heard (in order of appearance):

Jeffrey Thomas, District assistant superintendent of human resources;
Judy Bowlby, District principal;
Grace Waylen, District special education teacher (former);
Karen Ruby, District school nurse;
Heather Edlund, District executive director of teaching and learning;
The Parent; and
Erin Serafin, District general education teacher.

ISSUES

As set forth in the Order on Parent's Objection to Order on District's Motion for Partial Summary Judgment, the issues for the due process hearing are:²

- a. Whether the District violated the Individuals with Disabilities Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:
 - i. ~~With respect to the Parent's request for an independent educational evaluation (IEE) in January 2018:~~
 - A. ~~Denying the request;~~
 - B. ~~Untimely responding to the request;~~
 - C. ~~Failing to allow the evaluator who knew the Student best to conduct the evaluation;~~
 - ii. ~~Failing to provide the Student with an individualized education program (IEP) in January 2018 based on the information the District had at that time;~~
 - iii. ~~Failing to notify the Parent prior to the meeting on January 2, 2018, that it would require further evaluations of the Student so the Parent was not prepared to respond to the District's failure to provide an IEP;~~
 - iv. ~~Removing the Student's 1:1 para-educator in January 2018;~~
 - v. ~~Denying the Parent's request for a para-educator to shadow the Student at a meeting on January 2, 2018;~~
 - vi. ~~Failing to provide alternative electives, rather than PE, in December 2017 and January 2018;~~
 - vii. ~~Failing to invite the Student's therapist to a meeting on January 23, 2018, or to discuss the Parent's request for mental and emotional health supports for the Student at that meeting;~~
 - viii. ~~Violating the District's child find obligation by failing to provide mental and emotional health services for the Student in January 2018;~~
 - ix. ~~Creating an unsafe and unwelcoming environment for the Student in December 2017 and January 2018, inhibiting the Student's ability to learn or access FAPE;~~
 - x. ~~Denying the Student access to the Newport tutoring program in January 2018;~~

² The issues that are struck through are those that were dismissed as a result of the District's motion for partial summary judgment. They are struck through, rather than deleted, for consistent numbering.

- xi. ~~Failing to allow the Student to work in a quiet room with the para-educator in December 2017;~~
- xii. ~~Failing to give the Student extra time to respond during an in-class assignment in December 2017 and not allowing the Student to participate in class or in determining how she would complete her assignment.~~
- xiii. ~~Failing to allow the Student to participate in a music class in January 2018;~~
- xiv. ~~Forcing the Student to participate in a contact sport in January 2018;~~
- xv. ~~Failing to address bullying in December 2017 and January 2018;~~
- xvi. ~~Failing to follow protocols related to the Student's individual health plan (IHP) in December 2017 and January 2018;~~
- xvii. ~~Failing to implement the Student's IHP in December 2017 and January 2018;~~
- xviii. ~~The principal and a substitute targeting the Student in December 2017 and January 2018 as a result of the Parent's advocacy for the Student;~~
- xix. ~~Threatening the Parent that the District would not provide the Student with health care set out in the Student's IHP in January 2018;~~
- xx. ~~Failing to have a third party investigate allegations of disparate treatment in December 2017 and January 2018;~~
- xxi. Failing to provide ancillary services, including tutoring and homework, after the Student stopped attending school in January 2018 beginning March 2018;
- xxii. ~~Failing to instruct the Parent of the need to file an intent to homeschool when the Student stopped attending school in January 2018, denying the opportunity for parental participation;~~
- xxiii. Failing to meet timely with the Parent and outside providers when requested during the 2017-2018 school year beginning March 2018;
- xxiv. Failing to appropriately hire, train, and supervise staff during the 2017-2018 school year beginning March 2018;
- xxv. Determining that the Student qualified for special education and related services under the "other health impairment" category;
- xxvi. With respect to the IEP developed in March 2018 and amended in April 2018:
 - A. Failing to provide 1:1 instruction in written expression;
 - B. Failing to provide a paraeducator at all times to observe the Student and ensure the District is providing for her safety;

- C. Failing to provide for alternative electives to PE;
 - D. Failing to provide an appropriate placement because it was unsafe for the Student, it was at the same location where the District had already failed to safely and appropriately serve the Student, and because staff lacked the expertise to appropriately deliver services and appropriately address the Student's social and emotional health;
 - E. Failing to provide adequate time for one-on-one instruction in math and written expression;
 - F. Failing to address the Student's behavioral and emotional needs;
 - G. Failing to provide appropriate accommodations;
 - H. Failing to provide access to food and drinks throughout the day;
 - I. Failing to provide services that were in the Student's prior 504 plan/IHP;
 - J. Failing to include the protocols related to the Student's prior 504 plan/IHP;
 - K. Not providing access to ancillary services including a tutor and technology;
 - L. Developing the IEP without the input of a nurse;
 - M. Failing to consider the Parent's input in the IEP meetings and predetermining the IEP.
- b. And, whether the Parent is entitled to her requested remedies:
- i. Prospective placement: Homeschooling by the Parent and by Sylvan or Kuman at District expense, tutoring for homework assistance, services set forth in the Student's IEP, educational support, therapeutic services, electives in the community, transportation and other costs to access services, technology to include a computer and a hotspot to access the internet, and access to online remedial services;
 - ii. Extended school year services;
 - iii. An educational liaison of the Parent's choosing;
 - iv. Compensatory education:
 - A. One-on-one tutoring;
 - B. One-on-one instruction in academic areas;
 - C. Participation in elective classes or services;
 - D. Ancillary services;
 - v. An independent educational evaluation (IEE) related to mental health;

- vi. A third-party investigation of incidents that took place during the 2017-2018 school year;
- vii. And/or other equitable remedies, as appropriate.

FINDINGS OF FACT

Background

1. The Student was 11 years old at the time of the hearing. See Exhibit D24, p.1
2. In September 2014, the Student attended the District's Spiritridge Elementary School (Spiritridge) in the second grade. Exhibits P18, p.30, D24, p. 2. She was experiencing post-concussion symptoms from a recent concussion. *Id.* District staff allowed her, on at least one occasion, to participate in a physical education (PE) class in violation of her medical restrictions. *Id.*; Parent, Tr. 637. On a separate occasion, District staff allowed her to participate in recess and she was injured on the playground when she was pushed off a piece of play equipment. Exhibit P8; Parent, Tr. 637.
3. A District document regarding an investigation of the incident by Spiritridge administrators concluded:

Spiritridge staff have reflected and determined the following:

- Re-assess protocol for head injuries (i.e. when a parent calls to notify school of head injury & missing school), nurse or designee (administrators) should be notified immediately
- Nurse contacts parent and creates a safety plan
- Everyone involved is given a copy of the safety plan – hard copies of dr.'s notes & plan are given to teachers involved and appropriate staff
- "Safety plan" will be sent with a "high alert" status
- Safety plan (no matter who initiates) will be written in sub notes
- Safety plan will be implemented with all TEACHERS with fidelity and accuracy and will take priority

Exhibit P8, p.23 (emphasis in original); Thomas, Tr. 115, 120. The document stated that administrators had followed up with all parties involved and shared the concerns, plans, and next steps. *Id.* This protocol was specific to Spiritridge and did not apply to other schools the Student attended later. Bowlby, Tr. 221.

4. The Student left the District during the 2014-2015 school year and attended school in other school districts, sometimes through online programs, until December 2017. Exhibit D24, p.2.
5. The Parent notified the District in November 2017 that the Student would be returning to the District because the Student wanted to be in a classroom setting. Exhibit D1. The Student began attending the District's Somerset Elementary School (Somerset) in mid-December 2017 in the fifth grade. Exhibit D12, p. 4; Parent, Tr. 658.

6. The District provided a paraeducator for the Student's transition back to the District. Thomas, Tr. 113. On December 15, 2017, the Parent sent an email to District staff stating "The para was shadowing [the Student] today after I spoke to the principal and followed up with a detailed email to remove the para shadowing her because she has had an adverse emotional response to it." Exhibit P2, p.3. The Parent stated she was no longer in agreement with "an accommodation informally given and not prescribed by our doctors or in a current 504." *Id.* She also stated if the District "chooses to shadow [the Student] covertly, inconspicuously and unannounced to her at recess and gym you have my support as long as you do not emotionally, socially and mentally have an adverse impact to my child." *Id.*

7. The Parent began working with Karen Ruby, District school nurse, on December 15, 2017, to develop individual health plans (IHPs) for the Student with input from the Student's medical provider. Exhibits D14; Ruby, Tr. 397, 407, 450. The Student's medical provider had approved both IHPs by January 19, 2018. Exhibit P10, pp. 2-6. The process resulted in two IHPs – a post-concussive syndrome IHP and an allergy IHP. Exhibit D14. The post-concussive syndrome IHP provided for a health action plan with the following components:

- No contact sports or activities.
- Allow rest breaks during the day if needed.
- Allow student to wear sunglasses indoors to control light sensitivity.
- May wear earplugs or noise canceling head phones to control for noise sensitivity [sic].
- For headaches or other symptoms may go to the Health Room for headaches and lie down as needed.
- May have snacks as needed (helps prevent headaches). On a gluten free diet.
- [The Student] has Ibuprofen in the Health Room for headaches and Ondansetron for nausea.
- For **any bump, hit or blow** to the head or body have [the Student] escorted to the Health Room and call parent

Id. at 2 (emphasis in original). The post-concussive IHP also provided for calling the Parent and then 911 for signs and symptoms of severe head injury and listed the relevant signs and symptoms. *Id.*

8. The allergy IHP set forth an emergency care plan for implementation if it is suspected the Student has an allergic reaction, including the administration of epinephrine and calling 911. Exhibit D14, p. 4.

9. The Student had previously been determined to be a student with a disability pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504). Meetings were held with the Parent on January 2, 22, and 23, 2018, to develop a Section 504 plan for the Student. Exhibit D7. The team developed a plan dated January 23, 2018. Exhibit D12. The District provided the Parent prior written notice (PWN) that it was proposing to initiate the plan, although the Parent had indicated she would not sign it. Exhibit D12, pp. 4 - 5. The Parent did, however, approve the IHPs that day. Exhibit D14; Ruby, Tr. 443. The PWN stated that the District will continue to implement the IHPs provided at the meeting that day despite the Parent's failure to agree to a 504 plan. Exhibit D12, p. 5.

10. The Student was allowed on one occasion at Somerset to participate in PE in a way that was inconsistent with her medical provider's recommendations and the post-concussive IHP. On or about January 19, 2018, there was a substitute teacher for the Student's PE class. Exhibit D13, p.4. The substitute had been instructed by both the PE teacher and the Somerset principal that the Student was not to participate in any kind of contact sport and instead was to engage in an alternate activity the PE teacher had planned for her. Exhibit D13, p. 4. However, the Student wanted to participate in football with the rest of the class and told the substitute that her mom said she could play if it was with a soft ball. *Id.* The substitute allowed her to play and acted as her "personal bodyguard." *Id.* The Somerset principal followed up on this incident by reporting the substitute's failure to follow the proper protocol. Exhibit D13, p. 4; Bowlby, Tr. 49. The District learned from this experience, for the future, that staff working with the Student would need to be told the Student may ask to participate and they would still need to prevent her from engaging in contact sports. Edlund, Tr. 580. The Student did not receive a blow to the head or a concussion as a result of the participation or at any other time during her attendance at Somerset. Bowlby, Tr. 237.

11. On January 25, 2018, the Parent notified the District that she was pulling the Student out of school because of willful endangerment of her health and well-being by District staff and administrators as well as their negligence, retaliation, and discrimination. Exhibit P1, p.9. She stated that the Student would not return until there was an agreed-upon 504 plan. *Id.* The Student had never returned to school in the District as of the date of the hearing.

12. During the short time the Student attended Somerset, she was functioning well in school. Bowlby, Tr. 237. The accommodations provided through the 504 plan were supporting her access to instruction and she was making friends and well-liked by her peers. Bowlby, Tr. 236. In reading and writing, she performed at a typical fifth-grade level but needed extra support in math. Serafin, Tr. 692.

13. The District also proposed an initial evaluation of the Student to determine whether she was eligible for special education and related services. Exhibit D9, p. 1. The District proposed to evaluate the Student in the following areas: medical-physical, observation, general education, cognitive, academic, and other (study skills). Exhibits D8, D9, pp. 1, 3. The Parent consented to this evaluation on January 2, 2018. Exhibit D10. The District did not propose to evaluate the Student's social/emotional needs because the Parent did not want her evaluated in that area and the District had not identified any social or emotional difficulties in the brief time the Student had been attending school. Exhibit D8; Edlund, Tr. 579; Mother, Tr. 639.

14. The evaluation team considered the report of a neuropsychological evaluation of the Student conducted by Seattle Children's Hospital in October 2017. Exhibits D4; D24, p.2. The report outlined the Student's history of head injuries and concussions, beginning in September 2014 and most recently in August 2017. Exhibit D4, p. 2.

15. The District contracted with Dr. Miriam Araujo, Ph.D. to evaluate the Student with respect to math reasoning and written expression skills because the Parent had requested an outside evaluator. Exhibit D17, p. 2. Ms. Ruby, the school nurse, participated in the drafting of the medical-physical portion of the District's evaluation, which included information obtained from the Parent, from the Student's medical provider, from a review of the Seattle Children's Hospital evaluation, and a file review. Exhibit D24, p.6; Ruby, Tr. 408-410.

16. The evaluation team, including Ms. Ruby, met on March 2, 2018. Exhibit D20; Ruby, Tr. 448. The Parent participated by phone. Ruby, Tr. 448. The team determined that the Student was eligible for special education and related services under the other health impairment eligibility category. Exhibit D20, p. 2. The team recommended that the Student receive specially designed instruction (SDI) in math and study skills. *Id.*

17. Dr. Araujo's evaluation recommended SDI in written instruction. Exhibit D17, p.5. However, the Student's standardized assessment scores were in the average range, which was consistent with her capabilities demonstrated during general education instruction. Exhibits D17, p. 17, p.4., D20, p.2. Accordingly, the evaluation team concluded that the Student did not require SDI in written language but provided as an accommodation that she have extra time to complete assignments. Exhibit D20, p. 2.

18. Dr. Araujo's report noted that prior evaluations of the Student and her own assessment indicated emotional difficulties and recommended that a mental health evaluation be completed. Exhibit D17, p.5. As a result, the evaluation team determined that it needed additional data in the area of social-emotional. Exhibit D20, p.2. The team proposed that a mental health evaluation be conducted by Delton Young, a clinical psychologist, and that information be obtained from the Student's private therapist. Exhibit D20, p.2. The Parent agreed that a mental health evaluation would be appropriate but disagreed with the District's chosen provider, preferring Dr. Araujo. Exhibit D20, p.2-3. The Parent expressed uncertainty at the evaluation team meeting as to whether she would consent to the mental health evaluation. Exhibit D20, p.3. The team provided her with consent paperwork and informed her that it would finalize the draft evaluation report without the additional requested data if she did not return the signed consent by March 12, 2018. Exhibit D20, p.3.

19. On March 16, 2018, the District provided prior written notice (PWN) that it was proposing to finalize the evaluation report discussed with the Parent at the team meeting on March 2, 2018, with changes she requested at the meeting and in two emails. Exhibit D23, p.2. Because the Parent had not provided consent to conduct the mental health evaluation or any indication that she intended to provide such consent, the District concluded the evaluation without it. *Id.* The District noted that it would reopen the evaluation if the Parent became willing to consent to the social-emotional evaluation. *Id.*

Independent Education Program (IEP)

20. An IEP team meeting was held on March 29, 2018, with the Parent in attendance by phone. Exhibit D27, p.4; Waylen, Tr. 325. Ms. Ruby, the school nurse, did not attend the IEP team meeting. Ruby, Tr. 408. The Parent had the opportunity to participate and give input. Waylen, Tr. 325.

21. The IEP provided for 120 minutes weekly of SDI in math and 50 minutes weekly of SDI in study skills to be provided in a special education setting. Exhibit D29, p.16.

22. The IEP provided for a number of accommodations. Several of the accommodations came from the post-concussion syndrome IHP: allow rest breaks during the day if needed; allow the Student to wear sunglasses indoors to control light sensitivity; for any bump, hit or blow to the head or body have the Student escorted to the health room and call Parent; for headaches or other symptoms, may go to the health room and lie down as needed; may have snacks as needed;

on a gluten free diet; may wear earplugs or noise canceling head phones to control for noise sensitivity; and no contact sports or activities. Exhibit D29, p.11. The information from the allergy IHP was not included. *Id.* Nor was the information from the post-concussion syndrome IHP about the circumstances under which 911 should be called. *Id.* This information was not included because it did not have an effect on instruction and is not where a teacher would typically look for that information. Waylen, Tr. 271, 281.

23. The IEP also contained a number of other accommodations that were not listed on the IHPs. Exhibit D29, pp. 11-12. The accommodations in the proposed 504 plan, which the Parent had not signed, were largely included in the IEP as well, although not necessarily worded in the same way. *Compare* Exhibit D12, pp. 1-2 *with* Exhibit D29, pp. 11-12.

24. The draft IEP prepared by the District IEP team members before the meeting provided for push-in services for the Student in the general education setting. Waylen, Tr. 355. After the Parent suggested she thought the Student would do better with pull-out services, the team made that change so the Student would receive her SDI in a special education setting. *Id.* The team also considered providing the Student's SDI with a one-on-one paraeducator, as requested by the Parent, but determined that participation in a general education setting with pull-out services was the Student's least restrictive environment rather than the more restrictive setting of one-on-one instruction. Exhibit D29, p.20. The Parent requested SDI in reading comprehension to support the Student's ability to complete math story problems. *Id.* The team rejected this request because the Student's reading scores were in the average to above-average range and the Student would receive SDI in math to improve her math skills. *Id.* The District considered and adopted the Parent's request that a math goal not be measured by the number of items she could complete in a certain amount of time because of her need for additional time on tests. *Id.*

25. The Parent requested that consequences for failure to implement the Student's accommodation regarding no contact sports or activities be incorporated into the IEP. *Id.* The team did not adopt this request because staffing decisions are the District's responsibility. *Id.* The Parent requested that the Student have alternate electives instead of PE. Exhibit D29, p.21; Waylen, Tr. 316. The team considered that request but believed that the Student could master the learning targets for PE with the accommodation of not participating in contact sports so alternative activities were not necessary. *Id.* The Parent requested that the team consider a placement for the Student outside the District. Exhibit D29, p.21 The team rejected this request as it believed the Student's least restrictive environment was general education with pull-out instruction. *Id.* The Parent requested tutoring support but the team did not believe that was necessary in addition to the SDI provided in the IEP. Waylen, Tr. 321.

26. The Parent raised concerns at the meeting about the Student's social and emotional needs. Exhibit D29, p.21. Because the Student had not been assessed in that area, the most recent evaluation did not support services in that area. The District remained willing to conduct further assessment if the Parent provided consent. Exhibit D29, p.21. The Parent also raised concerns about the Student's communications needs. Because the Student had not been evaluated in that area either, the District expressed willingness to assess in that area if the Parent consented as well. *Id.*

27. The Parent did not ask the IEP team to incorporate the protocols developed by the Spirtridge administration in 2014 related to safety plans into the IEP. Waylen, Tr. 322; Exhibit P18, p.18. Nor did she ask that information about the Student's allergies be included in the IEP.

Waylen, Tr. 309. She also did not request a "parashadow" or a paraeducator to observe the Student at school as opposed to a paraeducator for one-on-one instruction. Waylen, Tr. 315. Nor did the Parent request that the Student receive any assistive technology or more minutes of SDI in math. Waylen, Tr. 318, 320. Nonetheless, the team considered assistive technology and determined it was not necessary. Exhibit D29, p.5; Waylen, Tr. 320. The Parent did not make any requests at the meeting related to safety other than the requests for alternate activities to PE and consequences for staff for failure to comply with the accommodation for no contact sports. Waylen testimony. There were no concerns raised by anyone at the meeting about the Student's behavior. Waylen, Tr. 363.

28. Following the meeting, on the same day, the Parent sent an email objecting to the IEP team not including or considering the following:

1:1 para for math, math vocabulary words and comprehension, quiet room access
(for 1:1, anytime for symptoms, concentration)

Reading comprehension to support math vocabulary, word problems and logic

Extended school year due to gaps in learning

504 accommodations and needs not being included in IEP and IEP triggering and being diametrically opposed to 504 accommodations and needs (being set up to fail in IEP by absent 504 synthesis) please revise IEP in all areas 504 needs are triggered, causes injury to [the Student] are diametrically opposed to efficacy in both [sic]

Accommodations for "contact" being violated repeatedly and life threatening medical conditions are at risk due to staff negligence and endangerment (there are no alternatives to the district's repeated failings and expectations of complicit endangerment and negligence or further access to turning my child into a vegetable or death)

Out of district placement and educational trust

Exhibit D28, p.1.

29. On April 2, 2018, Grace Waylen, the Student's case manager, sent the Parent the IEP and PWN and a form for the Parent to sign to consent to special education services. Exhibit D30, p.9. The PWN stated that items in the Parent's email could not be added because they had not been addressed at the meeting. Exhibit D29, p.21. She stated the Parent could request another IEP meeting to discuss them. *Id.*

30. The Parent responded that her objection to the lack of extended school year (ESY) services had not been considered. *Id.* at 8. In a separate email, she stated that the Student was entitled to both "a 504 and IEP" and objected to the District using the IEP to replace the 504. *Id.* at 7. She asked that other meetings be set up to address all her objections to the IEP and 504, noting that the student was entitled to "both alongside." *Id.*

31. Ms. Waylen set another meeting for April 25, 2018, at a time the Parent stated she was available, and arranged for the Parent to participate by phone. Exhibit D30, pp. 1-2. The Parent responded and provided a list of items requested for "resolution." *Id.* at 1. That list included an "education trust" through college, compensatory services, and ESY. *Id.* Additionally, she requested the following until the resolution was settled: one-on-one tutorial for educational and special education services immediately, access to compensatory services, and ESY. *Id.* She also requested money damages for tort claims of deprivation of rights, harassment, discrimination, and retaliation. *Id.*

32. Ms. Waylen sent the Parent an agenda for the meeting that included the following items: introductions, ESY, quiet room, and accommodations. Exhibit D31, p.7. The Parent responded by email that there were "zero items" on the agenda the Parent had requested be considered except ESY. *Id.* at 5. She stated she would not attend the meeting because of the team's unwillingness to address her objections and reason for requesting the meeting. *Id.* Ms. Waylen asked the Parent to let her know if she wanted to add additional topics. *Id.* at 4. The Parent responded that she had already been "quite clear." *Id.* Ms. Waylen informed the Parent that the meeting had been scheduled because of the Parent's request and she was happy to add any topic she would like to discuss. *Id.* at 3. She stated that she hoped the Parent would join the team for the meeting because her participation is important. *Id.*

33. The Parent asked Ms. Waylen to create an agenda with topics for discussion based on "the objections and requests for accommodations" and stated that the meeting would need to be recorded and transcribed. Exhibit D31, p.2. Ms. Waylen responded that she had included the three topics raised in the Parent's email of March 29, 2018, that had not been discussed by the IEP team at the last meeting. *Id.* She again asked the Parent to let her know if there were other topics the Parent wanted added to the agenda and informed her that she was welcome to record and transcribe the meeting. *Id.* The Parent responded that it was Ms. Waylen's job to synthesize her objections and requests for accommodation for the agenda and she had not done that. *Id.* at 1. She also stated that Ms. Waylen had not responded to her request for recording and transcribing the meeting. *Id.* The Parent did not provide any additional topics for the agenda. Waylen, Tr. 358-60.

34. The IEP team met on April 25, 2018, as scheduled. Exhibit D34, p.19. The team called the Parent at her home and cell numbers and left messages on both but the Parent did not call back to participate in the meeting. Exhibit D34, p.20. The team considered the Parent's requests and agreed to add access to a quiet location where the Student can work if she is feeling distracted as an accommodation. Exhibit D34, p.19. With respect to the Parent's request for ESY for the Student, the team determined there was insufficient data to necessitate ESY services because she had only attended school for 22 days and had been truant for 49 days. Exhibit D34, p.19. With respect to the Parent's request to discuss other accommodations and that the Student have both an IEP and a 504 plan, the team determined that the existing accommodations were appropriate and provided the Student with a free appropriate public education (FAPE) under both the IDEA and Section 504. Exhibit D34, p. 19. The District sent the Parent a PWN dated April 30, 2018, proposing to change the IEP initiated on April 16, 2018, to include the quiet room accommodation. Exhibit D34, p.19.

35. The IHPs remained in effect and are attached to the IEP. Bowlby, Tr. 238; Ruby, Tr. 449. IHPs are legally required regardless of whether there is also an IEP. Edlund, Tr. 485. The IHP

is where staff would typically look if they have questions about a student's medical needs or in a medical emergency. *Id.*

36. The Parent never consented to a social/emotional evaluation of the Student or to the provision of special education services for the Student. Waylen, Tr. 310; Edlund, Tr. 584. Nor did the Parent request another IEP meeting after the one on April 25, 2018. Waylen, Tr. 311; Parent, Tr. 669-75. The District remains willing to evaluate the Student in the area of social/emotional if the Parent consents. Edlund, Tr. 584.

37. The Parent sent an email to the District superintendent and Kevin O'Neill, its counsel, on April 19, 2018. Exhibit D32, p.2. Among other things, the Parent stated that she had not received "any homework" and that she had made several requests for it dating back to January 25, 2018. *Id.* Mr. O'Neill responded that the District does not provide homework to students who are truant from school but the District stood ready to provide educational services to the Student upon her return to school. *Id.* at 1.

38. Shortly after the development of the IEP, the District filed a truancy petition. Edlund, Tr. 521, 588; Parent, Tr. 634. Before filing, the District had been working with the Parent through the development of a 504 plan, the IHPs, and then the IEP in hopes of remedying the concerns that caused the Parent to remove the Student from school. Edlund, Tr. 589. However, after the IEP was developed and the Parent had not identified other concerns to address, the Parent did not return the Student to school. *Id.* The truancy action was dismissed on August 16, 2018. Exhibit P8, p.24.

39. Meluleki Neube, a mental health therapist at Catholic Community Services, wrote an undated letter addressed "to whom it may concern" stating that the Student is diagnosed with unspecified depressive disorder and struggles with depression, suicidal ideation, and low self-esteem. Exhibit P22. The Parent testified that she gave this document to the District, but did not remember who she gave it to or whether she just left it on a table at a meeting. Parent, Tr. 665. Ms. Edlund did not believe it had been provided before the IEP was developed. Edlund, Tr. 585. The Parent has not proven she provided this information to the District during the evaluation or IEP team process. Moreover, the letter does not contain sufficient information for the IEP team to determine whether the Student needs supports in the area of social/emotional or what those supports should be. Edlund, Tr. 585.

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, she 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 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.

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). 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," taking into account the progress of his non-disabled peers, and the child's potential.

M.C. v. Antelope Valley Union High Sch. Dist., 852 F.3d 840 (9th Cir. 2017)(citation omitted).

Meeting With Parent When Requested

6. The Parent attended the evaluation team meeting as well as the IEP team meeting on March 29, 2018. Another IEP team meeting was scheduled at a time at which the Parent had said she was available but failed to attend. Nonetheless, the team convened without her and addressed her concerns. The Parent did not identify any other IEP team meetings that she requested. Accordingly, the Parent has not proven a violation with respect to any failure to convene IEP team meetings.

Hire/Train/Supervise Staff

7. The Parent presented no evidence related to the hiring, training, or supervision of District staff. Accordingly, the Parent has not proven a violation with respect to District staff.

Eligibility Category

8. The Parent withdrew this issue on the record at the hearing so it is not addressed. Parent, Tr. 676.

IEP

One-on-one instruction in written expression.

9. An IEP must include a statement of the special education and related services to be provided to the student to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students. WAC 392-172A-03090(1)(d); 34 CFR §300.320.

10. Specially designed instruction (SDI) means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the student's unique needs that result from the student's disability and to ensure access of the student to the general education curriculum. WAC 392-172A-01175; 34 CFR §300.39(b)(3).

11. A student's IEP team develops an IEP based on the student's evaluation. The evaluation of the Student, which is not challenged here, resulted in a determination that the Student did not require SDI in written expression because the test scores provided by Dr. Araujo were in the average range and she had demonstrated grade-level writing while at Somerset. The Parent has not met her burden of demonstrating a violation for failure to provide SDI in written expression.

Paraeducator to observe Student and ensure her safety.

12. An IEP must include a statement of the program modifications and supports that will be provided to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students. WAC 392-172A-03090(1)(c)-(d); 34 CFR 300.320(a)(4)(ii).

13. The Parent appears to argue that the District should provide a paraeducator to observe the Student at school to make sure she never participates in dangerous activities and to ensure other District staff are complying with her IHPs. The Student's medical provider did not require this precaution as part of developing the IHP, and there is no evidence that any medical provider or educator has determined it is necessary for the Student's safety at school or to access her education. While the Parent is understandably concerned about the Student's safety, given her history of multiple head injuries, the Parent has not proven that a "shadow" paraeducator is necessary for the Student to access her education. Accordingly, the Parent has not proven a violation with respect to this issue.

Alternative electives to PE.

14. The Parent appears to argue that, because of the Student's need to avoid contact sports, she should participate in elective classes instead of PE. The Student's medical provider only mandated that she not participate in contact sports for purposes of the IHP. The medical provider did not prohibit the Student from participating in PE or recess. There is no evidence that any other medical provider or educator has determined that this is necessary for the Student's safety or to access her education. Accordingly, the Parent has not proven a violation with respect to PE.

Appropriate placement.

15. The Parent argues that the Student's placement is inappropriate because it is unsafe. However, the Parent has not proven by a preponderance of the evidence that it is unsafe. The Student's medical provider has approved the provisions of the IHPs and no medical provider or educator has determined the Student's placement would be unsafe with those protections. The Student's injury four years ago and the one failure during the 2017-2018 school year of a substitute to strictly follow the IHP does not render the placement unsafe. The District took action after that one failure by reporting the substitute and determining that it would in the future inform staff the Student may make requests to participate. The Parent has not proven a violation with respect to the Student's placement.

Adequate time for one-on-one instruction in math and written expression.

16. The Parent has not presented any evidence or argument that the IEP does not provide sufficient minutes of SDI in math or that the Student requires that instruction to be delivered one-on-one. As discussed above, she has not proven the Student requires SDI in written expression. Accordingly, the Parent has not proven a violation with respect to this issue.

Behavioral and emotional needs.

17. There is no evidence that the Parent or anyone else has identified any behavioral needs of the Student.

18. With respect to her emotional needs, the District has offered – and is still willing – to evaluate the Student in this area but the Parent has not consented. Without an evaluation, the District does not have the appropriate information with which to determine whether she requires services and supports in this area or what services or supports would be appropriate. Thus, the Parent has not proven a violation with respect to the IEP's failure to address any behavioral or emotional needs of the Student.

Providing access to food and drinks during the day.

19. The IEP includes an accommodation that the Student have "snacks as needed," which is the accommodation approved by the Student's medical provider in developing the IHP. The Parent has not presented any evidence or argument that some other access to food or drinks during the day is necessary for the Student to access her education or receive FAPE. Accordingly, she has not proven a violation.

Services from prior 504 plan/IHP.

20. The provisions of the post-concussion syndrome IHP related to instruction are incorporated into the IEP as accommodations. The Parent argues that the provision about when to call 911 from that IHP and the provisions of the allergy IHP, which relate to the steps to take if it is suspected the Student is having an allergic reaction, should have been included as well. The IHPs remain in effect as required by RCW 28A.210.320 and WAC 392-380-045 and are attached to the IEP. The Parent has not proven a violation of the IDEA with respect to including all terms of the IHPs in the IEP.

21. With respect to a "prior 504 plan," it is unclear whether the Parent is arguing the IEP should have included services from the 504 plan developed by the District in January that she refused to sign, or some 504 plan from another school district before she returned to the District. There is no 504 plan prior the Student's return to the District in the record. If the Parent is arguing the IEP should have included a service from the January 2017 District 504 plan she refused to sign, she has not identified what that service or accommodation is or why it is necessary for the Student to access her education or receive FAPE. Accordingly, she has not proven a violation.

Protocols related to prior 504 plan/IHP.

22. The Parent appears to argue that the IEP should have incorporated the protocols identified by the Spiritridge administrators following their investigation of the 2014 injury. The Parent did not request these specific protocols be included during the development of the IEP and has not proven they are necessary for the Student's safety, to access her education, or to receive FAPE. Accordingly, the Parent has not proven a violation.

Ancillary services including a tutor and technology.

23. The Parent has not presented any evidence that tutoring is necessary for the Student to access her education or identified any assistive technology necessary for that purpose. Accordingly, the Parent has not proven a violation.

Nurse's input.

24. The Parent argues the IEP team failed to consider the District school nurse's input because she did not attend the IEP team meeting. The nurse provided input to the IEP team by drafting the medical-physical portion of the evaluation and participating in the evaluation team meeting. The IEP team then obtained that input through the evaluation. Additionally, the nurse provided input through the development of the IHPs, which were in effect during the development of the IEP and largely incorporated into it. The Parent has not proven a violation with respect to this issue.

Parent's input and predetermination of the IEP

25. 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).

26. 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).

27. A district violates this procedural requirement if it predetermines a student's placement, meaning that it "independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification." *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). Likewise, a district "may not enter an IEP meeting with a 'take-it-or-leave-it' approach." *Id.* However, preparation by a district prior to an IEP meeting, including developing a draft IEP, does not itself establish predetermination. *Lee's Summit R-VII Sch. Dist.*, 112 LRP 14677 (SEA MO 2012). And Parents do not have veto power over individual provisions or the right to dictate any particular educational program. *Ms. S.*, 337 F.3d at 1131.

28. The Parent attended the evaluation meeting and the first IEP meeting. She actively participated and the District made changes based on her input. The District scheduled a second IEP meeting at the Parent's request and repeatedly invited her to identify the subjects for discussion and to attend, but the Parent failed to explain the other items she wanted to discuss or to appear for the meeting. Nonetheless, the District considered the requests she did make

and adopted one of them. The Parent has not met her burden of proving she was not appropriately provided the opportunity to meaningfully participate in the development of the Student's IEP or that the IEP was predetermined.

"Ancillary Services" While The Student Was Not Attending School.

29. The Parent's primary complaint throughout this proceeding is that the District filed a truancy petition related to the Student's absences pursuant to RCW 28A.225.005 through .030. The ALJ has no authority to address whether the District complied with those provisions so that issue is not addressed.

30. The ALJ only has the authority to address whether the District violated the IDEA with respect to the period of time the Student was not attending school once the Student was determined to be eligible for special education.

31. The Parent argues that the District should have provided what she refers to as "ancillary services" during this time in the form of tutoring and providing homework. The District could not provide any special education services during this time because the Parent had not provided her consent.

32. The Parent cites a number of cases regarding an IEP team's obligation to reevaluate truant students to determine supports to promote attendance. Those cases involve students with emotional or behavioral issues contributing to their attendance problems, not parents who are withholding students from school. Moreover, the District conducted its evaluation and developed the IEP while the Student was not attending school. There has been no change in circumstances that would warrant a reevaluation and the District remains willing to conduct a social/emotional evaluation if the Parent consents to one.

33. The Parent has not proven a violation with respect to the District's failure to provide services while the Student was not attending school.

ORDER

The Parent has not proven that the Bellevue School District violated the Individuals with Disabilities Education Act or denied the Student a free appropriate education. The Parent's requested remedies are denied.

Signed at Seattle, Washington on January 30, 2019.



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.



Parent



Heather Edlund, Executive Director of Special
Education
Bellevue School District
PO Box 90010
Bellevue, WA 98009-9010

Lynette M. Baisch, Attorney at Law
Porter Foster Rorick LLP
Two Union Square
601 Union Street, Suite 800
Seattle, WA 98101

cc: Administrative Resource Services, OSPI
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator