

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

IN THE MATTER OF

OSPI CAUSE NO. 2020-SE-0005

OAH DOCKET NO. 01-2020-OSPI-00978

EDMONDS SCHOOL DISTRICT

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

A due process hearing in this matter was held before Administrative Law Judge (ALJ) Johnette Sullivan by video conference on October 5, 6, 19 – 23, and 27, 2020. The Mother of the Adult Student whose education is at issue<sup>1</sup> appeared for the Parents' and for the Adult Student (Student). The Student and Parents were represented by Nicholle S. Mineiro of Cassady Mineiro PLLC and Kerri Feeney of Feeney Law Office PLLC, attorneys at law. The Edmonds School District (District), was represented by Sarah C. Johnson and Susan Winkelman of Pacifica Law Group LLP, attorneys at law. Also present was Dana Geaslen, District Assistant Superintendent. The following is hereby entered:

**STATEMENT OF THE CASE**

*Procedural History*

The Parents filed a Due Process Hearing Request (Complaint) with the Office of Superintendent of Public Instruction (OSPI) on January 6, 2020. OSPI assigned Cause No. 2020-SE-0008 and forwarded the Complaint to the Office of Administrative Hearings (OAH). In a scheduling notice entered January 13, 2020, OAH assigned the matter to ALJ Jacqueline Becker. The District filed a response to the Complaint on January 21, 2020. On January 23, 2020, before a Notary Public in Bonner County, Idaho, the Student named his Parents as his agents to act on his behalf pursuant to a Durable Power of Attorney<sup>2</sup>, including for educational decisions and filing a due process hearing request.

ALJ Becker issued multiple prehearing orders, including orders dated March 20 and April 13, 2020, that described the issues for hearing. For purposes of administrative organizational needs, OAH reassigned the matter to ALJ Anne Senter. ALJ Senter issued a prehearing order in response to the Student/Parents' withdrawal of some issues and clarification of others. See Sixth Prehearing Order dated September 29, 2020. A second re-assignment from ALJ Senter to ALJ Johnette Sullivan occurred with the parties' consent effective September 29, 2020.

*Decision Due Date*

The due date for a written decision in this case was extended at the Parents' request to thirty (30) days after the record of the hearing closes. See Prehearing Order dated March 5, 2020.

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<sup>1</sup>To ensure confidentiality, names of parents and students are not used.

<sup>2</sup> At request of the ALJ, a copy of the Durable Power of Attorney was filed by Student/Parents on October 19, 2020.

By agreement of the parties, the record closed on November 20, 2020. See Order for Submission of Closing Arguments and Decision Due Date dated October 28, 2020. Accordingly, the due date for a written decision in this case is **December 23, 2020**.

### **EVIDENCE RELIED UPON**

The following exhibits were admitted into evidence:

Exhibits admitted by agreement: P2 through P7, P9 through P11, P13 through P14, P16 through P24, P27, P42, D1 through D2, D5 through D7, D10 through D19, D21 through D30, D34 through D36, D39 through D43.

Exhibits admitted after initial objection withdrawn: P30, P31, P33, P34, P40, P43, P45 through P48, P50, P53, D1.

Student/Parents' Exhibits admitted over District objection: P36, P37, P51, P52, P54

District Exhibits admitted over Student/Parents' objection: D32

The following exhibits were not admitted into evidence:

Exhibits withdrawn: P1, P8, P12, P15, P25, P26, P28, P29, P32, P35, P38, P39, P41, P44, P49, D3, D4, D8, D9, D20, D31, D33, D37, and D38.

The following witnesses listed in order of appearance testified under oath:

Pam Hamilton, District School Psychologist (retired)  
Alan Unis, M.D., Attending Psychiatrist for Boulder Creek Academy  
Dana Dean Doering, ARNP, Educational Consultant for Dean Doering & Associates  
Michael Fabrizio, Board Certified Behavior Analyst (BCBA) for Organization for Research and Learning  
The Mother  
Gail Shepard, District Special Education Teacher (retired)  
Tamara Fernando, District General Education Teacher  
Luke McQuade, District Behavior Specialist  
Geoff Bennett, District High School Assistant Principal (retired)  
Allison Larsen, District High School Principal (former Assistant Principal)  
Christine "Crickett" Sutton, District School Psychologist  
Allison Brooks, Ph.D, Psychologist for Brooks Powers Group  
Nicholas Brown, District Special Education Teacher

### **ISSUES**

The Complaint filed January 2, 2020, claimed District failures that dated back to fall 2015. The Student/Parents subsequently withdrew some claims and clarified others. See Second and Third Prehearing Orders dated March 20 and April 13, 2020, respectively. The Student/Parents further withdrew and struck some issues and clarified or restated others. See Letter from Nicholle S. Mineiro, Counsel for Student/Parents, filed September 18, 2020. The final issues for the due process hearing are:

a. Whether the Edmonds School District (District) violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) as follows:

- (1) [withdrawn];
- (2) Whether the March 2018 individualized education program (IEP) failed to provide the Student a FAPE by failing to address the Student's social skills, self-advocacy, behavioral skills, and emotional regulation;
- (3) Whether the District failed to initiate a reevaluation in May 2018 in response to the Student's deteriorating functional and academic performance and hospitalization;
- (4) Whether the June 9, 2018 IEP failed to offer a FAPE by:
  - (a) failing to address bullying and harassment;
  - (b) failing to address the Student's social skills, self-advocacy, behavior, and emotional regulation;
  - (c) [withdrawn];
  - (d) [withdrawn];
  - (e) failing to provide summer instruction;
  - (f) [withdrawn];
  - (g) [withdrawn];
  - (h) [withdrawn];
- (5) Documents in District records suggest the District may have intended to provide a 1:1 aide and a change of placement to MDHS beginning in the fall of the 2018-2019 school year. To the degree the District intended to provide a 1:1 aide and a change of placement to MDHS beginning in the fall of the 2018-19 school year, whether the District violated the IDEA:
  - (a) by deciding to make material changes to educational programming and placement without first conducting a reevaluation of the Student, significantly excluding the Parents from the educational process and depriving the Student of educational benefit; and
  - (b) by failing to provide a timely Prior Written Notice (PWN) or IEP formally offering these services, stating the duration of these services, the location of the services, the provider of the services, the reason for offering these services, and all other information required in a PWN and IEP relating to these services, thereby significantly excluding the Parents from the

educational process.

(6) Whether the October 28, 2018 reevaluation failed to address the causes of the Student's inability to attend school at the end of the 2017-2018 school year and recommend educational programming, placement, and related services to address this inability to attend school; and whether the District significantly excluded the Parents from the educational process by disregarding the input of Parents and their professional providers concerning the Student's psychological profile and needs;

(7) Whether during the 2018-2019 school year the District failed to provide an IEP (including the November 18, 2018 IEP, February 25, 2019 IEP, and March 20, 2019 PWN continuing the existing IEP) insofar as it:

(a) failed to address the Student's need for protection from bullying and harassment so he could be safe, concentrate on his studies, and in order to prevent further deterioration in his emotional, behavioral and social functioning;

(b) failed to address the Student's autism-related deficits in social skills, behavioral, self-advocacy and emotion regulation, particularly trauma related to the school setting;

(c) [withdrawn];

(d) [withdrawn];

(e) [withdrawn];

(f) [withdrawn];

(g) [withdrawn];

(h) [withdrawn];<sup>3</sup>

(8) [withdrawn];

(9) [withdrawn];

(10) [withdrawn];

(11) Whether the Student lost educational opportunity as a result the District's failure to offer appropriate programming and placement to him before his enrollment at Parents' expense at BCA; and

(12) [withdrawn];

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<sup>3</sup> Student and Parents letter of September 18, 2020, withdrew Paragraph (7)(h) but due to a pagination error subsection (h) was inadvertently omitted from the Sixth Prehearing Order.

- b. And, whether the Student and Parents are entitled to their requested remedies:
  - i. Declaratory relief that the District denied the Student FAPE;
  - ii. Providing Student with compensatory education and further relief in an amount to be proven at trial, as deemed appropriate by the ALJ presiding at the hearing on this matter; and
  - iii. Reimbursement for all private evaluations obtained by the Parents from January 2, 2018, through today's date<sup>4</sup>.

See Sixth Prehearing Order dated September 29, 2020<sup>5</sup>.

### **FINDINGS OF FACT**

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

The Student/Parents withdrew multiple issues and struck language and replaced the issue in clarifications which narrowed (not amended) the Complaint. See Letter from Student/Parents' counsel withdrawing and clarifying issues dated September 18, 2019; Sixth Prehearing Order dated September 29, 2020. Therefore, the evidence was considered to make findings relevant to the remaining issues.

#### ***Background***

1. The Student has received special education services since 6<sup>th</sup> grade. D2<sup>6</sup>, p. 5. He was 18 years of age when his Parents filed the Complaint. The Student moved into the District in April 2015, with his Parents and younger sibling. P48, p. 1. The Student attended College Place Middle School. *Id.*, p. 2. For 9<sup>th</sup> and 10<sup>th</sup> grades, the Student attended Edmonds-Woodway High School (Edmonds-Woodway) in the 2016-2017 and 2017-2018 school years. *Id.*, p. 3.

2. The Student's last triennial reevaluation was in March 2017, where he remained eligible for special education under the category of Other Health Impaired. He qualified for specially designed instruction (SDI) in the area of social/emotional with a goal for learning strategies and organizational skills. His diagnosed disabilities were ADHD, Depression and Autism Spectrum Disorder. D2, p. 6. His March 2018 Individualized Education Program (IEP) placed him in a general education setting at Edmonds-Woodway about 86% of the time. P3, p. 16.

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<sup>4</sup> The Student/Parents used the phrase "through today's date" to mean the date the Complaint was filed on January 6, 2020. There is no statute of limitation issue in this appeal.

<sup>5</sup> Student and Parents letter of September 18, 2020, withdrew the issue numbered as Paragraph (7)(h) but due to a pagination error subsection (h) was inadvertently omitted from the Sixth Prehearing Order. The issue statement above omitted the references to which issues were withdrawn.

<sup>6</sup> Citations to exhibits in evidence are by the party: "P" for the Student/Parents and "D" for the District.

3. Before lunch on May 8, 2018, an incident occurred that involved the Student and other boys in the bathroom. A student identified here as student #1 displayed what appeared to be a real handgun and pointed it at the Student's head. The Student was age 16 on the date, and student # 1 was age 18. Mother, T628.
4. The Edmonds-Woodway administrators did not learn about the handgun incident until early afternoon. P7, p. 1. The incident is described more fully in findings below.
5. The Student happened to have a monthly scheduled appointment with his doctor at the Autism Center at Seattle Children's Hospital (Seattle Children's) after school on May 8, 2018. The Student's mental health was evaluated later that same evening and he was admitted to Seattle Children's Psychiatry and Behavioral Medicine Unit (PBMU). Mother, T685.
6. The Student remained at the PBMU until he was discharged on May 15, 2018. D5, p. 1.
7. The Student returned to school on May 23, 2018. He earned credits in two modified summer school courses completed by early July 2018 to complete his 10<sup>th</sup> grade year at Edmonds-Woodway. Mother, T717-718.
8. The Student has not attended a District school since finishing 10<sup>th</sup> grade.
9. On or about August 27, 2018, the Parents unilaterally placed the Student at their own expense in Boulder Creek Academy (BCA, or Boulder Creek). P48, p. 13; Unis, T137<sup>7</sup>. BCA is a private therapeutic boarding school in Bonners Ferry, Idaho. Unis, T141.
10. The Student did not participate in the hearing or provide direct testimony. The record contains three written declarations from the Student regarding school incidents in April and May 2018, each made under penalty of perjury and described more fully in findings below. P7, p. 7; P51; D36.
11. The Student's Father did not participate in the hearing or provide direct testify. The record does not contain any written declarations from the Father. The Mother appeared at hearing and gave direct testimony. In addition, she submitted a written declaration. P48.

### ***March 2017 Reevaluation and Individualized Educational Program***

12. By 2017, the school psychologist, Ms. Hamilton, had over 25 years' experience in education as a general education teacher, special education teacher, then as a school psychologist. Hamilton, T78. The District evaluated the Student in the area of medical/physical and social/emotional. D2, p. 6. The school psychologist chose the Behavior Assessment System for Children, Third Edition (BASC-3) as the assessment tool because it gave a broad spectrum of the different areas social/emotional covers. Hamilton, T79.
13. The March 14, 2017, reevaluation informed the IEP team of the Student's qualifying disabilities: ADHD, Depression and Autism Spectrum Disorder. D2, p. 6. Regarding the Autism diagnosis, the school psychologist considered that the Student met Level 1 on the Autism criteria,

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<sup>7</sup> Citations to the hearing transcript are to the last name of the witness, except in the case of the Mother, followed by the page number(s) on which the testimony appears.

which is the lowest diagnosis level, without intellectual or language impairment. Hamilton, T78; D1, p.1.

14. In summary, the reevaluation stated:

[The Student] was evaluated in medical/ physical and social/ emotional skills. The nurse's report confirmed the diagnoses of ADHD, Depression and Autism. The adverse effects of ADHD on educational performance include academic and behavioral difficulties such as impaired thought processes and decreased ability to complete age appropriate academic tasks due to short attention span, poor organizational skills, decreased ability to selectively focus, and severe difficulty making transitions and following multi-step directions. These factors adversely impact all academic areas. The adverse effect of Major Depressive Disorder on educational performance MAY include alteration in thought processes related to emotional pain and/confusion; alteration in coping pattern related to depression and/or anxiety. The adverse impacts of Autism Spectrum Disorder MAY include excessive literalness, social awkwardness, and some degree of inattentiveness, distractibility and disorganization; impaired social interaction due to a reduced level of age-appropriate thinking and reasoning abilities. (Emphasis in original)

The social/ emotional assessment confirmed deficits in [Student's] executive functioning. As such, it is recommended that he have a goal in Learning Strategies and Organizational Skills, and the Academic Lab class continuing on his schedule.

Recommended classroom accommodations to be considered are:

- Check work frequently to ensure understanding; Re-explain directions when needed
- Preferential seating
- Allow extra time on assignments and tests, if student is actively engaged
- Shorten/ modify assignments when possible
- S/U<sup>8</sup> Grading as an option (not a guarantee of passing) when curriculum is modified
- Assess individually or in small groups to reduce distractions

D2, p. 6. Under social/ emotional, the March 2017 reevaluation did not find the Student eligible in the areas of social skills, emotional regulation or self-advocacy.

15. The school psychologist gave weight to the BASC-3 scores to determine social/emotional areas of need. She explained that a score in the at risk range meant the area could or could not be a problem, something to keep one's eye on as time goes on. A score in the clinically significant range indicated a problem that needed to be addressed or looked at by the school in order to help a student. An area of concern that is clinically significant might be something written into an IEP goal. Hamilton, T81.

16. The school psychologist explained how she interpreted the BASC-3 results in March 2017. All of the Student's areas were in the average range in his self-report. His 9<sup>th</sup> grade English teacher reported all areas in the average range, except for a sub area called Leadership, which

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<sup>8</sup> Satisfactory or unsatisfactory. Shepard, T852.

was just barely elevated in the at-risk range. *Id.*, T80. The Student's 9<sup>th</sup> grade special education teacher had a few more concerns, but only one area in the clinically significant range: hyperactivity, consistent with his ADHD diagnosis. The special education teacher identified at risk range areas for Student's externalizing problems composite (while two other sub areas were in average range), and attention problem, and atypicality (things the Student might do were not typical of a student). The internalizing problems (anxiety, depression, somatization) were all in the average range. *Id.*, T81-83. Ms. Hamilton had no concerns about validity of the BASC-3 assessments. She considered Mother rated Student in the clinically significant range for several areas: hyperactivity, externalizing problems composite, attention, and atypicality. For adaptability and leadership, Mother's scales were elevated but other scales were not. *Id.*, T83. She opined it was also common for teachers to rate students differently than their parents might. A student may hold their impulses more at school. *Id.*, T85.

17. The school psychologist did not recommend the March 2017 reevaluation team add additional IEP goals because the composite scores in the Student's self-report and the report from his 9<sup>th</sup> grade special education teacher were all in the average range. *Id.*, T81.

***Student/Parents' Expert Michael Fabrizio: March 2017 Reevaluation and IEP***

18. Michael Fabrizio is a Board Certified Behavior Analyst (BCBA) for Organization for Research and Learning. P47. He is not a certificated teacher. Fabrizio, T451.

19. Mr. Fabrizio has 28 years' experience working with public schools and with students, reviewing and analyzing school evaluations and IEPs. *Id.*, T285. His experience and training is extensive, particularly regarding determining strengths, weaknesses, appropriate goals, objectives, and related services for youth on the Autism spectrum. *Id.*

20. At request of Student/Parents, Mr. Fabrizio reviewed only the Parents Exhibits and the District's Exhibits in rendering his opinions. Fabrizio, T286, T453. He reviewed the records within about four weeks of his testimony. *Id.*, T453. The hearing record is not clear about the extent to which he considered exhibits that were proposed but not admitted into evidence.

21. Mr. Fabrizio strived to read the exhibits placing the District in the most reasonably favorable position he could. *Id.*, T459. He agreed that special education programs provide more for a student that what is included in a student's IEP. However, in his opinion anything that is relevant to a student benefiting from SDI, accessing general education, any important skill needed by a student, even if taught as part of the special education program, needs to be in the IEP. *Id.*, T463.

22. Mr. Fabrizio testified at length about his interpretation of the BASC-3 responses of the Student, his Mother, and his 9<sup>th</sup> grade teachers, as compared to the interpretation by the school psychologist. He testified about his interpretation of the input from the Student's 9<sup>th</sup> grade teachers, as reported in the March 2017 reevaluation and IEP.

23. Mr. Fabrizio testified that the March 2017 reevaluation and IEP, in combination with the March 2018 IEP, showed observations by the Student's 9<sup>th</sup> and 10<sup>th</sup> grade teachers that in his opinion demonstrated:

“ . . . an emergent theme that started to come out was what I would describe as teachers' concerns about Student's vulnerability to usury relationships, and it



related to that social cues piece, in that you've got teachers that say things like, "Listen. I can see that there are times that students are doing things to Student, or they're doing things in order to get Student to react in a way that I, the teacher, fear the other students are doing in order to get Student into trouble."

*Id.*, T355.

24. The record is not clear whether Mr. Fabrizio, in reviewing the March 2017 reevaluation and IEP, was aware of the scope of issues in the case. However, the March 2017 reevaluation and IEP are not at issue here. Therefore, no findings were made in this order based on testimony of Mr. Fabrizio to the extent he challenged, disagreed with, re-interpreted, or suggested different meaning or weight to be given to the contents of the March 2017 reevaluation and IEP.

25. Mr. Fabrizio's testimony specific to other issues is in the findings below.

### ***March 2018 Individualized Educational Program***

26. The Student's IEP team met on March 13, 2018, for the annual review of the Student's IEP. The Mother and Student participated as part of the team. P3, p. 1. The team considered the Student's present levels of educational performance. *Id.*, p. 8, 9.

27. The English teacher reported:

[Student] is a pleasure to have in class. He is very polite and respectful to me. He turned in work that is done well and thoroughly when he does get it completed. However, I do need to say that [Student] is distracted easily in class. Some of the student in our class try to distract him on purpose, and I have spoken to them about it. But I also know that [Student] often tried to distract them as well. He continues to have trouble focusing in class. I've tried moving seats around, and we will to experiment with seating arrangements. When I ask [Student] to be on task, he is immediately responsive. I also did speak to him about not distracting other students, and he immediately agreed with me about need to change. Like I said above, he is very respectful and responsive to me. Currently [Student] is behind on some assignments. He can work with me to get caught up on these assignments.

*Id.*, p. 8.

28. The Math teacher reported:

[Student] needs to stay on task and make better use of class time. I would be happy to help him one on one if he continues to come in during Advisory/my office hour. I recommend him to do all work regularly and engage in class discussions. Unless I am standing by or proving one-to-one with [Student], he often chooses not to do Geometry. He is on internet sites which don't have anything to do with school work/math. He rarely asks math questions or shares answers/ideas. He is aware of 4 bathroom passes per quarter in my class, but has used more than 8 passes for this quarter. Additionally, he also has walked out of class in the last 12-10 minutes, at least twice this quarter. I have reviewed appropriate classroom

expectations and warned him of consequences should this behavior continue. [Student] and I will work during Advisory at least once a week until the end of the school year to go over daily assignments/review for tests. [Student's] mom, [Mother], is aware of this effort. I would be better able to support [Student] in class if he came prepared to engage in discussions. His body may be present, but his mind seems preoccupied with non-geometry topics.

*Id.*

29. The History teacher reported:  
[Student's] motivation and ability to concentrate on required class work has varied. Some days he is very much focused and on top of getting his work done, ensuring his homework is completed and on other days, less so. He was very focused during the football season – that external motivation really helped ensure he got his work done and maintained his grade. Once football was over, that began to slide, but as we enter the second month of the second semester, he has been more consistent about handing in work unprompted. That's a new phase of maturity I hope he will maintain until the end of the school year and beyond. In general, he seems capable of doing most of the work: on occasions, he has misunderstood texts he had to analyze. Daily routine work does not seem to present any real issues for him but those tasks requiring higher-level critical thinking skills still seem to be more of a challenge.

*Id.*

30. The Biology teacher reported:  
[Student] at present as a C+ in my class. He earned a C- (70%) on the recent exam. He has turned in two of the three lab reports, but needs to get the Diffusion Lab turned in. He participates pretty well in class. He could occasionally be disruptive earlier in the year, but there has been good improvement in that regard (just an occasional call out). I think the latest seating chart has helped get him in a spot where he is less distracted. Overall he seems to have a pretty good aptitude. I do allow him some extra time for assignments and he usually got them in.

*Id.*

31. The Adverse Impact Summary stated:  
Due to [the Student's] diagnoses of ADHD and Autism, he is not always aware when his words and actions are inappropriate. Teachers may need to prompt [the Student] and give him social cues when his behavior is too disruptive. [The Student] needs specially designed instruction in the area of learning strategies/organization skills to benefit from the curriculum.

*Id.* There is no stated adverse impact due to the Student's diagnosis of depression.

32. The Student's case manager updated the present level of performance information, based on input from his special education teacher:

33. The Student's case manager updated the present level of performance information, based on input from his special education teacher:

- a. Can be very focused (recent test for Math) OR at times, very silly and giggly (when he does not take his medication)
- b. Has a planning system (using one of my paper calendar templates) which he and his family have adapted with check boxes (work finished/work submitted)
- c. I do need to remind [the Student] to look back at the previous week or two to check for work that "fell through the cracks" in the system – as well as to note work which is due in future weeks, or times when there is no HW or classwork to complete (building the habit of writing down the work and referring to it each evening)
- d. Frequent and repetitive reminders to consult SW details and Canvas for assignments that should be in progress – Student may say he did not hear about/know about an assignment or forgets that even with an excused absence he is responsible to complete work or take tests/quizzes missed – recent Math quizzes are all on Canvas and he said he did not know that, although the teacher indicated that she had informed him
- e. Can be a very neat worker – does a fantastic and detailed job on maps and other graphic/visual assignments – is understandable (sic) very proud of them
- f. Struggles, as do many, with juggling the multiple demands of English and History as well as Science, all at the same time – gets caught up in one and loses track of the others
- g. Is challenged on retaining information from day to day
- h. Nice and polite for the most part but can become frustrated/pouty when he does not get his way
- i. [The Student] currently has 7 missing assignments for this semester.

*Id.*, p. 9.

34. The March 2018 IEP provided for SDI in learning strategies and organizational skills delivered by a special education teacher for 80 minutes / 3 times weekly in a special education setting. The Student would spend 240 minutes per week in a special education setting, 86.67% of his time in a general education setting. *Id.*, p. 16. The IEP team considered this placement to be least restrictive, and rejected full time placement in general education, because:

[The Student] needs support with organizational strategies and study skills. He qualifies for small group specially designed instruction in this area.

*Id.*, p. 17.

35. At Edmonds-Woodway, the special education class is called the "Academic Lab." Shepard, T824. During the 2017-2018 school year, the Student was in one of the Academic Lab classes. The Academic Lab classes met three days per week. The classes held Mondays through Thursdays were longer, 95 minutes (or 90 minutes, in classes with morning announcements). The classes held on Fridays were shorter, 50 minutes. The Academic Lab course covered four different areas: self-advocacy, social communication, organizational skills, and study skills. The special education teacher provided to all the Academic Lab students including this Student direct

instruction in these areas, and the opportunity to work on assignments from other classes with her support. Shepard, T825-26. She described in detail at hearing the SDI she provided to the Student on a weekly basis. *Id.*, T826-832. She felt she had a positive relationship with the Student and that he listened to her. *Id.*, T836.

36. At the March 2018 IEP meeting, the Student's special education teacher explained to the team including Mother and Student what she did in class with the Student and the supports she provided to him during the 240 minutes of weekly SDI. *Id.*, T839; Mother, T673. The special education teacher has about 22 years of experience at Edmonds-Woodway teaching special education. Shepard, T824. She had previously taught about 16 years in general education. Shepard, T823.

37. The March 2018 IEP team identified the same annual goal for learning strategies and organizational skills as in the 2017 IEP; however, the team updated the expectations based on the present levels reported by the special education teacher:

By 03/17/2019, when given an assignment [Student] will record the assignment in his planner improving missing assignment rate from 7 missing assignments to no more than two as measured by Skyward checks and teacher reports. The District would report the Student's progress toward the goal on a semester basis.

*Id.*, p. 12.

38. The March 2017 IEP had anticipated the Student would improve from missing 2-3 assignments to missing not more than one, as measured by Skyward checks and teacher reports. P54, p. 12. The new baseline reflected the then-current number of missing assignments: seven (7). Shepard, T839-41.

39. The Mother recalled discussing the goal at the March 2018 IEP meeting, but did not remember specifically talking about the missing assignment rate. She remembered the special education teacher talking about the Student's planner and helping him with that. Mother, T673. She recalled talking with the special education teacher about the Student's habit of doing assignments and not turning them in. They talked about ways the special education teacher could help him. The Mother suggested a different system using a check box for assignments completed and a check box for assignments turned in. The special education teacher thought the Mother's idea was brilliant. The Mother believed the special education teacher was receptive to her proposing ways to support the Student in her class. *Id.*, T674.

40. The preponderance of evidence supports a finding that the March 2018 IEP team did not spend much if any time discussing the 2017 baseline for missing assignments and any lack of progress toward the goal set the prior year in March 2017. More probably than not, the discussion focused on how the special education teacher would work with the Student on his planner. *Id.*, T673. The Mother does not recall expressing any concerns about the goal. *Id.*, T674.

41. The Student/Parents argue in their closing brief that the March 2018 IEP team erred when it did not revise the IEP to address lack of progress towards the annual goal and instead set a new baseline without further discussion. The Student/Parents assert that such lack of discussion lead to the team's failure to consider whether areas of need related to the Student's social skills, self-advocacy, behavioral skills, and emotional regulation, were contributing to his missing of

assignments and lack of organization. They argue that the March 2018 IEP team should have gone beyond the SDI recommendations contained in the March 2017 reevaluation. They assert it was error for the IEP team to repeat the same annual goal from March 2017 without further discussion.

42. The special education teacher initially stated she believed all of the accommodations and modifications in the March 2018 IEP helped to address the Student's deficits in distractibility in the general education setting. P3, p. 13; Shepard, T850. As she reviewed the list, she corrected herself. She clarified that the grading modification was "not so much" to address the Student's distractibility. *Id.*, T852. She explained that if a student was struggling enough that a teacher had to modify the curriculum, and the standard assessed by the teacher was not the grade level standard, the satisfactory/unsatisfactory (S/U) grading was an option. An "S" for satisfactory earns credit. A "U" for unsatisfactory does not earn credit. S and U grades do not affect a student's grade point average (GPA). *Id.* There is no evidence that any of the Student's general education teachers had considered modifying the curriculum or not assessing the Student on the grade level standard until after May 15, 2018. The Student's transcript did not reflect the S/U grading option was used by a teacher until June 2018. D35, p.1.

43. The Mother prepared for the hearing by organizing a written declaration that was in chronological order by school year. For the Student's 10<sup>th</sup> grade school year, 2017-2018, she did not mention the March 2018 IEP meeting in her declaration. P48, p. 6-15.

44. During the Mother's direct testimony, she made no mention of the March 2018 IEP meeting or development of the March 2018 IEP. Mother, T616– 663.

45. In her direct testimony, the Mother recalled email communications from the Student's general education teacher Ms. Fernando dated May 15 and June 19, 2018, respectively. P20, pp. 1-2. She believed Ms. Fernando's emails showed a clear lack of empathy and that Ms. Fernando did not care about the Student. *Id.*, 647-48. The Mother stated the Student told her that Ms. Fernando

. . . didn't care about him, and she kind of just tried to cover her tracks to check the boxes, but didn't truly care about him and his needs all year long.

*Id.*, 672.

46. Ms. Fernando attended part of the March 2018 IEP meeting. P3, p. 1. However, on cross-examination the Mother could not remember any information that Ms. Fernando shared at the March 2018 IEP team meeting about the Student. More probably than not, the Mother did not raise any concerns about Ms. Fernando at the March 2018 IEP team meeting.

47. On cross-examination, the Mother did not recall if at the March 2018 IEP meeting that she requested that the District provide any additional services to the Student in his IEP. She did not recall asking that the District conduct a functional behavior assessment. *Id.*, 672-673.

48. The District issued a Prior Written Notice (PWN) stating its intent to initiate the IEP on March 18, 2018, noting it was based on the March 2017 reevaluation and teacher observations, and considered information from Student and Mother:

[The Student] and his mother discussed difficulty with focusing at the meeting, with his teachers. [The Student] takes medication for ADD. He is going to start going to work with his teachers during advisory, especially his Geometry and his English teachers. . . .

P3, p. 17. The preponderance of evidence does not support a finding that the Mother or Student told the March 2018 IEP team that the Student was receiving medication other than for attention deficit.

49. The preponderance of evidence does not support a finding that the Parents or Student informed the March 2018 IEP team that the Student was seeing a therapist on an outpatient basis or the reasons the Student needed therapy. More likely than not, that information was not shared with the District sometime later. The Mother recalled informing the special education teacher and perhaps other District staff in “springtime frame of 2018” about the Student having anxiety attacks or other issues, and that he was seeing a therapist. The Mother recalled the special education teacher alerted the Father about the Student’s behavior at school, sitting in the corner and curling up, on or about May 3, 2018, and information the Parents shared with the District at that time. P5; Mother, T675.

***Student/Parents’ Expert Michael Fabrizio: March 2018 IEP***

50. Mr. Fabrizio has not met the Student. He has not assessed or observed the Student in any setting. He has not spoken to any of the Student’s teachers at Edmonds-Woodway. He has not spoken to any of the teachers at Boulder Creek. Fabrizio, T452.

51. Mr. Fabrizio expressed his opinion that the March 2018 IEP was not appropriate for the Student. *Id.*, T352.

52. Mr. Fabrizio expressed concern about the March 2018 IEP goal in context of the expectation one year earlier. He opined that the March 2018 IEP team failed to consider progress data over the last year to determine reasons the Student was not making acceptable progress on missing assignments. He opined the March 2018 IEP team could have identified component skills that made up part of the larger goal or objective. In the alternative, the team could have discussed whether they should continue working on the goal but change the strategies that they were using. *Id.*, T338.

53. The topic of District progress reporting to the Parents on the Student’s progress toward the IEP goal during the one-year period between the IEPs is not an issue in the case. Mr. Fabrizio noticed the lack of progress reporting in the exhibits given to him to review. More likely than not, he mistakenly believed the Parents had not received progress reports. Fabrizio, T365, 411, 454. The extent to which his belief about lack of progress reports influenced his opinion that the March 2018 IEP was inappropriate is unknown. However, Mr. Fabrizio accurately observed and formed opinions based on the lack of analysis or discussion of the goal included in the March 2018 IEP.

54. In addition to his opinions about how the Student’s March 2018 IEP team addressed the goal in the area of learning strategies and organizational skills, Mr. Fabrizio did not believe the March 2018 IEP was appropriate to meet the Student’s needs in part because:

- a. He faulted the March 2018 IEP team for failing to discuss mental health as being a component of the issues the general education teachers were reporting that related to Student's behavior beyond missing assignments. *Id.*, T345-346. He felt the comments and observations of the Student's general education teachers focused primarily on the Student's distractibility, ability to self-manage, ability to pay attention, difficulty with meeting social expectations and norms, and difficulty reading the social cues around him, and were less focused on the IEP goal of missing assignments. *Id.*, T346-348.
- b. He expected to see goals or objective related to the Student's attending skills or self-management skills, and the Student's ability to withstand unexpected or difficult changes, based on his interpretation of the observations of the teachers who completed BASC-3 reports, and input from the Student's 9<sup>h</sup> and 10<sup>th</sup> grade teachers related to those areas of need. *Id.*, T353.
- c. He believed the single goal in the area of learning strategies and organizational skills did not address the teachers' reports of the Student's difficulty asking for information that he needed. He suggested the March 2018 IEP team could have added a goal under a category called self-advocacy or social or self-management, relating to teaching the Student how to go get needed information, how to identify what information he needed and who might be a likely source for having that information. *Id.*, T308-309.
- d. He believed the teacher reports and adverse impact summary statements in the March 2017 and March 2018 IEPs showed indications of several problem areas for the student, including usury relationships, inability to read social cues ("read the room"), self-advocacy in asking for information the Student needed, perspective-taking to address understanding the motivations of peers towards him, difficulty retaining information day-to-day. *Id.*, T304, 306-307, 309. He opined that an IEP team might develop SDI in new areas not identified in a reevaluation if the team has sufficient reason to believe that the area is problematic. He considered the present level of performance summary statements of teachers to be examples of when it may be sufficient to develop SDI on the areas identified. *Id.*, T307.

55. After a thorough and careful review of the totality of Mr. Fabrizio's testimony, the preponderance of evidence supports a finding that his opinion that the Student's March 2018 IEP was not appropriate to meet the Student's needs was influenced significantly by considerations that are outside the scope of the issues in this case.

### ***Events of Note in April 2018***

56. On April 18, 2018, the Student's general education teacher, Mr. Black, emailed the Parents about Student's behavior that day in class. The Student did not want to remain in the classroom, after being warned to stop using the computer to listen to music. The Student reluctantly surrendered the computer and then announced he was leaving despite Mr. Black's statement leaving was an unwise decision. When the Student neither returned to his chair nor left the classroom, disrupting others, Mr. Black called security. A vice principal escorted the Student out of the classroom. Mr. Black further explained his student-teacher noticed the Student displaying a lot of attitude, contempt, and not engaging in classroom work. In contrast, the Student had been very engaged and actually nagged Mr. Black about quick entry of assignments when football

was a motivating factor. Mr. Black observed that the Student's behavior declined precipitously after the season ended. P4, p. 2.

57. The Mother responded and thanked Mr. Black for the information. She explained:

. . . I doubt you are aware, so I thought I would share a bit of [the Student's] life right now. He is really struggling as our home life is a bit of a mess right now. Last month, we lost our awesome rescue dog to a gruesome cancer that grew all over her skin, [the Student's] great grandma that he adores (who is really grandma age due to blended family) is in her 3<sup>rd</sup> round of chemo for a super aggressive breast cancer, his paternal grandmother recently had to move to an adult family home due to the progression of ALS, and his father nearly died a couple weeks ago and was in the ICE, and is still having complications. In addition, I am deep in helping put the WEHS ABD Auction on this Saturday, which takes my time from him. So, having Asperger's and being on the spectrum, [the Student] is really having a hard time dealing with all of this. In essence, his therapist explained that there are just too many inputs for him and he kind of turns to fight or flight. . . . We know he is a good kid deep down, and hate to this acting out. We are submitting the form for the Explorers program for him today, hoping that will help. . . .

*Id.*, p. 1-2.

58. Mr. Bennett was the vice principal who escorted the Student on April 18, 2019. He spoke with the Student for a long time because the Student had a lot on his mind. He works with lots of students in special education. The Student told Mr. Bennett about the dog's death, and multiple family members with serious illness. He told Mr. Bennett he had been taking prescription medicine for four years for depression, and that he had an outside counselor. The Student identified a couple of friends, but his concerns related to home and family. The Student did not mention to Mr. Bennett anything about being bullied at school. Bennett, T1057-1059.

59. On April 30, 2018, Mr. Black emailed the Parents an update. The Student was making faces and trying to make a couple of boys laugh. The teacher observed this on 4-5 occasions and spoke collectively to the Student and four boys in the class that regularly displayed immature behavior. The teacher asked the Student on two occasions to not drink from a soda bottle he brought to class that day. He did not address this with the Student further because the Student seemed to be seeking approval from peers in a negative way. Mr. Black later spoke to two boys to impress on them that goofing off was not okay. He hoped if other boys stopped their reactions to the Student, it might lead to the Student stopping the behavior. *Id.*, p. 1.

60. Sometime in the "springtime frame" the Mother spoke with the Student's special education teacher about the Student seeing a therapist and problem behaviors the Parents observed at home. The Mother recalls the special education teacher sharing observations in school: the Student sitting in a corner and curling up, or other "weird" things. Mother, T 675. The preponderance of evidence, including the emails with Mr. Black, establish the special education teacher knew by end of April 2018 that the Student was seeing a private therapist.

61. Sometime in April 2018, the Parents called 911 and the Student went to the emergency room at Swedish Hospital. He was released back home after a mental health evaluation and was not admitted. The Mother recalled the Student was talking about killing himself. Mother, T680;



D40, p. 15. The Student had punched his Father, and punched walls in the house. The Mother cannot recall if she reported these incidents to anyone in the District. The Mother explained this was the only time they called the police to help with the Student. Mother, T753. If she told anyone, she would have told special education teacher Gail Shepard “or somebody along those lines.” Mother, T686. There is evidence of record from a District witness that confirmed Mother communicated about the 911 call specifically in April 2018 or early May 2018.

62. On or about April 25 or 26, 2018, the Student witnessed a violent confrontation of other students. D11, p. 2. He observed a student being punched in the jaw so hard that the student fell backwards hitting his head on the floor. The Student witnessed a lot of blood on the floor and that the student was bleeding out of his mouth. The Student gave a declaration under penalty of perjury to the District about the events he witnessed and the persons he saw involved in the fight. D36.

### ***May 2018 Classroom Events***

63. On May 3, 2018, the case manager informed the Parents that the special education teacher had just come to her concerned about the Student. His biology/chemistry teacher, Mr. Ogren, had reported the Student’s recent lack of any effort or engagement. On May 3, the Student appeared to be all bundled up, sweating, and saying he did not care about anything. The school counselor was not at the school. The case manager was wondering about sending him home but not if he would be alone. The Father replied and asked to make sure someone stayed with the Student, and that the Parents were working on getting there ASAP. The Father mentioned the Student had been struggling a lot lately. P5.

64. Mr. Ogren emailed the Mother, case manager and special education teacher about the May 3, 2018, events. He noted the Student walked into class late, calling out as he came in. Mr. Ogren had difficulty getting his attention in order to get him to stop. The Student told Mr. Ogren he was “going through some stuff” or words to that effect. The Student got some work done the following Monday May 6, but the teacher observed the Student had an obsession with his Chromebook. The Student was disrespectful, making noises in class with the apparent goal of seeking attention and disrupting the class. P6.

### ***May 8, 2018, Handgun Incident***

65. On May 8, 2018, Edmonds-Woodway administrators learned a student reported seeing a video taken earlier that morning involving what appeared to be a handgun at school. P7, p. 1; D43. The administrators eventually located the student showing the video. The video is less than one minute in length, and showed the Student as he entered a bathroom stall in which student #1 was standing and displaying a handgun. At one point, student #1 waived the handgun toward the Student, who reached out and pushed away at student #1’s arm.

66. Vice principal Bennett recognized the two students in the video: Student, and student #1. He knew student #1 really well. Bennett, T1064-1065. He confirmed the video he saw is the one in evidence. Bennett, T1095. The Student was called in to speak about the incident with vice principal Bennett. The principal met with several boys and obtained statements, including from the Student. The principal did not share copies of the other students’ statements with the vice principal, the Student’s IEP team, the Parents, or staff involved in providing SDI to the Student.

67. The Student made a written declaration under penalty of perjury before the principal and local police before he left school May 8, 2018:

My friends [redacted] & I were going to meet and go to 7-11, and we decided to go to the bathroom before, because we needed to go really bad, so we walked into the bathroom and [redacted] said I wanna show you something so I was okay, then the next thing I know he pulled out a gun, it was all black, looked very real. Then he points it at my head and I looked down the barrel and it looked kind of like an airsoft or pellet gun, then [redacted] starts recording on his phone, then [redacted] starts laughing, then puts it away, then he said "I'll just get lunch here." I said okay then [redacted] and [redacted] and I walked to 7-Eleven, we all thought that was crazy. Also, he said he had got it this weekend, and he had to give it back to his ex-girlfriend.

P7, p. 7.

68. The administration determined the gun looked real but was an air soft gun, and that student #1 had left campus consistent with his usual schedule. Administration determined a lock down was not necessary. *Id.*; D11, p. 2.

69. The Mother learned about the handgun incident when vice principal Bennett called her. She learned more from the Student when she picked him up after school to drive him to a regularly scheduled medical appointment with the Autism specialist. Mother, T688. More probably than not, the Student understood that he was in trouble with the principal due to his failure to immediately report the handgun incident to someone at the school. Mother, T688, 689.

70. Administrators issued a public statement that no students were threatened with the firearm. The Mother strongly disagreed with the statement and believed the principal tried to play down the situation. The principal revised the statement to say that as the police investigation continued, one student told the police that he felt threatened by the student with the gun in the bathroom. P7, p. 1; P48, pp. 7-8.

71. The Mother recalled local media and police described the handgun as an authentic replica of the Edmonds Police Department service weapon, a Smith & Wesson semiautomatic pistol. *Id.*; Mother T619, 626.

72. While at the PBMU, the Student filled out a police department incident form that his Mother delivered to him a day or two earlier. Mother, T622. The form bears his signature and a date of May 11, 2018. The Student identified his location as Seattle Children's. The Student made the declaration under penalty of perjury. P51. The Mother read aloud the Student's statement to staff at a re-entry planning meeting on May 21, 2018. Mother, T623.

When [student #1] pointed the gun at me, 6 inches away from my forehead, I was extremely scared, and feared for my life. I am still worried, cannot stop thinking about it and also still fear for my life, and what will happen if I see him again, or at school. I feel very strongly that my life is in danger.

*Id.*

## **Seattle Children's PBMU**

73. The Student, his Mother and Grandmother gave patient histories to medical staff at the PBMU the evening of May 8, 2018. D40, pp. 14-15. The Student was admitted to the PBMU later that evening. Mother, T685. The PBMU evaluation stated the Mother reported that two nights prior, after the Father had spoken to the Student about chores with clear expectations and rewards, the Student started freaking out and said he was leaving, and then punched his Father. The Mother reported the Student punched the walls and paced like a caged animal, and left riding an old bike after 10 p.m. while wearing black clothes. D40, p. 15.

74. The Student was interviewed as part of the mental health evaluation. In pertinent part, the PBMU staff reported:

. . . Of note patient reports that another student at school points [sic] to a gun at him today. The other student has since been taken into custody. Other than this incident he reports that he feels safe at school, he feels safe at home, other than his ability to keep himself safe. . . . Patient explained, "I've been depressed for 6 years almost. For the past month or 2 things have been worse. My dog died, like February, we had to put her down. Then, my dad had to go in the ICU; he had a polyp that was bleeding like crazy. . . for 2-3 days. The police had to escort me to a hospital 3 week [sic]. My dad and I were fighting a lot and I was just getting pissed off a lot. I was feeling super stressed. I had a knife on me when the cops actually came to my house. My father was concerned because I kept saying that I wanted to end my life. Also, my great grandmother getting diagnosed with breast cancer.

*Id.*, p. 14.

75. The Student was discharged from the PBMU on May 15, 2018. D5. The Student's case manager alerted District staff that something happened and the Student was not attending school, and that she was working to possibly line up home instruction. Mr. Bennett vaguely recalled a meeting on May 15, 2018, where staff talked about the Student's re-entry. He could not recall whether either Parent was present. Bennett, T1069.

76. The PBMU issued to the Student and Parents at time of discharge a crisis prevention plan and a discharge summary. The school psychologist cannot recall if she received the records from the Parents or in the records release from the PBMU. Hamilton, T91, 93. The crisis prevention plan was not admitted into evidence, but the school psychologist referenced its contents in the assessment revision described more fully below. D7, p. 5. The discharge summary is in the record. D5.

77. The discharge summary that the Student's principal diagnosis was major depressive disorder, recurrent, severe, with suicidal ideation. His secondary diagnoses were Autism spectrum disorder without intellectual or language impairment, nicotine use disorder, and ADHD, likely predominantly inattentive type. At admission, the Student was taking four prescription medications. *Id.*, p. 1. The doses and medications had changed by the date of discharge. *Id.*, p. 3. The summary stated in part:

Throughout hospitalization, [Student] consistently denied any further suicidal ideation. His mood improved, affect remained bright in the milieu and during individual sessions, and he was social with peers. He participated well in group. He was looking forward to returning to school to reconnect with his peers and finish out the academic year. Of note, he is particularly looking forward to hanging out with one peer that he enjoys rapping with. During hospitalization, there was no aggression or self harm. He did not engage in any impulsive behaviors.

Educational consult: Our education team coordinated with the school in order to ensure [the Student] has optimal support as he transitions back to school. The school indicated that the other male who pulled a gun (later it was discovered this was fake) will be suspended. Parents were considering on (sic) having [Student] remain at home for the remainder of the year due to safety concerns. [Student's] wish was to return to school, and he felt he would decompensate into a depressive state if he were not allowed to return back to school to be around peers.

*Id.*, p. 2. Aftercare planning included follow-up appointments with the Student's private therapist, Doni Kwak, PhD, on May 29, 2018, with his doctor at Seattle Children's outpatient clinic for medication management, and a recommendation for social skills groups. *Id.*

### ***Student's Re-entry to Edmonds-Woodway***

78. The Mother was uncertain about specific dates she met with District staff after the Student's hospital discharge, because she communicated with staff multiple times daily. The Parents attended a meeting on or about May 21, 2018, when Parents were considering the possibility of the Student returning to the Edmonds-Woodway campus to complete 10<sup>th</sup> grade. The parties refer to the May 21, 2018, as the re-entry meeting.

79. The preponderance of evidence supports a finding that the Mother communicated with multiple school staff on a near-daily basis until the end of the school year. The Mother's description of herself and her husband as "open books" when communicating with the District was credible. Mother, T640. The Mother emailed, telephoned, and met in person with the vice principal, the special education teacher, the case manager, the behavior specialist, the assistant superintendent, the school psychologist, and others, to keep them informed about the Student. She reported her observations of how the Student was doing at home, with his therapist, and in the car to and from school. Mother, T640; 642-43; 647; 648; P23.

80. At the May 21, 2018, the Parents continued to express their concerns about the Student's safety as he was not to be left alone since the PBMU discharge. The Mother reported she had begun to work from home, and a grandmother was available as needed. The Parents reported that Student wanted to return to school, but the Parents were concerned about past bullying incidents involving the football team and other students. They shared that other students try to get the Student mad, yet the Student considers them friends and does not want to get them in trouble. D7, p 5. As noted in findings above, the Mother read aloud from a declaration the Student made to the local police about the May 8, 2018, gun incident, while he was in the PBMU. P51. That statement was significantly different in tone from the Student's initial declaration on May 8, 2018, and his conversations with Mr. Bennett. D36.

81. Based on Parents concerns expressed since May 8, 2018, the District offered to add counseling with its behavioral specialist as a related service in the Student's IEP. Hamilton, T103.

82. The school psychologist provided the Parents with an assessment revision notice. The notice stated the District planned an assessment in the area of social/emotional, at the Parents' request. The notice referenced the Student's recent hospitalization and stated that the District needed to conduct an assessment revision in order for the Student to receive additional services from the behavior specialist. D7, p. 3; Hamilton, T110.

83. The school psychologist received the Parents' consent to conduct an assessment revision and to release medical records. *Id.*, T108-109; D7, p 5. The assessment revision notice included a parental response form that gave the Parents the opportunity to identify other areas they wanted the District to assess; however, the Parents left the section blank when they gave consent for assessment revision. *Id.*, p. 9.

84. The school psychologist selected May 31, 2018, for the Student's IEP team to meet to consider the assessment revision and amendment to his March 2018 IEP. She considered there was a three-day Memorial holiday, and she needed time to gather the records from Seattle Childrens. Hamilton, T103.

85. Meanwhile, the Mother and the Student met with vice principal on May 22, 2018, to discuss the Student's transition back to the classroom. The Student expressed a desire to stay at school that day, but his Mother and the vice principal agreed he should start the next day. Mr. Bennett summarized the meeting in an email to the Father. D6, pp. 4-5. He summarized the topics he discussed with the Student and the Mother:

- a. Bullying: when and where and who, and problems with meme videos which Mr. Bennett said were tougher to figure out, and that it was ok to "get loud" when a kid tries to do that;
- b. Quitting football: Student said he had to put up with a lot of stuff during and after the season;
- c. Homework stress and grades: Mr. Bennett agreeing to talk to teachers about where the Student is at and consider the option to give an S grade where appropriate;
- d. Kids in classes: Mr. Bennett talked with every teacher present to be aware of Student's depression about school and social elements
- e. SBA: Student missed two days which are easy to make up next week
- f. Return to classes: Student wanted to go back to classes May 22, but Mother and Mr. Bennett decided no, to allow time for Mr. Bennett to talk with some students and all Student's teachers
- g. Exercise: Student likes bike riding, weight lift after school is still an option
- h. Football Line Coach: Mr. Bennett would talk with Mr. Gradwohl head coach next week
- i. Golden Pass: Student given Mr. Bennett's business card, he can leave class and see Mr. Bennett when stressed
- j. First day back plan: very flexible for Wednesday; see a couple kids on first floor; see Mr. Bennett; go to SBA testing with special education teacher; at end of each period okay for Student to see Mr. Bennett for update if he wants; at end of day Student will get out early and will call Mother for short progress report.

*Id.*

86. The Father thanked Mr. Bennett, noting the Student was feeling somewhat better about coming back to school. *Id.*, p. 4.

87. The Student returned to Edmonds-Woodway on May 23, 2018. The Mother emailed Mr. Bennett as she dropped off the Student shortly before 7 a.m. She expected the Student to see some friends and then go to Mr. Bennett's office. She planned to pick the Student up early at 12:15 p.m., noting he was "very anxious last night and couldn't get to sleep." *Id.*, p. 3. Mr. Bennett provided Parents with updates throughout the day on May 23, 2018, about how the Student was doing. Mr. Bennett reported the Student was doing fine and that the plan to gradually re-enter the Student to the school routine seemed to work well. *Id.*, pp. 1-2.

88. On May 24, 2018, the Mother reported that Student had asked to spend 15 minutes extra at school because he wanted to play poker with Mr. Bennett. *Id.*, p. 1.

89. The preponderance of evidence supports a finding that the Student continued to attend partial school days at Edmonds-Woodway through June 13, 2018. P2, p. 2. The Parents reported on June 14 and 15, 2018, the Student was struggling to return to school and would not attend. P18. The Student attended school on June 15, 2018, for at least 40 minutes during which he spoke with the behavior specialist. D12; McQuade, T995. The Student returned to school and attended on Monday, June 18, 2018. That evening, the Student suffered significant injuries to his face during a bike accident. P23. Because of the injuries in the bike accident, the Student was unable to attend the final three days of school. P2, P23.

90. The evidence does not include testimony or exhibits to make findings about the amount of time the Student spent at school when he attended on partial days from May 23, 2018, to June 18, 2018. The Mother recalled the Student would try to attend a partial day for an hour or two. Mother, T641.

91. The Mother's testimony was credible and it is found that she observed the Student struggle in the morning before school, expressing to her his worries and anxieties about not feeling safe at school. In the car on the way to school, he complained of feeling nauseous which was a rare event for him. She observed he did not sleep well at night, and he reported nightmares. Mother, T640-641. However, no District staff reported that the Student displayed similar behavior or expressed similar concerns once he arrived at school.

92. The Mother expressed to vice principal Bennett her dismay that the Student had not been contacted by the District's school counselors or therapists, an expectation likely discussed at the May 21, 2018, re-entry meeting. *Id.*, T640.

### ***Safety and Academic Plan***

93. The Mother reported to vice principal Bennett on May 30, 2018, that when she picked up the Student from school he reported a student had hit him in the groin and said hurtful things (I hate you; I'm going to shove this ruler up your butt; f--- you). D11, p. 3. Mr. Bennet spoke to the teacher in that room and some students he considered neutral observers, but no one reported observing what the Student reported. Nevertheless, prompted by the Mother's report the following day Mr. Bennett drafted a one-page safety and academic plan to be in place for the 15 school days remaining in the term. *Id.*; D9. He discussed the safety plan at the assessment review and IEP team meeting held that day. P13.

94. The vice principal's safety and academic plan provided instructions for teachers and staff:
- a. Teachers: He needs to be dismissed the last 5 minutes of each class and to go directly to the Main Office. I will see to it that he is escorted to the next class.
  - b. Advisory Period: He is on a "No Go" status. He must stay in Mr. Louie's Advisory Period.
  - c. Lunch time: He will be eating lunch up here in the Main office Conference Room. I will get him to the lunch room early to buy lunch and then eat lunch up here.
  - d. Academic Effort: He needs to be on task; not disrupt class and work on school work as directed by teacher. If this is not working the teacher will contact Cindy Scott in Main office and Mr. Bennett will come to class and work with him in Main Office.

*Id.*

#### **May 31, 2018 Assessment Revision and IEP Amendment Meeting**

95. The Parents did request an early reevaluation of the Student in May 2018. The Parents and District met on May 31, 2018, to review the assessment revision and consider amending the Student's current IEP. The school psychologist drafted the assessment revision based on the Parents' information about the Student and the PBMU hospitalization, and the information in the PBMU discharge summary and crisis prevention plan. She had not communicated with the Student's medical providers directly. She had not received clinical notes from the Student's medical providers. The District staff who were members of the Student's May 31, 2018, IEP team accepted the Parents' description of the Student's concerns and of the medical events. The school psychologist noted the team discussed the Student's private therapy with Dr. Kwak weekly since January 2018, which PBMU had recommended the Student continue. The Student's May 31, 2018, IEP team considered the PBMU crisis prevention plan that identified triggers and early warning signs. They considered the Student's statements to PBMU staff about what he thought he could do when he noticed early warning signs of stress. They considered the PBMU list of suggestions for actions by parents and caregivers who noticed early warning signs of stress. They discussed the Student's good relationship with the vice principal, and the Parents' request that the Student's private therapist had recommended the District arrange for the Student to receive credit for his classes with no failing grades that semester. *Id.*, p. 5.; P10, p. 1.

96. The school psychologist explained that when a change in student performance is in only one area, it is permissible for her to revise a student's existing evaluation; however, she must do a reevaluation if there is more than one area of concern. Hamilton, T59. With the Student's sole area of concern social/emotional, she determined the medical information was sufficient and that a reevaluation would not be necessary. Hamilton, T110. The school psychologist explained that it would be the time to consider more assessment and doing a full evaluation in fall 2018, if the additional counseling support was insufficient. Hamilton, T111.

97. In summary, the Student's May 31, 2018, IEP team determined that counseling with the behavior specialist was appropriate and that the Student's IEP would be amended to add it as a related service. D-7, p. 6. The only area in which the Student had qualified in the triennial reevaluation, which is not at issue here, was in learning strategies and organizational skills.

98. There is no evidence that any staff member of the Student's team thought additional reevaluation was necessary. At that date, he was attending school partial days. More likely than not, the evidence is that the student attended school each thereafter, except for June 13 and 14, until a biking accident the evening of June 18, 2018. P2, D12.

99. The Student/Parents' expert, Mr. Fabrizio, testified that he could not remember when he had not seen a functional behavioral assessment (FBA) completed and behavior intervention plan (BIP) developed when students returned from inpatient or restrictive settings to the public school environment. Fabrizio, T400. The Parents did not request an FBA of the Student. The Student/Parents struck from Issue 3 the language about failure to initiate a functional behavioral analysis in May 2018. The Student actually did attend school even after the May 31, 2018, assessment revision although not for a full day. The Parents evidence does not establish severe school refusal sufficient to warrant additional assessment or reevaluation.

100. As noted above, Mr. Fabrizio's opinion about the assessment revision is entitled to less weight because he had never met the Student, had not performed any assessments of the Student, never talked to his teachers, or observed the Student in a school setting. Fabrizio, T451-452. He was not familiar with the District's special education programs. *Id.*, T499-500. He interpreted teacher comments in the March 2017 reevaluation, the March 2017 IEP, and March 2018 IEP, as potentially indicative of signs of school refusal. However, he had no other information about the circumstances of the events described.

#### ***June 2018 IEP Amendment***

101. Following the May 31, 2018, IEP team meeting, the school psychologist finished drafting an amendment of the Student's IEP to reflect the discussions and input received at the meeting. She presented the IEP Amendment to the Parents on or about June 4, 2018, with a start date of June 9, 2018. P14, p. 18.

102. The June 2018 IEP Amendment did not change the area of learning strategies and organizational skills for SDI, or the annual goal. *Id.*, p. 15. The June 2018 IEP Amendment added 30 minutes / 1 time weekly for Counseling with the Behavioral Specialist as a related service starting June 9, 2018, through March 17, 2019. The May 31, 2018, IEP amendment did not add to the Student's SDI. *Id.*

103. The school psychologist updated the present level of performance information for the social/emotional area to reflect the PBMU diagnoses, with information about the recent hospitalization, and the PBMU crisis prevention plan information about triggers and early warning signs. *Id.*, p. 7.

104. On a page titled Team Considerations (Amendment), there is information about the areas deemed not of concern. One area deemed not of concern was that the Student's behavior impeded his learning or that of others. A teacher is to consider, when appropriate, strategies including positive behavioral interventions, strategies, and supports to address the behavior when this is a concern. Another area deemed not of concern was assistive technology devices and service needs, which added that the Student "utilizes the district issued lap top (Chromebook) effectively to complete school work." P14, p. 5.



105. The Student/Parents failed to prove the Student's IEP team that met May 31, 2018, had information specific to the Student being bullied and harassed at school except for the incidents that occurred on May 8, 2018 (student #1 gun incident) and May 30, 2018 (student #2, punch to groin and verbal threats incident) described in the findings above. The preponderance of credible evidence is that on or after May 8, 2018, the Mother informed District staff about claims that other students and coaching staff had bullied and harassed the Student since middle school, particularly related to the football team.

106. failed to address the Student's social skills, self-advocacy, behavior, and emotional regulation (struck providing only one goal in Is/o when more in this area were needed)

#### *Summer instruction*

107. The Student/Parents assert the June 2018 IEP Amendment should have addressed how the Student's experience of being bullied by students or staff affected his social skills, self-advocacy, behavior, and emotional regulation at school. The evidence contains very few occurrences in which the Student had a serious or frequent problem advocating for himself. Regarding behavior and emotional regulation, the Student/Parents fault the District for failing to update information in the Amended IEP regarding the Seattle Children's crisis plan. Near and continuing after May 31, 2018, the Mother began to report that some days the Student was having a good morning; however, on other days the Student was anxious, tired, upset, reporting feelings of nausea, and wanting to not go to school. There were very few school days left before the end of the term, combined with injuries sustained in a bicycle accident. The Mother has not identified a pattern of behavior that would be sufficient to constitute significant school refusal.

108. The Student/Parents fault the May 31, 2018, IEP Amendment for failure to develop goals for the related service of counseling that was added. The Student/Parents fault the District's failure to identify the Student's functional needs for the related services and set goals, such as attendance, or tolerating school.

109. The May 31, 2018, IEP Amendment did not provide for extended school year services. However, the District considered the Student eligible for summer school to re-take English and Biology. P23, p. 2. The Mother felt the Unsatisfactory grades were a slap in the face. Exacerbating all the other stressors in the Student's life, a few days prior to June 21, 2018, he suffered injuries on his power bike and had "a raw face and broken teeth." The Mother reported the Student would be on a liquid diet for 4-6 weeks and on heavy pain medications. She retorted, "How would he be expected to do summer school on top of this? Seriously?!?" *Id.* Nevertheless, the District staff arranged for means by which the Student was able to earn Satisfactory grades and credits for the two courses, by early July 2018.

#### ***Harassment, Intimidation, Bullying***

110. The Parents' application or complaint seeking an investigation of harassment, intimidation, bullying (HIB) by others of the Student is not in the record. The Mother identified a specific student, referred to in the record as student #2, as the student they "completed the HIB for." Mother, T636. Vice principal Bennett was assigned the task of investigating the Parents' HIB complaint. He issued a report to assistant superintendent Greg Schwab on June 14, 2018. D11.

111. The issues on appeal do not include challenges to how Mr. Bennett completed his investigation, issued his report, complied with his HIB policy, or provided Parents with appeal rights from a final HIB decision. Therefore, no further findings are necessary regarding the HIB investigation process in June 2018.

112. The Mother had no first-hand knowledge of others bullying the Student. Her declaration and testimony are based on information gleaned from the Student or other sources. With few exceptions, her reports of the Student being bullied lack details as to who, what, where, when, how and other event specifics.

113. Despite the lack of direct evidence, Mr. Schwab agreed that lack of proof of bullying did not mean that it did not happen; further, that the District needed to find ways to support a student who perceived that he had been a victim. Schwab, T1119-1120.

114. Mr. Bennett interviewed the Student, other students, and coaches, and collected feedback from teachers. He found no one who reported witnessing bullying directed toward the Student during 9<sup>th</sup> grade during the 2016-2017 school year. Mr. Bennett spoke to the Student, who recalled in fall of 2017 some football players gave him a “hard time.” The Student’s statements were consistent with those of a coach and other students who reported that the Student would walk around seemingly uninterested in football weight lifting, which sometimes prompted students to tell the Student to get to work lifting, to not be lazy, or words to that effect. No one reported observing students bully the Student during football or weightlifting. *Id.*, pp.4-5.

115. Mr. Bennett interviewed some students involved in the May 8, 2018 incident. He found their stories did not match, but he felt student #1 was the key culprit. Mr. Bennett knew student #1 had 4<sup>th</sup> period PE with the Student, and believed “for whatever reason” student #1 decided to display the air soft gun to frighten the Student. D11, pp.2-3. Mr. Bennett did not record asking questions about students’ knowledge of bullying through videos and social media posts of the May 8, 2018, event or other events.

### ***Meadowdale High School and 1:1 Paraeducator Support for 2018-2019 school year***

116. About June 14, 2018, the District’s behavior specialist learned the Student’s private therapist, Dr. Kwak, was wondering whether the District’s Meadowdale High School (Meadowdale) might be a better fit for the Student than Edmonds-Woodway for 11<sup>th</sup> grade. The therapist mentioned Meadowdale’s good reputation working with students on the Autism spectrum. P17, p. 1; McQuade, T988-989. In addition, the behavior specialist understood Mr. Bennett was wondering if the Student might benefit from a one-on-one para at Edmonds-Woodway when school started in the fall. *Id.* The behavior specialist believed this type of information was best discussed by the Student’s IEP team. McQuade, T993.

117. The same day (June 14, 2018) the behavior specialist met the Student at school. They spoke for about 40 minutes to get to know one another. The behavior specialist informed the Parents by email about how the Student talked about what he liked to do including the finer points of a favorite video game. The behavior specialist was pleased with the Student’s direct eye contact, ease in conversation and laughter. He thought the Student appeared well rested and happy. D12; McQuade, T994-995. The Mother knew the Student was not well rested that day. She knew the Student laughed when he was nervous or trying to fit in and that it would be a mistake to interpret the laughter as happiness. Mother, T714. There is no evidence that the

Mother told the behavior specialist that she believed his impressions of the Student on that day were mistaken.

118. On June 18, 2018, the school counselor spoke with the Student. She reported the Student mentioned he might not be at Edmonds-Woodway the next school year; however, he needed a schedule adjustment and wanted to inform someone in the counseling office. D13, p. 1.

119. The school counselor discussed with the Student many options for the next school year including: Running Start; Sno-Isle; e-Learning; and the Automotive Tech program offered at Meadowdale. There were many combinations and options could be blended. She described the Student as happy with the exchange of information. *Id.*

120. The Parents spoke with Mr. Schwab, assistant superintendent, on July 16, 2018. The Mother sent an email to summarize the conversation. To be successful, the Parents stated the Student needed:

- a. 1:1 support that includes school sponsored activities such as football practices, weight training;
- b. School district data on evaluation for IQ, cognitive and academic info;
- c. Cognitive and achievement scores for the IEP specifically;
- d. An independent evaluation; and
- e. Transition programming through age 21.

D15, p. 2. The Parents were “glad” the District was “in agreement” that Meadowdale was the most appropriate school for the Student with 1:1 paraeducator support for the 2018-2019 school year. The Parents expressed it did not seem fair the Student had to change schools instead of “his bully”, more probably than not reference to student #2 (the May 30, 2018, punch to groin incident).

121. The Parents informed Mr. Schwab that were working with an educational consultant and would engage as appropriate with any additional needs they identified. The Parents were pleased to hear that Mr. Schwab would authorize the District to pay to provide support for outside counseling for the Student. The Student had just started with a new local therapist who specialized in autism/PTSD. *Id.*

122. At the July 2018 meeting, the Mother learned that Meadowdale has two special education programs: a Learning Support program similar to Edmonds-Woodway’s Academic Lab, and an Intensive Learning Support program. There is no evidence that the Parents and Mr. Schwab agreed to placement in the ILS program. The discussion of the need for a 1:1 aide was something the Parents requested based on their experience at Edmonds-Woodway would likely have been inconsistent with the ILS program.

123. Assistant superintendent Schwab alerted Ms. Beglau, the director of secondary learning support, about his discussions with the Parents. If a special education student was looking at transferring schools, assistant superintendent Schwab thought that involved an IEP process and a team would need to convene. Schwab, T1125.

124. Meadowdale’s school psychologist learned that an Edmonds-Woodway special education student was planning to transfer to Meadowdale for the 2018-2019 school year. Edmonds-

Woodway referred to its special education class as the Academy Lab. At Meadowdale, the special education classes are the Learning Support Program. The Meadowdale school psychologist planned to implement the Student's existing IEP, the common practice when a special education student transferred to Meadowdale. In her opinion, a reevaluation was not necessary to implement a student's existing IEP. Sutton, T1181. The Meadowdale school psychologist was not aware of the discussions Mr. Schwab had with the Parents on July 16, 2018, or District agreement to the Parents' request to add 1:1 paraeducator support to the IEP.

125. Ms. Beglau contacted the Parents in mid- August 2018, to invite them and the Student to meet her and the Meadowdale principal prior to the start of the school year. Ms. Beglau did not mention an IEP meeting in her email, and the content of her voice mail message is not known. The Mother replied that both Parents had travel plans and would be unavailable. She agreed to be in touch the following week. D16.

126. A Meadowdale assistant principal, Ms. Dreier, emailed the Parents on August 23, 2018, to invite them to an IEP meeting on September 6, 2018. The invitation to meet informally before the start of the school year was repeated. D18, p. 2.

127. The District had not a PWN regarding its' agreement to Parents' request to allow the Student to transfer to Meadowdale, or to formally offer detailed information about a 1:1 paraeducator.

### ***Neuropsychological Examination August 17, 2018***

128. The Parents had consulted on April 23, 2018, with Beau Reilly, PhD., about conducting a private neuropsychological examination of the Student. Dr. Reilly is board certified as a pediatric neuropsychologist and clinical child and adolescent psychologist. Dr. Reilly did not testify at hearing. Dr. Reilly tested the Student on August 17, 2018. D 17, p. 1, p. 30. He administered these tests:

- a. Adaptive Behavior Assessment System (ABAS-3: Paternal, Maternal, & Grandparent Ratings)
- b. Autism Diagnostic Observation Schedule (ADOS-2, Module IV)
- c. Beery-Buktenica Development Tests of Visual-Motion Integration (BEERY: VMO; VP; MC)
- d. Behavior Assessment System for Children (BASC-3: Paternal, Maternal, Self, & Grandparent Ratings)
- e. Behavior Rating Inventory of Executive Functions (BRIEF -2: Paternal, Maternal, & Grandparent Ratings)
- f. Conners Continuous Performance Test (CPT-3)
- g. Differential Ability Scales (DAS-II: School Age Core & Selected Diagnostic Clusters)
- h. Delis-Kaplan Executive Function System (D-KEFS – Selected Subtests)
- i. Wechsler Intelligence Scale for Children (WISC –V: Selected Subtests)

*Id.*, p. 3. Overall, Dr. Reilly reported the results obtained were a valid representation of the Student's level of functioning at that time.

129. Dr. Reilly reported asking the Student during a clinical interview about prominent stressor's in his life. The Student described "the biggest things that stresses me out is probably school I guess. Sometimes it's been hard for me to go." He described his coping skills and general way

of dealing with stress as relaxing listening to music or drawing, riding his bike or going on a walk. *Id.*, p. 4. The Student explained he lived with his mom, dad, younger sibling, and described the family pets. He thought I got along with his family okay but sometimes had arguments with his parents. He liked to hang out with a friend he had known from 4<sup>th</sup> grade who lived in another suburb. They saw each other about once monthly and enjoyed hanging out and playing video games and watching YouTube videos. *Id.*, p. 19.

130. Dr. Reilly's diagnoses differed slightly from Seattle Children's May 2018 diagnoses: Autism Spectrum Disorder; Persistent Depressive Disorder; Generalized Anxiety Disorder; Attention Deficit Hyperactivity Disorder, and Posttraumatic Stress Disorder stemming from the May 2018 incident. *Id.*, p. 22. Dr. Reilly's impressions were that these deficits would most commonly manifest in the following behaviors:

- a. Significant challenges maintaining focus
- b. Overactive impulsivity
- c. Persistent worry and experiences of stress
- d. Recurrent temper outbursts
- e. Low mood states characterized by self-critical statements
- f. Impairment of social interaction ability

Collectively, he reported the Student's constellation of symptoms is most accurately accounted for by the combined comorbid effects of autism spectrum disorder and combined presentations of ADHD with internalizing symptoms from persistent depressed mood and chronic anxiety. *Id.*, pp. 21-22.

131. Dr. Reilly made recommendations regarding the Student's education. He strongly recommended the Student's IEP team at Edmonds-Woodway be provided with a copy of his report so that his neurocognitive profile could be factored into his special education plan. To ensure a smooth transition back into his education settings, he opined the Student would greatly benefit from:

- a. Preferential scheduling options that would allow him to structure his day in a manner that increases organizational skills and regulatory control. Ideally, frontloading of all courses that are more homework-intensive during the morning periods;
- b. The option of a study skills or organizational class in the afternoon followed by less homework intensive courses and electives;
- c. Structure that would allow the Student to participate in more organizationally-intensive classes first and then organize a work plan or schedule of task completion with a teacher during a study hall hour that he could then take home and implement each day

*Id.*, p. 24.

132. Dr. Reilly recommended accommodation for learning:

- a. Extended time to complete tests and quizzes, reports or long-term projects with deadlines
- b. Testing options in a separate location if he prefers, particularly when extended time is needed

- c. Visual guides or lecture notes
- d. Options of audio recording lectures
- e. If group pairings are necessary, pair with peers who have strong organizational and social skills for modeling
- f. Checking in with a special education teacher during a study skills or organizational skills class to build a work plan for each day

*Id.*

133. Dr. Reilley recommended service supports for emotional stability:

- a. To ensure smooth re-entry into school, scheduled appointments with the school counselor during the initial part of the year to check in concerning emotional regulation and general coping, treat as high priority given Student's statements about bullying to Seattle Children's staff allowing predetermined opportunities for checking in and support, can be before or after school hours to reduce feelings of being different
- b. A predetermined plan for emotional regulation or break opportunities if he needs them during the day, ideally a simple nonverbal signal he could give a teacher to use the restroom, take a short walk, collect himself at a designated location, contact the school counselor)
- c. Provided with access to his therapist at any time as necessary via phone or text contact for more immediate problem solving in the event it becomes necessary

*Id.*

***Parental Placement at Boulder Creek Academy***

134. On the evening of Sunday, August 26, 2018, the Parents emailed the District. D18. They explained that as the 2018-2019 school year approached the Student's anxiety regarding returning to school had increased. With the assistance of educational consultant/ nurse practitioner for child psychiatry, Dana Doering, the Parents decided a District school would be inappropriate to meet the Student's needs. They had decided that a therapeutic placement was the only appropriate placement for the Student to access his education. The Parents informed the District that they had placed the Student at Boulder Creek in Idaho. They described Boulder Creek as an accredited program. They rejected "the District's proposed placement at Meadowdale and asked the District to agree to place the Student at Boulder Creek. If the District would not agree to the Boulder Creek placement, the Parents were serving notice to the District that the Parents were unilaterally privately placing the Student and requesting reimbursement for the placement. The Parents were unable to attend the IEP meeting but suggested two available alternative meeting dates and times. *Id.*, pp. 1-2.

135. The Mother explained in her declaration the Parents' considerations:

As the start of the school year approached, [Student] became more agitated and anxious. He had trouble concentrating. [The Student] had nightmares about the gun incident. He was easily angered at home and displayed some aggressive posturing towards family members. [The Student's] treatment providers said he was experiencing Post Traumatic Stress Disorder. On August 13, 2018, [the Student] met with his psychotherapist. After that session [the Student] shared with [his Father] and me how anxious he was about attending Meadowdale High School

in the Fall. [The Student] expressed conviction that he couldn't feel safe at Meadowdale High School or anywhere else in the District.

[His Father] and I realized it was not possible for [the Student] to heal if he remained in the District. The social media bullying had not abated. If anything it had increased. From [the Student's] perspective everyone was laughing at him. Our entire family knew that students throughout the District had seen and joked about the memes and videos created and distributed just to make fun of [the Student]. [The Student] was not going to escape the negativity by simply moving to a different school within the District. I felt it was critical that we find a place where [the Student] felt safe or he would never be able to finish high school. The safe place we found was Boulder Creek Academy.

P48, p. 13.

136. The Parents' educational consultant had advance access to Dr. Reilly's August 27, 2018, report, by about August 24, 2018. Doering, T230-231. Ms. Doering has a clinical practice as a psychiatric nurse practitioner. *Id.*, T226. In her opinion, Dr. Reilly's report was a "game changer" that made her rethink and include two residential options as possibilities for the Parents' consideration. *Id.*, T230. She focused on one of the recommendations for service supports for emotional stability: that the Student have access to his therapist at any time as necessary for immediate problem. She interpreted the service as "perpetual and immediate." *Id.*, T231. Ms. Doering found it hard to imagine providing such access anywhere other than a residential placement, and in addition she believed there was a "worsening situation from this kid."

137. Ms. Doering was "looking at using Boulder Creek as a more – a more appropriate assessment setting for a short period of time to see if we could get him unstuck on some of his more extreme fears and paranoidias about returning to school." *Id.*

138. Ms. Doering made what she described as a "very unusual but well-fitted request" to see if Boulder Creek would they be willing to conduct a short-term assessment in a classroom setting. She did not identify the staff person who specifically affirmed that Boulder Creek could "accommodate" such an unusual request." *Id.*, T256. Her testimony was contradicted by Dr. Unis, the Boulder Creek psychiatrist, who stated Boulder Creek does not accepts students for short-term, 30-45 day assessments periods. Unis, T607.

139. The Parents' personal check to BCA for \$13,683.84, was dated August 31, 2018, for "Aug, Sept. 2018 + Enroll Fee". The monthly tuition was \$10, 250. P50, p. 46.

140. The typical range of stay for a BCA student is one to two years. Unis, RP 170. The Student lived on the BCA campus until spring 2020. P50, p. 44; Unis, T171.

### **October 2018 Reevaluation**

141. The Student/Parents allege the October 28, 2018, reevaluation failed to address the causes of the Student's inability to attend school at the end of the 2017-2018 school year and to recommend educational programming, placement, and related services to address this inability to attend school. This issue includes whether the District significantly excluded the Parents from

the educational process by disregarding the input of Parents and their professional providers concerning the Student's psychological profile and needs.

142. The Parents consented to reevaluation and did not suggest any other areas for assessment. There is no claim related to the areas of assessment. D21. The reevaluation covered existing data, social/emotional, behavior, academic, age appropriate transition assessment, medical-physical, general education, adaptive and cognitive. *Id.*, p. 2. The Parents did not request an FBA. Brown, T1126.

143. The reevaluation changed the Student's eligibility category to Autism. D23, p.6. The reevaluation recommended SDI in learning strategies and organizational skills but in the cognitive area. It recommended SDI in emotional regulation under the social/emotional area. It recommended SDI in social skills, in the adaptive area. *Id.*

144. The reevaluation recommended SDI in emotional regulation in the area of social/emotional, and social skills in the area of adaptive. It continued a goal of learning strategies and organizational skills, but in the area of cognitive. D23, p. 8.

145. The reevaluation team considered information from Meadowdale staff about the learning support program (LS) and the intensive or ILS program. Brown, T1135-66. The Parents dissented to the October 2018 reevaluation. D23, p. 23. Their dissent focused on the May 8, 2018, gun incident and its impact on the Student. They did not make a specific request for additional SDI in the areas assessed, or in other areas. They asserted their believe placement at Boulder Creek was the only place the Student could get the therapeutic needs required after the gun incident and ensuring trauma and PTSD. The Parents strongly felt that the Student would not be alive if he had not gone to Boulder Creek. They did ask the reevaluation team to assess or determine the causes of the Student's inability to go to school at the end of the 2017-2018 school year. There is no evidence the District refused a request to address the causes for the Student's attendance challenges at the end of the prior school year. There is no evidence the Student was resisting attending school at Boulder Creek.

146. The District considered Ms. Doering's opinion that Dr. Reilly's report was a game changer. D23, p. 15. However, her opinion that residential placement was necessary to meet the Student's needs, not a District high school, was based on a recommendation by Dr. Reilly for access to his therapist at any time necessary via phone or text contact to allow for more immediate problem solving in the event it became necessary. The recommendation is in the section describing service support for emotional stability at school D17, p. 25. Ms. Doering described the recommendation as "perpetual." Doering, 230-32. The report does not contain that word, and the evidence does not support a finding that Dr. Reilly was recommending the Student have unlimited, immediate, perpetual access to a private therapist. Such a recommendation would have been inconsistent with his public-school recommendations. Notably, the Parents did not ask Dr. Reilly to testify in this matter.

147. The evidence does not show the District ignored the Parents' concerns. However, the District did give greater weight to the hospital discharge recommendations from PBMU and significant weight to the report of Dr. Reilly, both of which addressed the Student's transition back to Edmonds-Woodway. Neither report indicated a need for more restrictive setting than the District's learning support programs. The District team considered Dr. Unis's opinion made in early September 2018 that he believed Boulder Creek was the least restrictive environment for



the Student. Unis, T557. However, the District gave greater weight to the lack of support for that opinion among the other medical providers.

148. The Parents' shared with the District staff information that was understandably very upsetting. It involved social media posted by District students that were unkind, included mean comments and images that made fun of the Student. However, the Parents also shared their belief the Student was unaware of the social media postings. P15.

### **November 2018 IEP**

149. Mr. Brown, a special education teacher in the LS and the ILS programs at Meadowdale, drafted an IEP based on the reevaluation. D24, Brown, T1356-66.

150. The findings made address two concerns of the Student/Parents: (a) the Student's need for protection from bullying and harassment, to be safe to concentrate on his studies, without further deterioration of emotional, behavioral and social functioning; and (b) the Student's autism-related deficits in social skills, behavioral, self-advocacy and emotional regulation deficits, particularly related to trauma in a school setting.

151. The Student's November 2018 IEP team was considering the recommendations for SDI in the October 2018 reevaluation, which involved the intensive ILS program and 24.1% of time in general education. In addition, the preponderance of credible evidence is that from and after the Parents' unilateral placement of the Student out-of-state in late August 2018, there was no indication of a plan for his immediate return. The evidence supports the Parents' reasons for making the Boulder Creek placement were not strictly related to educational concerns. There is little evidence of temper or aggression by the Student at school, but significant evidence of physical outbursts at home.

152. The November 2018 IEP recommended SDI delivered by special education teachers totaling 1950 minutes per week. D24, p. I17. Relevant here are:

- a. 200 minutes/ 1 time daily in emotional regulation
- b. 20 minutes/ 3 times weekly in social skills

*Id.* The District recommended a related service of a 1:1 paraeducator aide for 300 minutes/ 1 time weekly. The recommendations included supplementary aids and services:

- a. Counseling with school psychologist 2 hours/ 1 time weekly
- b. 1:1 aide with paraeducator (in general education setting), 1650 minutes/1 times weekly
- c. Counseling with school counselor of 30 minutes/1 time weekly

*Id.*

153. The November 2018 IEP had three measureable annual goals to support the Student's post-secondary goals:

Emotional Regulation:

By 11/22/2019, when given a situation that causes anxiety or emotional distress, [the Student] will indicate to the teacher, verbally or non-verbally, that he needs a break,

improving emotional regulation from indicating his emotions to teachers in 1 out of 5 times to indicating his emotions to teachers in 3 out of 5 times, as measured by classroom observations and tally sheet

**Social Skills:**

By 11/22/2019, when given the opportunity to engage in a supervised setting, [the Student] will attend and participate with peers, improving social skills from attending 0 events per month to attending 3 events per month, as measured by observation and attendance.

**Learning Strategies and Organizational Skills:**

By 11/22/2019, when given an assignment [the Student] will record the assignment in his planned improving missing assignment rate from 7 missing assignments to no more than 2 as measured by Skyward and teacher reports

Id., p. 14

154. Ms. Doering continued to recommend placement at Boulder Creek. She acknowledged at hearing the Meadowdale's ILS program sounded lovely with well-designed autism-specific supported class. She agreed that the program had an adequate classroom setting for the Student. Dr. Unis, the Boulder Creek psychiatrist, recommended that Boulder Creek was the appropriate, least restrictive placement for the Student; however, at hearing he admitted he made that recommendation relied primarily on the reports of the Parents and Student. He had not read the PBMU records, of Dr. Reilly's report, or any of the Student's educational records before he determined Boulder Creek was appropriate in September 2018. However, he testified he did not disagree with Dr. Reilly's report when it was received in the Student's records for his review. He was also unable to give an opinion regarding the Student's educational needs. Mr. Fabrizio, based on review of the proposed exhibits in this case, asserted the November 2018, February 2019, and March 2018 IEP were not appropriate. However, he conceded he was unfamiliar with the ILS program proposed by the District

155. The District does not dispute the absence of a general education teacher at the November 2018 IEP meeting. The Parents did not excuse the absence. Mr. Brown

***February 2019 IEP, March 2019 IEP and PWN***

156. The February 2018 and March 2018 IEPs added two emotional regulation goals and a social skills goal at the request of the Parents. D27. There were no other substantive changes.

157. The new goals were:

**Emotional Regulation: Coping Skills**

By 11/22/2019, when given a situation that creates anxiety or distress [the Student] will identify and use a coping strategy from a predetermined list of options improving ability to copy with adversity and regulate emotions from using none of the predetermined coping strategies in 1 of 5 situations to using one of the predetermined coping strategies in 4 of 5 situations as measured by teacher and para-educator observations and checklists.

**Emotional regulation: Preparation Skills**

By 11/22/2019 when given the prospect of a large group situation (lunch, assembly, etc.) [the Student] will confer with a trusted adult about potential concerns and options improving emotional regulation and preparation from conferring with a trusted adult in 0 of 5 opportunities to conferring with a trusted adult in 3 of 6 opportunities as measured by observations and checklists

**Social Skills: Identifying Social Cues**

By 11/22/2019, when given a social setting that causes anxiety or distress (i.e. people taking out phones, joking/laughing, etc.) that causes a negative perception of the interaction, [the Student] will confer with a trusted adult (i.e. teacher, counselor, school psych., para, etc.) to confirm his negative perception of the event, improving his ability to accurately read social cues and events from conferring with a trusted adult in 0 of 5 incidents to conferring with a trusted adult in 3 of 5 incidents as measured by observations and checklists

Id., pp. 12-13

158. The final IEP meeting was held March 20, 2019. The PWN issued by the District informed the Parents of the District's intent to continue the IEP reviewed that date. D31. It informed Parents the District was ready and able to serve the Student if the Parents wished to return him to the District. The team reviewed goals suggested by the Parents but determined they were more appropriately considered teaching strategies that are used in the ILS classroom at Meadowdale. There is a reference to "gatekeeping" goal rejected, without clarification of the term. The evidence is less clear about the intent. The team rejected placement in a contracted, residential facility because the District was ready to provide SDI as outlined in the IEP and supported by the Student's most recent evaluation. Id., p. 3.

159. In fall 2019, Mr. Brown communicated to Parents the District's continued willingness to service the Student in the ILS program at Meadowdale.

***Remedies***

160. The Student/Parents request compensatory education and other equitable remedies. Specifically they request the District reimburse them for the cost of tuition at Boulder Creek at the rates noted in the finding above. They request reimbursement for educational consultation report of Ms. Doering, in the amount of \$7,750, and for Dr. Reilly, in the amount of \$1,235.38. P50, p. 1, and p. 45.

**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. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005). Because the Parents are seeking relief, they bear the burden of proof in this case. Neither the IDEA nor OSPI regulations specify the standard of proof required to meet a party's burden of proof in special education hearings before OAH. Unless otherwise mandated by statute or due process of law, the U.S. Supreme Court and Washington courts have generally held that the burden of proof to resolve a dispute in an administrative proceeding is a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. 91, 98-102, 101 S. Ct. 999 (1981); *Thompson v. Department of Licensing*, 138 Wn.2d 783, 797, 982 P.2d 601 (1999); *Hardee v. Department of Social & Health Services*, 172 Wn.2d 1, 4, 256 P.3d 339 (2011). Therefore, the Parents' burden of proof in this matter is preponderance of the evidence.

3. Under RCW 34.05.461(4):

... Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding officer determines that doing so would not unduly abridge the party's opportunity to confront witnesses and respond to the evidence.

Hearsay is a statement either oral or written, made by some person other than the person testifying at the hearing, offered in evidence to prove the truth of the statement made by the person who is not at the hearing. (E.R. 801.) Hearsay is evidence which is not supported by live testimony and is not subject to cross-examination. Additionally, RCW 34.05.452 provides that:

Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their own affairs.

### ***The IDEA and FAPE***

4. Under the IDEA, a school district must provide "a free and appropriate public education" (FAPE) to all eligible children. In doing so, a school district is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 200-201, 102 S. Ct. 3034 (1982).

5. In *Rowley*, the United States 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.

*Rowley*, 458 U.S. at 206-07 (footnotes omitted).

6. The first inquiry is whether a District has complied with the procedures established by the IDEA. *Id.* at 206-07. Procedural safeguards are essential under the IDEA, particularly those that protect the parents' right to be involved in the development of their child's educational plan. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir. 2001). Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

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

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

7. The next question is whether the District has violated the substantive requirements of the IDEA. The Supreme Court recently clarified the substantive portion of the *Rowley* test as 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." *Andrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999, 197 L.Ed.2d 335 (2017). Additionally, the Student's "educational program must be appropriately ambitious in light of his circumstances . . . ." *Id.*, 1000.

8. The Ninth Circuit has explained the *Andrew 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.*, 858 F.3d 1189, 1201 (9th Cir.), *cert. denied*, 138 S. Ct. 556 (2017) (citations omitted; internal quotation marks omitted). The determination of reasonableness is made as of the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is "a snapshot, not a retrospective." *Id.*

9. The determination as to whether an IEP is reasonably calculated to offer a student FAPE is a fact-specific inquiry that must focus on the unique needs of the student at issue. As the U.S. Supreme Court has made clear, "A focus on the particular child is at the core of the IDEA," and an IEP must meet a child's "unique needs." *Andrew F.*, 137 S.Ct. at 999 (emphasis in original). "An IEP is not a form document," and the "essential function of an IEP is to set out a plan for pursuing academic and functional advancement." *Id.* "Above all, an IEP team is charged with developing a 'comprehensive plan' that is 'tailored to the unique needs of a particular child.'" *L.C. on behalf of A.S. v. Issaquah Sch. Dist.*, 2019 WL 2023567 at \*21, 119 LRP 18751 (W.D. Wash. 2019)(quoting *Andrew F.*, 137 S.Ct. at 994).

## **Scope of Issues**

10. RCW 34.05.461(4) provides: “[f]indings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.” Here, the matters officially noticed are the issues identified in the prehearing order. See Letter from Student/Parents’ counsel withdrawing and clarifying issues dated September 18, 2019; Sixth Prehearing Order dated September 29, 2020. Therefore, no findings have been made, no conclusions were drawn, and no remedies granted in this order on the issues the Student/Parents chose to remove from the Complaint.

## **Student’s Residence**

11. The IDEA requires school districts to provide a FAPE to students residing within their boundaries. 20 USC §1415(a)(1)(A); WAC 392-172A-02040. State law determines a student’s residency. *Union Sch. Dist.*, 15 F.3d XX at 1525; *Wise v. Ohio Dep’t of Educ.*, 80 F.3d 177, 183 (6<sup>th</sup> Cir. 1996); *J.S. v Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175, 1191-92 (W.D. Wash 2002). WAC 392-172A-01160 adopts for special education the definition of residency used for school transfers in WAC 392-137-115. To define student residence, WAC 392- 137-115 provides:

As used in this chapter, the term "student residence" means the physical location of a student's principal abode—i.e., the home, house, apartment, facility, structure, or location, etc.—where the student lives the majority of the time. The following shall be considered in applying this section:

- (1) The mailing address of the student—e.g., parent's address or post office box—may be different than the student's principal abode.
- (2) The student's principal abode may be different than the principal abode of the student's parent(s).
- (3) The lack of a mailing address for a student does not preclude residency under this section.
- (4) If students are expected to reside at address for twenty consecutive days or more.

12. The Student/Parents failed to prove by a preponderance of evidence that their intent when they emailed the District on August 26, 2018, was for a short-term temporary placement at Boulder Creek for the limited purpose of obtaining assessment of the Student in a school setting they considered to be safe. Ms. Doering claimed it was not until October 4, 2018, that she recommended to Parents a full placement at Boulder Creek. Ms. Doering’s testimony was inconsistent with the contents of the Parents’ email, and with the Mother’s declaration prepared for hearing. The Student/Parents offered no evidence of any assessments of Student completed at Boulder Creek in September 2018 or October 2018. The Student/Parents did not offer evidence to rebut Dr. Unis’s testimony that Boulder Creek does not accept students on a short-term basis and that the standard placement at Boulder Creek is between one and two years. The Student and Parents approved Boulder Creek’s master treatment plan on a monthly basis starting in September 2018, which plan was for a one-year placement. The Student/Parents failed to prove that they communicated to the District that they rescinded or modified the statements expressed in their email of August 26, 2018. The preponderance of evidence does not prove that the Parents’ communicated to District staff that they (a) no longer rejected a District school as an appropriate placement for the Student; (b) no longer asked the District to place the Student at Boulder Creek; (c) no longer asked the District to reimburse for a therapeutic residential

placement at Boulder Creek; and (d) instead limited their reimbursement request to a short time in fall 2018 in order to obtain school-setting-based assessments of the Student for the purpose of informing the Student's IEP team of the appropriate placement.

13. The findings support a conclusion that the Parents' made a decision to place the Student in an out-of-state therapeutic residential school on August 26, 2018. Since late August 2018 and during all times at issue in the Complaint, the Student has lived the majority of the time at Boulder Creek. It has been the Student's principal abode.

14. Therefore, the preponderance of evidence supports a conclusion that from August 28, 2018, the Student was not a resident of the District and the District no longer had an obligation to provide the Student with a FAPE. However, the District nevertheless chose to continue to meet with Parents, conducted a reevaluation, and offered IEPs in fall 2018 and in 2019. The Student's non-resident status does not diminish the IDEA standards for determining the appropriateness of the District's actions after August 28, 2018.

### ***Statute of Limitation***

15. Under WAC 392-172A-05080, a due process hearing request must be made "within two years of, and allege a violation that occurred not more than two years before, the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint . . . ."

16. OAH has jurisdiction over the two-year period prior to filing of the complaint on January 6, 2020. The Student/Parents did not plead an exception to WAC 392-172A-05080 and withdrew claims dating back to fall 2015 and for periods outside the two-year statute of limitation period. See Second Prehearing Order dated March 20, 2020; Third Prehearing Order dated April 13, 2020. Therefore, no findings or conclusions are made to the extent Student/Parents' evidence and arguments challenged the March 2017 reevaluation and March 2017 IEP.

### ***Appropriateness of the March 2018 IEP***

17. When determining whether an IEP is appropriate, the "question is whether the IEP is reasonable, not whether the court regards it as ideal." *Rowley*, U.S. at 206-07. The determination of reasonableness is made as of the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is "a snapshot, not a retrospective." *Id.*

18. An IEP must also contain a statement of annual goals, including academic and functional goals designed to meet the student's needs that result from his disability to enable him to be involved in and make progress in the general education curriculum and meet each of a student's other educational needs that result from the student's disability. WAC 392-172A-03090(1)(b)(i); 34 § CFR 300.320(a)(2). For students who take alternate assessments aligned to alternate achievement standards, the IEP must include a description of benchmarks or short-term objectives. *Id.* There must be a relationship between the present levels of performance and the goals and objectives. *Seattle Sch. Dist.*, 34 IDELR 196, 34 LRP 226 (SEA WA 2001). Goals must be stated with enough specificity that they are understandable and must be measurable in order to determine whether a student is making progress toward the goals.

19. The IDEA does not specify the number of goals that must be included in an IEP, but there should typically be at least one goal for each area of need. See, e.g., *Bellflower Unified Sch. Dist.*, 54 IDELR 66 (SEA CA 2010) (IEP deficient because it did not contain goals to address student's deficits in attending to group instruction); *Flagstaff Arts and Leadership Academy*, 113 LRP 27180 (SEA AZ 2013) (IEP deficient because it failed to provide goals to properly address basic reading, reading fluency, life skills, and other areas of need). An IEP need not contain every goal requested by a parent or recommended by the parent's experts. See *G.D. v. Torrance Unified Sch. Dist.*, 112 LRP 12078 (C.D. Cal. 2012) (IEP goals not inappropriate where the district included goals addressing the student's significant needs while excluding those it deemed unnecessary or not age appropriate).

20. In *Grafton School District v. JL*, 120 LRP 20299 (E.D. Wisc. 2020), the court considered that "adequate progress" will necessarily vary from child to child, but the Supreme Court has provided some guidance. In the case of a child who is fully integrated in the regular classroom, an IEP "typically should . . . be 'reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.'" *Id.*, quoting *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, 203-204 (1982). In the case of a child "not fully integrated into the regular classroom and not able to achieve on grade level," the IEP should be "appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom." *Endrew F.*, 137 S.Ct. at 1000.

21. There is no evidence the District rejected any request by Parents or Student made at the March 2018 IEP team meeting. There is no evidence the District failed to specify at least one goal for the area of need identified in the March 2017 reevaluation under social/emotional: the area of learning strategies and organizational skills. The preponderance of evidence proves a single failure by the District: to discuss fully the Student's rate of missing assignments and progress, or lack of progress, toward his goal. However, the Student/Parents have failed to prove that a consequence of that error was the District's failure to address the Student's social skills, self-advocacy, behavioral skills, and emotional regulation. If the Student's IEP team had more fully discussed his goal, the preponderance of evidence supports a finding the discussion would have reasonably been limited to information known about the sole area of need identified in the March 2017 reevaluation: learning strategies and organizational skills. A full discussion of the goal by the Student's March 2018 IEP team may have reasonably led to a recommendation for reevaluation to identify another area of need for the Student in the social/emotional area in addition to learning strategies and organizational skills. However, the Student/Parents limited the issue of District failure to initiate a reevaluation to May 2018, not the period from January 2018 to the date of the March 2018 IEP meeting.

22. Parents' expert, Mr. Fabrizio, testified at length about indications of Student's social skills, self-advocacy, behavioral skills, and emotional regulation needs in BASC-3 ratings reports and teacher input. However, no findings were made based on that testimony because the Student/Parents withdrew challenges to the March 2017 reevaluation and March 2017 IEP, and withdrew Issues (2)(a) and (c)<sup>9</sup>. It is disingenuous in context of lack of challenge to the March

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<sup>9</sup> Relating to protection from bullying and harassment so he could be safe, concentrate on his studies, and in order to prevent further deterioration in his emotional, behavioral, and social functioning; and to provide instruction in social skills, pragmatic language, self-advocacy, behavioral skills, and emotional



2017 reevaluation to assert the District failed to add goals under the area of learning strategies and organizational skills in the Student's March 2018 IEP to address social/emotional areas in areas in which the Student had not qualified for SDI.

23. For the above reasons, the Student/Parents have not proved by a preponderance of evidence that the District's March 2018 IEP failed to address the Student's social skills, self-advocacy, behavioral skills and emotional regulation. The Student/Parents have not proved the March 2018 IEP was not appropriate. They have not proven the District violated the IDEA and denied the Student a FAPE in that regard.

### ***Failure to Initiate Reevaluation in May 2018***

24. 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).

25. Once a district is on notice that a Student may have a disability that requires special education services, a District must decide whether or not to evaluate a student within a reasonable time period. See *W.B. v. Matula*, 67 F.3d 484, 501 (3<sup>rd</sup> Cir. 1995).

26. The Ninth Circuit has held that "the 'informed suspicions of parents, who may have consulted outside experts,' trigger the requirement to assess, even if the school district disagrees with the parent's suspicions because '[t]he identification [and assessment] of children who have disabilities should be a cooperative and consultative process.'" *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1120 (9<sup>th</sup> Cir. 2016). Further,

Whether a school district had reason to suspect that a child might have a disability must be evaluated in light of the information the district knew, or had reason to know, at the relevant time, not "exclusively in hindsight." *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9<sup>th</sup> Cir. 1999) (quoting *Fuhrmann v. East Hanover Bd. of Educ.*, 993 F.2d 1031, 1041 (3<sup>d</sup> Cir. 1993)). However, some consideration of subsequent events may be permissible if the additional data "provide[s] significant insight into the child's condition, and the reasonableness of the school district's action, at the earlier date." *E.M. v. Pajaro Valley Unified Sch. Dist.*, 652 F.3d 999, 1006 (9<sup>th</sup> Cir. 2011) (quoting *Adams*, 195 F.3d at 1149).

*E.S. v. Conejo Valley Unified Sch. Dist.*, 2018 U.S. Dist. LEXIS 126251 (C.D. Cal. 2018). Unlike the case of *Timothy O.*, *supra*, there is no evidence the District relied on informal, unscientific observation of the Student or lacked information about the Student's diagnoses and recent hospitalization.

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regulation, and failed to provide a social skills group and sufficient counseling sessions for depression and other mental illness, and failed to provide regular check-ins with a counselor during the day.

27. The Student/Parents failed to prove they requested a reevaluation of the Student in May 2018. Accordingly, a reevaluation was only required if the Student's educational or related services needs warranted one in May 2018.

28. The Student/Parents withdrew allegations that the District failed to initiate a reevaluation and a functional behavioral analysis in response to the Student's educational or related services needs for time prior to May 2018. Therefore, the analysis here is based on the premise the District was not required to initiate a reevaluation of the Student prior to May 2018.

29. The Student did not have a discipline record in his 10<sup>th</sup> grade year until spring 2018, and the evidence shows a single incident when his teacher had to call the vice president in April 2018. The Student did not repeat that behavior thereafter. The Student witnessed a fight at school in April 2018. There is no evidence the Student was having deteriorating functional and academic performance related to being a witness. There is no evidence the Student expressed concerns about the fight he witnessed, or that he was having problems at school caused by the fight he witnessed. The District knew in April 2018 that the Student was experiencing stress related to events at home and with family, and that his behavior at home was of concern to his Parents. The evidence does not establish there were significant behavioral issues at school prior except for May 3, 2018. The District alerted Parents to concerns about the Student's unusual behavior in class (bundled up, sweating, in a corner, curled up, statements about not caring). However, the Student returned to school the next day and there is no evidence that he repeated that behavior.

30. The Student was a victim of a bully at school on May 8, 2018, when student #1 displayed a realistic-looking handgun and pointed it at the Student's head. The District learned on May 21, 2018, that the Student had given a second declaration about the event on May 11, 2018. The second declaration differed from the oral and written statements he had given the District on May 8, 2018. The Mother read aloud to District staff from the Student's second declaration, in which he expressed fear for his life and worry about what would happen if he saw student #1 again or saw him at school. The District had expelled student #1 from school. The Parents made reports the Student had been a victim of bullying since middle school years. The District suggested adding to the Student's IEP a related service of counseling with the behavior specialist. Between May 22, 2018, when the vice principal met with the Student and his Mother, through May 31, 2018, there is no evidence that while at school the Student displayed behaviors that were of concern to the District except for that he missing classes when hospitalized and until he returned, and that he would continue to miss some assignments during the gradual re-entry period. The District agreed to Parents' request to plan for the Student to recoup and his credits for his second semester classes.

31. The Mother regularly reported on days when the Student struggled going to school during the month of May 2018, and days he called her to pick him up early. However, she and the Student's Father also reported days in May 2018 when the Student was eager for school or appeared to be doing better. There is no evidence that a pattern of school refusal was significant during May 2018, such that it would warrant the District to initiate a reevaluation. The Mother reported a bullying incident happened at school on May 30, 2018. The assistant principal immediately decided he needed to give instructions to teachers and District staff to minimize opportunities for bullying events while the Student was at school. The act of giving instructions to teachers and staff in the form of a temporary safety plan for the few school days remaining in

the term is not proof that the District knew the Student's educational or related services needs warranted a reevaluation.

32. For the reasons above, the Student/Parents have not met their burden of proving that the Student's needs warranted a reevaluation in May 2018. The Student/Parents have not proven the District violated the IDEA and denied the Student a FAPE on this issue.

### ***Appropriateness of the June 2018 IEP***

33. The Student/Parents challenged failure to conduct a reevaluation in May 2018. However, they did not challenge the revision assessment approved by the Student's IEP team on May 31, 2018, which team included his Parents. Therefore, the analysis of the appropriateness of the June 2018 IEP is in context of the May 31, 2018, revision assessment. The revision assessment did not change his eligibility category, or recommend a change to the social/emotional area in which he qualified for SDI in learning strategies and organizational skills. However, because of the Student's recent hospitalization, the assessment revision recommended adding counseling with a District behavior specialist as a related service.

34. The Student/Parents withdrew as issues allegations that the June 2018 failed to address the Student's need for protection from bullying and harassment so he could be safe and concentrate on his studies, and to prevent further deterioration of his emotional, behavioral and social functioning. They replaced that issue with allegation the District's June 2018 IEP failed to address bullying and harassment. The analysis below is limited to the replacement issue.

35. The Student/Parents struck issue language about the District's failure to provide goals and objectives to address Student's autism-related deficits, specifically social skills, behavioral and pragmatic language, self-advocacy, and emotional regulation deficits, and to provide a sufficient number of goals in the June 2019 IEP to address the Student's needs. They replaced that issue with whether the June 2018 IEP failed to address the Student's social skills, self-advocacy, behavior and emotional regulation deficits. The analysis below is limited to the replacement issue.

### ***Failing to address bullying and harassment***

### ***Failing to address the Student's social skills, self-advocacy, behavior, and emotional regulation***

36. There is no evidence the District rejected any request by the Parents or Student made at the May 31, 2018, IEP team meeting. There is no evidence the District failed to specify at least one goal for the area of need identified in the March 2017 reevaluation and May 2018 assessment revision under social/emotional: the area of learning strategies and organizational skills. The issues for hearing do not include alleged violations of procedural rules, such as rules relating to notice, whether the District properly convened meetings in May 2018, or whether the IEP team should have reconvened in June 2018. Therefore, no findings or conclusions were made regarding evidence offered that is outside the scope of the issues.

37. As happened in March 2018, when the Student's IEP team met on May 31, 2018, the team members did not discuss the goal related to the missing assignment rate at the May 31, 2018, IEP meeting. The Student had obviously missed classes and assignments while hospitalized, and in the days after his release while his Parents were deciding whether he should return to school. More probably than not, the Parents' reports at the May 21, 2018, meeting that the PBMU recommended they not leave the Student alone, and the Student's expressed fears and worries

about the May 8, 2018, incident, were the primary source of team discussions about possibly adding additional counseling as a related service. The assessment revision process followed. Therefore, the events in the Student's life at home and at school and any patterns of concern that occurred or developed after the May 31, 2018, IEP team meeting are not relevant to this analysis.

38. The Student/Parents have not proved that a full discussion of the goal by the Student's IEP team on May 31, 2018, would have reasonably led the team to add more goals in the area of learning strategies and organizational skills. This is not a parental participation issue, but rather an issue with the area of need identified in the March 2017 reevaluation and May 31, 2018, assessment revision. Their argument is that the District's June IEP violated the IDEA and denied the Student a FAPE because it lacked goals in the areas of social skills, self-advocacy, behavior, and emotional regulation. The District asserts the Student had not qualified for SDI in those areas. Consistent with his review of the March 2018 IEP, the Parents' expert, Mr. Fabrizio, testified regarding the inappropriateness of the June 2018 IEP. It is disingenuous in the context of a lack of challenge to the March 2017 reevaluation and May 2018 assessment revision, and the withdrawn and stricken issues, to assert the District failed to add goals under the area of learning strategies and organizational skills in the Student's June 2018 IEP to address bullying and harassment and the Student's social skills, self-advocacy, behavior, and emotional regulation, for which he had not qualified for SDI.

39. It is undisputed that the June 2018 IEP does not include the vice principal's instructions to teachers and staff about a safety plan. The Student's IEP team knew the vice principal had drafted instructions on May 31, 2018, in response to a bullying incident on May 30, 2018. The preponderance of evidence is that the instructions to teachers and staff were understood to be of temporary duration for the few school days remaining in second semester term. To the extent the Student/Parents' and their expert, Mr. Fabrizio, argue that these temporary instructions to staff needed to be included in the IEP, they have not proven the June 2018 IEP inappropriate on that basis or that failure to include the temporary staff instructions on a more permanent basis to be in effect for the following school year resulted in a denial of FAPE to Student.

40. For the above reasons, the Student/Parents have not proved by a preponderance of evidence that the District's June IEP failed to address Student needs related to bullying and harassment, and social skills, self-advocacy, behavior, and emotional regulation. They have not proven the District violated the IDEA and denied the Student a FAPE on these issues.

#### *Failing to provide summer instruction*

41. While the District in its closing brief was uncertain what Student/Parents meant by summer instruction, the Student/Parent's closing brief addressed extended school year (ESY) services here and in relation to their argument about lost educational opportunity. Both parties analyzed ESY in closing briefs.

42. WAC 392-172A-02020 provides:

(1) Extended school year services means services meeting state standards contained in this chapter that are provided to a student eligible for special education:

- (a) Beyond the normal school year;
- (b) In accordance with the student's IEP; and

- (c) Are provided at no cost to the parents of the student.
- (2) School districts must ensure that extended school year services are available when necessary to provide a FAPE to a student eligible for special education services.
- (3) Extended school year services must be provided only if the student's IEP team determines on an individual basis that the services are necessary for the provision of FAPE to the student.
- (4) A school district may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount or duration of those services.
- (5) The purpose of extended school year services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors.
- (6) School districts must develop criteria for determining the need for extended school year services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based upon the professional judgment of the team and consideration of factors including the nature and severity of the student's disability, rate of progress, and emerging skills, with evidence to support the need.
- (7) For the purposes of subsection (6) of this section:
- (a) Regression means significant loss of skills or behaviors if educational services are interrupted in any area specified on the IEP;
  - (b) Recoupment means the recovery of skills or behaviors to a level demonstrated before interruption of services specified on the IEP.

43. ESY services were "necessary to permit [A.S.] to benefit from [her] instruction." *Hellgate Elementary*, 541 F.3d at 1212 (explaining that ESY services are integral to a FAPE only when the benefits a child gains during a regular school year will be significantly jeopardized if she is not provided ESY services during the summer) (internal quotation marks and citation omitted).

44. The June 2018 did not provide for extended school year. However, it continued from the March 2018 IEP a modification for the Satisfaction/Unsatisfactory grading option. The Parents asked that the District arrange for the Student to complete his second semester course work and earn credits. The evidence does not establish they specifically asked for summer instruction. There is no evidence that Parents or District staff had previously raised any concerns related to ESY services to meet the Student's needs. Nevertheless, the preponderance of evidence supports a conclusion that the District was willing to offer and did actually offer summer instruction, which the Parents rejected. The Parents requested an alternative to which the District agreed. With modified summer classes, the Student received passing grades. The Student/Parents have failed to prove the June 2018 IEP was inappropriate based on failure to provide summer instruction, or that the summer instruction offered would not have constituted appropriate ESD services for the Student. They have not proven the District violated the IDEA and denied the Student a FAPE on these issues.

***Excluding Parents by Making Material Changes to Educational Programming and Placement without Conducting a Reevaluation and by Failing to Provide a Prior Written Notice (PWN) or IEP Formally Offering the Services***

45. 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).

46. The specific requirements for parent participation are set forth in WAC 392-172A-03100:

A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including:

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(3) The notification required under subsection (1) of this subsection must:

(a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student, and participation of the Part C service coordinator or other designated representatives of the Part C system as specified by the state lead agency for Part C at the initial IEP team meeting for a child previously served under Part C of IDEA.

(4) Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, the notice also must:

(a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student and that the agency will invite the student; and

(b) Identify any other agency that will be invited to send a representative.

(5) If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls.

(6) A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as:

(a) Detailed records of telephone calls made or attempted and the results of those calls;

- (b) Copies of correspondence sent to the parents and any responses received; and
- (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(7) The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(8) The school district must give the parent a copy of the student's IEP at no cost to the parent.

47. Additionally, districts are required to provide prior written notice (PWN) to parents a reasonable time before it proposes to initiate a change to the provision of FAPE. WAC 392-172A-05010.

48. The Student/Parents argue the alleged failure to provide appropriate parent participation dated back to at least mid-June 2018, when behavior specialist, Mr. McQuade, communicated with staff about his discussions with the Student's private therapist. He had learned the therapist was wondering about whether attending to Meadowdale<sup>10</sup> rather than Edmonds-Woodway for the 2018-2019 school year might be good for the Student. They argue there was evidence that the vice principal and Mother collaborated on a near-daily basis from May 22, 2018, until the Student's bike accident the last week of school, about check-ins with Mr. Bennett, escorting Student to and from class, and the like, which caused staff and Mother to wonder if more supports may be needed when the Student returned to Edmonds-Woodway in fall 2018. The communications continued when the Parents met in mid-July 2018 with the assistant superintendent, Mr. Schwab, and the director of secondary learning support, Ms. Beglau. The evidence clearly established continuing communications between the Parents and District after school ended in June 2018, about the 2018-2019 school year.

### Reevaluation

49. The Student/Parents failed to prove they requested a reevaluation<sup>11</sup> of the Student in June or July 2018, or prior to their August 26, 2018, email. Accordingly, a reevaluation was only required if the Student's educational or related services needs warranted one.

50. The Student/Parents have not proved that the daily strategizing and interventions tried in May and June 2018, constituted a material change in the Student's programming, or that the Student's educational or related services needs warranted a reevaluation in order to implement the agreement in that regard.

51. At the July 2018 meeting, the Mother<sup>12</sup> likely learned more about Meadowdale's two special education programs, including that one was more intensive. The preponderance of

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<sup>10</sup> Any references by Student/Parents in the closing brief to MDHS are to Meadowdale.

<sup>11</sup> The Parents' request for an IEE in their July 16, 2018, email is not in the scope of the issues.

<sup>12</sup> No findings were made about what the Father knew about Meadowdale's special education programs.

evidence established that the Parents presented requests to the assistant superintendent in mid-July 2018, which included a request for 1:1 paraeducator support at Meadowdale, and requests for counseling. The Student's existing IEP already included counseling as a related service. The agreement would increase that related service to add additional minutes with the Student's private therapist. The related service of counseling had been identified as an area of need for the Student in the May 2018 Assessment Revision to the March 2017 Reevaluation.

52. The Student/Parents have not proved there was an agreement in mid-July 2018 regarding Meadowdale's intensive ILS program, only that it was discussed. Therefore, they have failed to prove a material change in the Student's educational programming requiring reevaluation in that regard.

53. The Student/Parents have not proved that the agreement by the assistant superintendent to approve their requests constituted a material change in the Student's programming, or that the Student's educational or related services needs warranted a reevaluation in order to implement the agreement.

54. For argument's sake, even if a reevaluation was required under the IDEA, the Parents failed to prove a procedural violation that may have resulted from such failure caused a denial of a FAPE to the Student. The evidence does not establish that any failure by the District to initiate a reevaluation impeded the Student's right to a FAPE, significantly impeded the Parents' opportunity to participate in the decisionmaking, or caused a deprivation of education benefits.

#### PWN and IEP Formally Offering Services

55. A district must provide a 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).

56. Moreover, written notice must be provided "a reasonable time" prior to the effective date. WAC 392-172A-05010(1); 34 CFR §300.503(a); *Letter to Chandler*, 59 IDELR 110 (OSEP 2012). "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). The Office of Special Education Programs (OSEP) interprets "a reasonable time" to be at least ten calendar days. *Letter to Winston*, 213 IDELR 102 (OSEP 1987).

57. The Student/Parents provided no authority, and the ALJ is unaware of any, for the proposition that the IDEA requires that attempts by staff to strategize to see what may work for a Student must be included in an IEP prior to attempts to see what works. The circumstances here involved strategies and interventions during the last weeks of a school year, and after the Student's IEP team had convened on May 31, 2018.

58. The Student/Parents have not proved that after the May 31, 2018, meeting of the Student's IEP team, the District was required to issue a PWN or to convene another IEP meeting regarding the completion of the Student's 2017-2018 school year, including the modified summer program. The Student/Parents have not proven there was a violation in that regard related to lack of a timely PWN or IEP in that regard.



59. The Student/Parents failed to prove they reasonably expected the additional services to which the assistant superintendent had agreed, would begin *prior* to the start of the 2018-2019 school year. The Student/Parents did not prove there was an agreement that the District would begin paying for private counseling services for the Student prior to the start of the 2018-2019 school year. There is no evidence that the Student's visits with his private therapists did not occur or were delayed relating to the lack of an IEP and PWN.

60. There is no evidence the Meadowdale school psychologist knew more information other than that a special education student was transferring from Edmonds-Woodway to Meadowdale with an existing IEP that Meadowdale would need to implement.

61. There is no evidence that the District agreed to or planned to change the Student's educational programming and placement at the start of the 2018-2019 school year from a learning support program to an intensive learning support program. This conclusion is supported by the discussion of a 1:1 aide, something less likely to be needed in Meadowdale's smaller intensive learning program. The Student/Parents have not proven there was a violation in that regard related to lack of a timely PWN or IEP prior to start of the school year.

62. The Student/Parents have proved that the District did not give timely notice of an IEP meeting *prior to* the start of the school year on September 5, 2018. They proved that the failure of the IEP team to develop an IEP and provide the Parents with a PWN of the changes prior to the start of the school year constituted a violation of the IDEA by the District.

63. Parental participation is essential under the IDEA. The procedural safeguards provide:

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). It is important to have formal written offers in the form of an IEP and PWN to create clear records relating to educational placement of students, and to rigorously enforce procedural requirements. *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1526 (9<sup>th</sup> Cir. 1994)

64. The Student/Parents have not proved that this procedural violation resulted in a denial of FAPE to the Student. The evidence shows the Parents affirmatively rejected the District's July 2018 agreement based on recommendations from other consultants and providers. There is no evidence they were confused about services the District had agreed to provide or that they believed the District had denied requests, before they made the placement decision. The evidence does not establish the District's failure to convene the IEP team to develop an IEP and provide the Parents with a timely PWN of the changes violated the Parents' participation rights, or significantly impeded the Parents' opportunity to participate in the decisionmaking, or caused a deprivation of education benefits.

## **October 2018 Reevaluation**

65. The IDEA does not give Parents the right to dictate the areas in which a school district must assess a student as part of a special education evaluation. See *Letter to Unnerstall*, 68 IDELR 22 (OSEP 2016); *L.C. v. Issaquah Sch. Dist.*, 2019 U.S. Dist. LEXIS 77834, 2019 WL 2023567 (citing *Avila v. Spokane Sch. Dist. 81*, 686 F. App'x 384, 385 (9th Cir. 2017)).

66. When conducting special education evaluations, districts must ensure that a child is assessed in "all areas of suspected disability." WAC 392-172A-03020 (3)(d). But a district need not evaluate in 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 (2008). An evaluation must be "sufficiently comprehensive to identify all of the student's special education and related services needs." WAC 392-172A-03020(3)(g).

67. The Ninth Circuit employs the "snapshot" rule to determine the appropriateness of a student's evaluation on the basis of the information reasonably available to the parties at the time of the IEP meeting. *L.J. v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 1004 (9th Cir. 2016). That is, courts look to the time of the student's evaluation by the school district. *Id.* Additionally, "[a]n IEP must take into account what was, and was not, objectively reasonable when the snapshot was taken." *Id.* (citation omitted). Courts judge the eligibility decision on the basis of whether it took the relevant information into account, not on whether or not it worked. *Id.* *M.B. v. Springfield School District No. 19*, 120 LRP 28840 (U.S. District Court, Oregon September 23, 2020).

68. The Student/Parents raise two specific issues with respect to the October 2018 reevaluation: 1) that the District disregarded the input of the Parents and their professional providers about the Student's needs and 2) that the reevaluation failed to address the causes of the Student's inability to attend school at the end of the 2017-2018 school year and to recommend educational programming, placement, and related services to address this inability to attend school.

69. The Student/Parents have not proven their argument that the District disregarded the Parents' input or that of their professional providers. The District relied on Dr. Reilly's report extensively to update the Student's diagnoses and needs. Notably, Dr. Reilly had not recommended a residential placement or therapeutic placement for the Student. The District also considered and included the input of Ms. Doering, the Parents educational consultant. She had not formally evaluated the Student or observed him a school setting or spoken to any of his teachers. It was not inappropriate for the District to consider these reasons in giving little weight to Ms. Doering's recommendation for placement at Boulder Creek.

70. The Student/Parents allegation is otherwise limited the alleged failure of the District to address the causes of the Student's inability to attend school at the end of the 2017-2018 school year. The Mother credibly testified about her interactions with the Student at home and driving to and from school, and her observations of his resistance to attending school during that time period. Her observations were not discounted by the reevaluation team, and are not discounted here. However, the Student did not fail to attend school entirely, he attended partially most days until his biking accident, and the time period was less than one month. At the time of the reevaluation in October 2018, the District gave less weight to the Student's end-of-year behaviors and considered also the the Student was no longer attending public school. They included the Parents' written dissent. There is no evidence the Parents asked the District to determine the

causes of the Student's inability to attend school at the end of the prior school year. Causation was not an issue the Parents' raised in the Parents' dissent. To the contrary, the Parents' dissent explained the reasons they believed the Student was unable to attend school after the May 8, 2018, gun incident.

71. The Student/Parents argued in closing brief that the issue of school refusal was long-standing, and that the District failed to consider teacher reports that may indicate other signs of school refusal, such as leaving the classroom, not completing assignments, and the like. This claim was not asserted to the reevaluation team, but made based on Mr. Fabrizio's comments about symptoms of school refusal.

72. The Student/Parents have not proved the District violated the IDEA and denied the Student a FAPE in regard to the October 2018 reevaluation.

73. The evidence does not support the Student/Parents allegation and they have not proved the District significantly excluded the Parents from the educational progress by disregarding the input of Parents and their professional providers concerning the Student's psychological profile and needs.

***Whether the November 2018 IEP, February 2018 IEP, and March 2018 IEP and PWN Failed to Address the Student's Need for Protection from Bullying and Harassment and his Autism-Related Deficits in Social Skills, Behavioral, Self-Advocacy and Emotion Regulation, Particularly Trauma Related to the School Setting***

74. It is undisputed that no general education teachers attended the November 2018 IEP meeting, and that the Parents' did not excuse their absence. While not stated clearly in the issue statement, both parties addressed it in closing briefs. Teachers are required members of the IEP team. WAC 392-172A-03095(1). An Edmonds-Woodway general education teacher could have provided information about the Student's 10<sup>th</sup> grade year. A Meadowdale general education teacher could have provided insight into the general education curriculum and standards. The Student/Parents have proved the District's failure to ensure attendance of a general education teacher constituted a procedural violation of the IDEA.

75. The District does not dispute the absence of a general education teacher, but asserts in this case that had little impact on the team discussion. The Student's November 2018 IEP team was considering the recommendations for SDI in the October 2018 reevaluation, which involved the intensive ILS program and 24.1% of time in general education. In addition, the preponderance of credible evidence is that from and after the Parents' unilateral placement of the Student out-of-state in late August 2018, there was no indication of a plan for his immediate return. The evidence supports the Parents' reasons were not strictly related to educational concerns. There is little evidence of temper or aggression by the Student at school, but significant evidence of physical outbursts at home.

76. The Student/Parents have not proved that this procedural violation resulted in a denial of FAPE to the Student. The evidence does not establish the District's failure to ensure a general education teacher attend the November 2018 IEP meeting impeded the Student's right to a FAPE, significantly impeded the Parents' opportunity to participate in the decisionmaking, or caused a deprivation of education benefits.

77. The February 2018 and March 2018 IEPs added two emotional regulation goals and a social skills goal at the request of the Parents. There were no other substantive changes.

78. Ms. Doering continued to recommend placement at Boulder Creek. She acknowledged at hearing the Meadowdale's ILS program sounded lovely with well-designed autism-specific supported class. She agreed that the program had an adequate classroom setting for the Student. Dr. Unis, the Boulder Creek psychiatrist, recommended that Boulder Creek was the appropriate, least restrictive placement for the Student; however, at hearing he admitted he made that recommendation relied primarily on the reports of the Parents and Student. He had not read the PBMU records, of Dr. Reilly's report, or any of the Student's educational records before he determined Boulder Creek was appropriate in September 2018. His testimony that he did not disagree with Dr. Reilly's report was he initially. He was also unable to give an opinion regarding the Student's educational needs. Mr. Fabrizio, based on review of the proposed exhibits in this case, asserted the November, 2018, February 2019, and March 2018 IEP were not appropriate. However, he conceded he was unfamiliar with the ILS program proposed by the District.

79. The Student/Parents did not offer any evidence from anyone familiar with the ILS program to challenge its appropriateness.

80. The Student/Parents' closing brief raises multiple arguments. However, most arguments are related to the consequences of the District's failure to conduct an FBA or similar assessment and develop a behavioral intervention program (BIP) as part of the IEPs. For example, the lack of goals to identify replacement behavior for school refusal issues. They have not proven that the lack of an FBA leading to a BIP rendered the IEPs inappropriate. For the reasons explained in the findings and conclusions above, Mr. Fabrizio's opinion is given less weight. The District staff with knowledge of the Student did not believe an BIP was warranted. Weight is given to their testimony because they had first-hand, school-based knowledge and observations of the Student. In addition, it was not unreasonable for District staff to consider that an FBA and BIP were not necessary if the Student had not attended a District school for over four months (six months by February 2019), and was in an out-of-state placement where the Student was not engaging in school refusal.

### *Bullying and Harassment*

81. The Mother credibly testified about her desire to protect the Student from bullying and harassment. The Parents understandably want the Student to be safe. Dr. Unis met monthly with the Student, primarily for medication management. However, he had no knowledge of the Student's daily classroom experiences. There is no evidence that the Student has been completely free at Boulder Creek from experiencing any bullying and harassment, from another student making fun of the Student, saying something mean, or posting to social media in off-class hours. The Parents trust staff at Boulder Creek to help the Student in such event. But, they have failed to prove that ILS staff could not have similarly helped the Student in such event. The evidence does not prove the broad generalization that the Meadowdale campus and the ILS program in particular are unsafe. Another factor in this analysis is that the bullying and harassment by former Edmonds-Woodway classmates and others, described by his Mother is not time- or place-bound. The internet allows access any time, from nearly anywhere, to social media, videos, pictures, texts and messaging sites. The Mother believed the Student was unaware of the online bullying and harassment; however, absent his testimony that fact cannot be proven.

82. The Meadowdale campus is large, over 1,600 students, in comparison to Boulder Creek. However, the preponderance of evidence is that the ILS has small class sizes and is in a separate building on campus that was described by Mr. Brown, one of the LS and ILS staff, as like a bubble or small circle on the campus. The District staff credibly testified about the efforts to minimize bullying, but also how the program educates students by providing means to address these and other stressors. The Parents offered no evidence to counter the information about the ILS curriculum and program.

83. The Student/Parents have not proved the District violated the IDEA and denied the Student a FAPE regarding the November 2018 IEP, February 2019 IEP, and March 2019 IEPs.

### ***Lost Educational Opportunity***

84. The final issue is whether the Student lost educational opportunity as a result of the District's failure to offer appropriate programming and placement before his enrollment at Boulder Creek. Because the Student/Parents have not proven that the District failed to offer appropriate programming or placement during that time period, as concluded above, there can be no lost educational opportunity as a result.

### ***Remedy***

85. As the Student/Parents have not proven that the District denied the Student a FAPE, no remedy is warranted. Accordingly, the Student/Parents' requested remedies are denied.

### **ORDER**

The Student and the Parents have not proven that the Edmonds School District violated the Individuals with Disabilities Education Act in a manner that denied the Student a free appropriate education. Their requested remedies are denied.

Served on the date of mailing.



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Johnette Sullivan  
Administrative Law Judge  
Office of Administrative Hearings

### **Right To Bring A Civil Action Under The IDEA**

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

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served this document on each of the parties listed below. I emailed via secure email or mailed a copy to the parties at their addresses of record using Consolidated Mail Services or U.S. Mail.

Adult Student

[REDACTED]

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Edmonds School District  
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Parents

[REDACTED]

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Dated December 23, 2020 at Seattle, Washington.

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

cc: Administrative Resource Services, OSPI