

**WASHINGTON STATE  
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Shoreline School District

Docket No. 11 2022 OSPI 01739

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

Agency: Office of Superintendent of  
Public Instruction

Program: Special Education

Cause No. 2022 SE 0142

A due process hearing was held before Administrative Law Judge (ALJ) Jacqueline Becker on June 5 through 9, 2023. The Parents of the Student whose education is at issue<sup>1</sup> appeared and were represented by Ryan Ford and David Weafer, attorneys at law. Also present for portions of the hearing were Suzanne Daw and Emma Halpin, paralegals at Ford Law Firm. The Shoreline School District (District) was represented by Lynette Baisch and Megan Knottingham, attorneys at law. Also present for the District was Trish Campbell, Executive Director of Student Services.

**PROCEDURAL HISTORY OF THE CASE**

The Due Process Hearing Request (Complaint) in this matter was filed with the Office of Administrative Hearings (OAH) on November 21, 2022. The Complaint was assigned Cause No. 2022 SE 0142 and assigned to ALJ Becker. Multiple prehearing conferences were held pertaining to discovery and other issues, and related orders were entered, all of which can be found in the administrative record.

Due Date for Written Decision

The due date for a written decision in this case is thirty (30) calendar days after the close of the record. The record closed when the parties timely filed post hearing briefs on August 25, 2023, and the due date for the written decision is September 24, 2023.

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

## EVIDENCE RELIED UPON

### Exhibits Admitted:

Parents' Exhibits: PA2 pages 1 37, PA3, PB1 5, PB9, PB15 17, PB18 pages 1 5, PC1, PC3, PC4, PC6, PC9 12, PC14, PC16, PC19 30, PD1 4, PD9, PD9a, PD10 14, PD16 21, PD25 33, PD35 38, PD40 42, PD50, PD51, PE1, PE2, PE7, PE9 11, PF1 7, PF12, PF16 32, PF35, and PF37.<sup>2</sup>

District's Exhibits: D2, D4, D12 14, D16, D21, D22, and D24.

### Witnesses Heard:

The Student's Mother (Ms. Parent)

Leslie Orme District special education teacher

Remi Rajotte District general education math teacher

Matthew Graham District special education teacher

Elizabeth Hinson District special education teacher

Dr. Christine Clancy Clinical neuropsychologist

Carol Buresh Special Education Administrator at Brightmont Academy

Tony Beals Director of Brightmont Academy's Seattle campus

Sheba Abraham Math and science teacher at Brightmont Academy

Dr. Steve Hirsch Former District school psychologist

Dr. Scott Irwin Former District Director of Secondary Student Services

Melissa Gioino District general education math teacher

Siri Hulbert District general education Spanish teacher

## ISSUES/REMEDIES

The issues heard at the due process hearing are:

A. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and failed to offer the Student a free appropriate public education (FAPE), as follows:

1. Whether the District's 3 x 3 model predetermined the Student's Individualized Education Program (IEP) team's decisions as they relate to

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<sup>2</sup> The Parents submitted six exhibit binders which were labeled A-F, and exhibits in the binders contained identifiers starting with letters A-F. Parents' exhibits are therefore referred to with a "P" designation as well as an additional letter, such as PA1, PC2, etc.

the District's provision and allocation of specially designed instructional (SDI) minutes to the Student;

2. Whether the District's 3 x 3 model served the purpose of inappropriately easing the District's administrative burden to provide the Student with FAPE and/or inappropriately reducing the overall number of SDI minutes the District provided to the Student;

3. Whether the District's educational programming including the Student's placement for the area of math, denied the Student FAPE dating back two years from the filing of the Complaint due to:

- a. The programs not being reasonably calculated to meet the Student's needs in the area of math; and
- b. The programs not being reasonably calculated to meet the Student's needs in that the District failed to offer the Student extended school year (ESY) services in the area of math;

B. Whether the Student's placement at Brightmont Academy (Brightmont) for math instruction was and continues to be appropriate;

C. Whether the Student was entitled to a comprehensive and fully funded independent educational evaluation (IEE) by the District during 2021 based on the facts alleged in the Complaint; and

D. Whether the Parents are entitled to their requested remedies:

1. Declaratory relief that the District violated the IDEA and denied the Student FAPE;

2. Compensatory education in the form of reimbursement for the Parents' past costs related to Brightmont;

3. Compensatory education in the form of future instruction through Brightmont or a prospective placement at Brightmont;

4. Reimbursement for the Parents' remaining costs related to the IEE they obtained through Dr. Clancy; and

5. Such other additional relief as the Court finds just and equitable.

## 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 conflicts, the evidence adopted has been determined to be more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence is set forth below as necessary.

### Background

1. The Student is currently [REDACTED] years old and is in eleventh grade. D16 p.1.<sup>3</sup> At all times relevant to this proceeding, the Student attended Kellogg Middle School and Shorecrest High School (Shorecrest) in the District. D24.
2. The Student was first determined to be eligible for special education services in March 2019 when he was in sixth grade. PA2. He was referred for an evaluation by his classroom teacher due to concerns about his math reasoning and number sense. The classroom teacher had been providing the Student with extra math instruction and small group instruction for several months prior to the referral. PD2 p.2.
3. The District's initial evaluation (March 2019 Evaluation) assessed the Student in the following areas: cognitive, academic in math and reading, and general education. PA2 p.2. The evaluation determined the Student had a specific learning disability (SLD) in math calculation as demonstrated by a discrepancy between his academic performance in math and his cognitive functioning. *Id.* at 2, 19.
4. The March 2019 Evaluation summary notes that the Student exhibited "hesitant behavior" during the assessment which might have indicated that he was too shy or embarrassed to self advocate when he needed assistance. PA2 p.2. It also notes that the Parents view the Student as "somewhat sensitive" and were concerned that he gives up easily in situations where he feels he cannot demonstrate proficiency as quickly as he would like. *Id.* at 1. A "significant finding" of the evaluation was that the Student would benefit from coaching in self advocacy "so he

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<sup>3</sup> The hearing transcript is cited as "Tr." with references to the page of the cited testimony. For example, a citation to "Tr. 80" is to the testimony at page 80 of the transcript. Exhibits are cited by party ("P" for Parents, "D" for District), exhibit number, and page number. For example, a citation to "D1 p.5" is to the District's Exhibit 1 at page 5. Because the Parents gave their exhibits letter designations of A, B, C, D, E and F in addition to the "P" designation that was ordered in the prehearing order, Parent exhibits are referenced using two letters. For example, a citation to "PA2 p.4" is to the Parents' exhibit A2 at page 4.

can seek help when needed without sacrificing his desire to be an independent learner.” *Id.* at 7.

5. The March 2019 Evaluation recommends that the Student be provided with a number of accommodations including “peer tutoring with another student who is experiencing difficulty with math facts in a safe environment where [Student’s] math difficulties are not overtly noticeable to his broader group of peers.” A2 p.2.

6. The IEP developed for the Student in April 2019 provided the following math calculation SDI: 120 minutes per week provided by special education staff in a general education setting, and 90 minutes per week provided by special education staff in a special education setting. PA3 p.9.

7. During the 2019 20 school year, the Student was in seventh grade and was in a team taught general education math class. Leslie Orme, a District special education teacher, was one of the team teachers. Tr. 53 55. The other teacher was a math general education teacher, Ms. Payne. *Id.* at 126. A team taught class is designed to serve general education students as well as students receiving special education services who can be successful in the general education curriculum if the class is modified to meet their needs. *Id.* Ms. Orme described team teaching as a successful instructional model that allows special education students to learn with their peers without being singled out as needing special attention. *Id.* at 126 27.

8. The Student’s general education SDI during the 2019 20 school year consisted of a combination of whole group instruction, small group instruction, and one to one instruction in the general education math class. Tr. 77. The 90 minutes in the special education setting were provided in Ms. Orme’s “round table” period which is essentially a homeroom class. Round table was a small group setting with a paraeducator as well as a special education teacher in which extensive one on one and/or small group instruction was provided. *Id.* at 78 89, 124 25.

9. Ms. Orme noted the Student to have strong scores in daily work and problem solving, but difficulty demonstrating mastery of essential math skills. Tr. 60 61; PB1. She recommended the “IXL online” learning program to help the Student review and practice skills at home. PB1.

10. The District stopped delivering in person instruction in March 2020 due to the COVID 19 pandemic. Tr. 79. Ms. Orme never noticed the Student seeming uncomfortable in front of his peers during math instruction during the 2019 20 school year, but the Parents told her the Student did not like working with other students during remote instruction. *Id.* at 90, 113 14. Ms. Orme observed that the Student “didn’t give up he kept trying” during remote instruction. *Id.* at 98. He

maintained his effort and sense of humor while other students stopped trying. *Id.* Ms. Orme described the Student as “working hard, doing his best,” and seeing successes. *Id.*

11. The Parents disagree with Ms. Orme’s assessment of the Student’s engagement during COVID. They felt his anxiety affected his ability to learn, and noted that many assignments were optional and the Student did not complete them. Tr. 793.

12. The Student’s IEP was revised in April 2020 (April 2020 IEP). This IEP states that the Student had shown improvement in the areas in which he had received SDI but still struggled with “order of operations” and ratios. PB3 p.3. The IEP’s two math goals pertained to the areas of struggle. The April 2020 IEP provided 120 minutes per week of math calculation SDI in the general education setting, and 60 minutes one time per week of math calculation SDI in the special education setting. *Id.* at 7. All SDI was to be delivered by special education staff. *Id.*

13. Ms. Orme did not have any concerns about the Student’s ability to participate in general education math class during the upcoming 2020 21 school year. She opined that he had understood the team taught general education curriculum during the 2019 20 school year. Tr. 117.

#### The 2020 21 school year

14. The Student was in eighth grade during the 2020 21 school year. The District provided instruction to its students remotely for much of that year due to the COVID 19 pandemic. PC1.

15. On August 9, 2020, the District informed families that it would be implementing what it referred to as the “3 x 3 Schedule” (3 x 3 model) for middle and high school students during the 2020 21 school year. PC3. Under the 3 x 3 model, students would participate in three classes each term, rather than the usual six classes. The District informed families that this would allow students to “experience a reduction in the number of classes they will need to manage while also navigating a new on line learning environment.” *Id.* at 1. Classes that would typically have been year long would now be completed in a half year, i.e., one semester. *Id.* at 2. According to the District, “While the amount of time spent in each course is fundamentally the same, it is consolidated into a deeper, shorter term.”<sup>4</sup> *Id.*

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<sup>4</sup> While it is not stated in the District’s communication to families, the undersigned assumes that class periods were longer in the 3 x 3 model than they had been in the previous scheduling model in order to provide the same amount of class hours in fewer weeks.

16. Under the 3 x 3 model, students receiving special education services would “have courses balanced between the terms to ensure their needs are met.” PDC p.3. Families were informed that IEP managers would be reaching out to ensure that “IEP goals and minutes are addressed within the 3 x 3 schedule.” *Id.* On September 1, 2020, Matthew Graham<sup>5</sup> emailed Ms. Parent and introduced himself as the Student’s IEP manager. PC4. Mr. Graham informed the Parents that some students’ IEPs would need to be amended due to the change in scheduling model, and that he would reach out individually to parents of students whose IEPs needed amending. *Id.*

17. On September 23, 2020, Mr. Graham emailed Ms. Parent and informed her that the Student’s IEP needed to be amended to “reflect the change in minutes your student is in school and to reflect the updated schedule of synchronous and asynchronous learning blocks.” PC6. The Student was receiving no SDI in math at the time due to the 3 x 3 model. Tr. 190 93. The reason the Student was receiving no SDI is unclear.

18. Mr. Graham did not have any concerns about the Student’s ability to participate in general education math under the 3 x 3 model. Tr. 241 42. In his email, Mr. Graham invited Ms. Parent to contact him if she wanted a meeting to review the IEP changes, or, alternatively, asked if she would grant the school team permission to proceed with the changes without a meeting. *Id.* Ms. Parent requested a meeting, and a zoom conference was arranged. *Id.*

19. The Student’s IEP team held a meeting on October 20, 2020, to amend the Student’s IEP. The new IEP provided that the Student would receive 30 minutes of math calculation SDI in the special education setting one time per week through January 22, 2021. Starting January 23, 2021, the Student would receive 197 minutes per week of math calculation SDI from a special education teacher in the general education setting. PC9 p. 8. This amendment was needed because the Student was not taking a general education math class during the first semester, so he could not receive SDI in the general education class. *Id.* at 11; Tr. 181.

20. The 30 minutes per week of SDI in the first half of the school year was determined to be appropriate for the Student because “that was the time that was available on Wednesdays...and that was the time those services could fit in” according to Mr. Graham. The purpose, according to Mr. Graham, “was to facilitate the new Zoom and things like that...I was trying to get him his service minutes for those two goals and we only had this particular section of a Wednesday that had the

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<sup>5</sup> Mr. Graham has a master’s degree in special education. He has been teaching special education since approximately 2000. Tr.179.

time after school.” Tr. 194, 264. Mr. Graham thought 30 minutes of SDI per week was an appropriate amount of time. *Id.* at 265. Teacher observations, the Smarter Balanced state assessment, the iReady assessments, and classroom data were also considered in the team’s decision to provide 30 minutes per week. *Id.* at 195-97.

21. The Parents did not think 30 minutes of SDI per week during the first half of the school year was sufficient. They asked whether the District could offer other supports and were told there were no other supports available due to the 3 x 3 model, and that “this was the best [the District] could do.” Tr. 590. With several school holidays falling on Wednesdays, the 30 minutes per week did not amount to much SDI. *Id.* at 591.

22. The weekly 30 minutes of math SDI were delivered to the Student by Mr. Graham via zoom. On the assessment that was given as part of this SDI, the Student answered eight out of eight “order of operations” problems correctly. PD26. Mr. Graham supported the Student by answering clarifying questions he may have had during the assessment. Tr. 244-45. By February 6, 2021, the Student demonstrated 70% accuracy on order of operations problems, and 70% accuracy on “ratios and rates” problems. PD28.

23. During the second half of 2020-21 school year, the Student was again in a team-taught math class with general education math teacher Remi Rajotte and special education teacher Mr. Graham. Tr. 134-35, 175. Mr. Rajotte described the Student’s engagement in remote math learning as “excellent” and his work as “high quality.” *Id.* at 155-56. Mr. Graham observed the Student to ask for help as needed. The Student worked with peers and did not seem reluctant about doing so. *Id.* at 247. He was able to keep up with the concepts taught in the general education class. *Id.* at 248.

24. The Student’s iReady math score in the winter of 2021 was 475, which represented a fifth to sixth grade level of performance. PC12 p.5. That score did not cause Mr. Rajotte to be concerned about the Student’s math performance. Tr. 152-53. He interpreted it to mean the Student needed more practice in the areas tested on the iReady. *Id.* Mr. Graham was also not concerned about the iReady scores. He felt the Student’s score was in a “reasonable proximity” to other students in the same grade. According to Mr. Graham, “We don’t put a lot of weight on the iReady score as a decision maker...It’s one piece of data.” Tr. 251. Mr. Graham does not use the iReady for IEP progress monitoring or when developing goals. *Id.* at 198-99.

25. Mr. Rajotte has been a math teacher since 2009. Tr. 133. He opined at the due process hearing that the iReady does not accurately reflect a student’s math



understanding. He has observed, “[f]rom years of giving this assessment and seeing, consistently, students scoring one or two grade levels below the grade they’re actually in and when I go over the results of the iReady, it’s a number. The number doesn’t mean anything to me.” *Id.* at 143. He has seen students’ test results place them as much as five grade levels behind where they actually are. *Id.* at 144. In Mr. Rajotte’s opinion, students score inaccurately low on iReady because they rush or guess at answers and do not try very hard. *Id.*

26. The Student’s IEP team met on April 13, 2021, for the annual IEP review. PC12. The “team considerations” at the meeting included the Student’s iReady math score of 475. *Id.* at 5.

27. The “present levels of educational performance” section of the April 2021 IEP noted that the Student had been able to keep up with the concepts presented in general education math. He received support in a small group that retaught concepts, and he was allowed extra time to complete work if needed. PC12 p.6.

28. The Student’s “deficits in the area of math computation” were identified as affecting his ability to be involved and progress in age appropriate curriculum, and were deemed to have an adverse impact that required SDI. PC12 pp. 6 7.

29. The April 2021 IEP provided for 30 minutes of math calculation SDI in a special education setting twice per week, as well as 120 minutes of math calculation SDI in the general education each week. PC12 p.10. The IEP contained two goals, both pertaining to math calculation:

By 04/17/2022, when given 10 problems involving all operations with integers [Student] will correctly solve the problem improving calculation with integers from 30% accuracy to 80% accuracy as measured by teacher generated assessment.<sup>6</sup>

By 04/17/2022, when given 10 two step equations ( $2x+5=11$ ) [Student] will correctly solve the equation for a variable improving calculation and reasoning skills from 20% accuracy to 80% accuracy as measured by teacher generated assessment.

*Id.* at 6.

30. The box pertaining to ESY was checked “no” on the April 2021 IEP. PC12 p.12.

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<sup>6</sup> An “integer” is a positive or negative whole number. Tr. 249.

31. The Parents did not agree with the services that were offered in the April 2021 IEP. PC14.

32. The Parents requested an IEE via an email to Mr. Graham sent late in the day on April 13, 2023. Specifically, the Parents requested “a re evaluation/math aptitude assessment on our son [Student] so that we can move forward with an IEP that reflects our son’s current math aptitude/needs.” They further clarified, “To be clear, our request is for the school district to pay an ‘independent entity/psychologist’ to conduct the new evaluation.” PC14 p.1.

33. The Parents also expressed numerous concerns regarding the Student, including: he was two grade levels behind in math; his struggles worsened during remote learning; he did not receive “formal math teaching” between September 2020 and mid January 2021 despite his IEP; the Student did not feel he was progressing in math and felt incompetent and embarrassed to ask for help; he was not receiving 1:1 tutoring despite the Parents having requested it since he was in seventh grade; and the Parents had not been shown any tangible evidence that the Student was progressing in math. PC14 p.1.

34. On April 26, 2021, Dr. Scott Irwin,<sup>7</sup> District Director of Secondary Student Services at the time, responded to the Parents’ request for an IEE. Dr. Irwin stated, “It is my understanding that your request is based upon your disagreement with the evaluation conducted by the school staff and your belief that the school district’s evaluation is inappropriate.” PC16 p.3. The District agreed to provide an IEE at public expense in the areas of cognitive and math. *Id.* Dr. Irwin asked the Parents to identify an independent evaluator from a list he provided.

35. Approximately a week after receiving Dr. Irwin’s response, the Parents asked Dr. Irwin via email whether a social/emotional assessment could be added to the approved IEE. Specifically, Ms. Parent stated:

I am in the process of scheduling an evaluation for my son. I wanted to ask if it is possible to add a social emotional component to the approved IEE? I believe my son has much difficulty self advocating for himself, easily embarrassed, and avoidant which may be impacting his learning. This is not a new request for IEE just asking whether this component can be added on to the approved IEE.

PC16 p.9.

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<sup>7</sup> Dr. Irwin has bachelor’s and master’s degrees in teaching. He also has a doctorate in educational leadership and a superintendent certification. Tr. 537.

36. Dr. Irwin replied that social/emotional could not be added to the IEE because it was not an area that the District evaluated in 2019 and thus was not an area with which the Parents could disagree. PC16 p.8. However, Dr. Irwin stated that social/emotional would be a possible new area for evaluation of the Student which would be handled by Rachel Norman, District school psychologist, if the Student's IEP team determined such an evaluation was necessary. *Id.* at 8. Ms. Norman then contacted the Parents to set up a time to discuss their concerns about the Student's social/emotional status. *Id.*

37. Ms. Parent recalls discussing the IEE request on the phone with Dr. Irwin. The Parents expressed concern that the Student's mental health was suffering due to anxiety and embarrassment around math. They described to Dr. Irwin that the Student cannot focus when he is anxious, and this prevents him from concentrating and learning math. Tr. 595 96.

38. An IEP review meeting was held on May 6, 2021. PC19. Dr. Irwin attended the meeting. *Id.* at p.12. The Student's iReady math scores were discussed. The Student's "deficits in the area of math computation" were again identified as causing an adverse impact that required SDI. *Id.* at 4 5. The Student's IEP was amended to provide 30 additional minutes per week of math calculation SDI in a special education setting for the remainder of the 2020 21 school year. *Id.* at 9, 12. The team considered adding "math skills" as a support class for the Student, as well as performing a social skills evaluation. Both options were rejected because "math skills" was deemed not to be appropriate, and the team decided to add additional accommodations to help reduce the Student's anxiety. *Id.* at 12. "Math skills" is a math support class that focuses on basic calculation skills (addition, subtraction, multiplication) and is delivered in a special education setting. Mr. Graham thinks the math skills class would have been too restrictive a setting for the Student. Tr. 250, 265.

39. The box regarding ESY was checked "no" on this IEP. PC19 p.11.

40. There is little discussion in the exhibits pertaining to this review meeting about the Student's social/emotional status. One of the Student's strengths is identified as, "He will ask for help in class." PC 19 p.3. The PWN pertaining to the meeting indicates that the social/emotional was a "question," and the team considered an evaluation for social skills, but it was rejected. The PWN states that "the team will be adding accommodations to support anxiety." *Id.* at 12 13.

41. On May 14, 2021, the Parents emailed the IEP team members and expressed concern that the additional 30 minutes of math SDI would not be sufficient for the Student to make the gains needed to be successful in math in the future. PC29 p.2.

42. On May 26, 2021, the Parents again emailed the IEP team members and stated that they did not feel that the “parent concerns” section of the IEP accurately reflected the concerns they had discussed with the team. PC29 p.3. Their main concern was that the intervention provided by the District for the past three years had been ineffective in “closing the gap” regarding the Student’s math deficits. They also asked for more frequent progress reporting. *Id.* at 3 4.

43. On May 26, 2021, the Parents responded to Ms. Norman and asked for a phone call to discuss the Student’s social/emotional health. PC16 p.7. A call was set up for June 2, 2021. *Id.*

44. Ms. Norman spoke with Ms. Parent on the afternoon of June 2, 2021. PC21 p.2. The email Ms. Norman sent to the Parents later that day states that she would collaborate with Mr. Graham on accommodations to address the Student’s anxiety. It also states the District would “hold off” on assessing the Student’s social/emotional skills due to the uniqueness of the 2020 21 school year and the challenges that would be involved in getting an accurate assessment of his emotional functioning in the classroom given how late it was in the school year. Ms. Norman stated she would communicate with Shorecrest and provide information about the Student and the Parents’ concerns about his emotional functioning. She also recommended that the Students triennial reevaluation be undertaken earlier than its due date of March of 2022. *Id.*

45. Ms. Norman’s notes pertaining to the conversation with Ms. Parent document that Ms. Parent reported:

[Student] can withdraw and be emotional/upset/angry when he's not understanding something from school. These behaviors are not seen at school because he will often say things are fine when he's struggling. He doesn't want to look different in front of peers or like he's not understanding something. He has some learning related anxiety, especially when it comes to math, but, again, doesn't want to look bad in front of peers. Concerned about his emotional functioning/regulation and ability to advocate for himself when he needs help, especially in math.

PC21 p.3.

46. On June 2, 2021, the District issued a prior written notice (PWN) to the Parents documenting its refusal to initiate a reevaluation or an assessment revision for emotional skills. PC21 p.1. The PWN states, “Due to the uniqueness of this school year, it's challenging to get an accurate assessment of [Student’s] emotional

functioning in the class given his limited time with teachers and the smaller class sizes. School is almost over for the year as well, which does not offer a lot of opportunity collect data on [Student's] emotional functioning and needs." *Id.* The Parents felt they had no input into this decision and were simply "told" that the District could not conduct an evaluation that school year. Tr. 599. The PWN goes on to state that, to support the Student, the IEP manager and school psychologist would collaborate on accommodations to add to his IEP to address anxiety. Also, because the Student was undergoing an IEE, the District would evaluate the Student earlier than his triennial evaluation was due in order to incorporate and address concerns about his anxiety. PC21 p.1. Ms. Norman appears to have written this PWN. *Id.*

47. The accommodations ultimately included in the Student's May 2021 IEP were:

Accommodations	Frequency	Location	Duration m/d/y to m/d/y
Adult check for understanding of critical directions in core classes	daily	classrooms	05/10/2021 to 04/17/2022
Calculator	as determined by teacher (task dependent)	math classes	05/10/2021 to 04/17/2022
check in one to one with student for questions and understanding	daily	all classes	05/10/2021 to 04/17/2022
Check work frequently to ensure understanding	daily	classes	05/10/2021 to 04/17/2022
Multiplication Table (Gr 4 - HS)	as scheduled	math tests	05/10/2021 to 04/17/2022
Preferential seating	daily	all classes (allow easy access for the teacher to check in)	05/10/2021 to 04/17/2022
reduce length of assignments to lower anxiety about completing work	daily	all classes	05/10/2021 to 04/17/2022
Small Group	as needed for focus	all classes	05/10/2021 to 04/17/2022
When calling on [REDACTED] prepare him ahead of time to limit anxiety	daily	all classes	05/10/2021 to 04/17/2022

PC19 p.6.

48. As of June 2021, the Student demonstrated 50% accuracy on his first IEP goal related to integers but needed teacher reminders about the rules of integers. He demonstrated 60% accuracy on his second goal pertaining to two step equations but needed teacher reminders about the steps. PC20.

49. The Student received the following grades for the third semester<sup>8</sup> of the 2020 21 school year: B in social studies, C in math, B in Spanish. D12. In the fourth semester of that school year he received an A in social studies, an A in math, and a B in Spanish. *Id.* A “C” is an average math grade in the District, whereas an “A” denotes mastery. Tr.151.

50. Mr. Rajotte had no concerns about the Student’s ability to move on and participate in ninth grade math and felt the Student would be capable of mastering the ninth grade math curriculum. Tr. 157. Mr. Graham does not recall the Student exhibiting a lack of confidence in his math abilities during the 2020 21 school year. *Id.* at 205 06.

51. At the conclusion of the 2020 21 school year, the Parents requested 1:1 instruction for the Student in math. D21. The Parents felt the Student’s math deficits were not improving, in part because the Student expressed to his Parents that he was not doing well and was not learning. Tr. 578. He would say things such as, “I feel defeated,” and his math anxiety seemed to increase. *Id.* at 578 79.

52. The Student did not receive ESY during the summer of 2021. Mr. Graham has never referred a student for ESY. Tr. 197. He does not recall why the IEP team did not recommend ESY for the Student. *Id.* at 198.

53. Dr. Irwin described the District’s process for determining whether a student requires ESY. The District looks for a “pattern of regression and significant [time being required for] recoupment.” Tr. 562. This means they look at whether a student has regressed over a school break and needs a significant amount of time to recoup the loss. There must be two different occasions when such regression has occurred in order to establish a need for ESY. *Id.* Most students have a “summer slide,” but some lose much more ground over the summer recess and take longer to recover. *Id.* at 563. In general, a student with an SLD would need ESY if it took them longer than the length of the break at issue to recover the lost academic ground. *Id.* However, this can vary from student to student.

#### The July 2021 IEE

54. Dr. Christine Clancy is a board certified clinical neuropsychologist. She has a PhD in school and child clinical psychology and a post professional diploma in child life studies. PD3. Dr. Clancy has been in private practice in pediatric neuropsychology since 2010. *Id.* She does not have experience delivering general or

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<sup>8</sup> This school year had four semesters, which were similar to quarters, due to the 3 x 3 model.

special education, does not hold a teaching certificate, and does not have experience designing special education programming. Tr. 412.

55. In June 2021, Dr. Clancy agreed to perform an IEE of the Student. The District limited the IEE to the areas of intellectual functioning, visual spatial and constructional skills, memory, and math academic skills. PF4. However, the Parents requested and paid for a social/emotional assessment. Tr. 408.

56. On July 9, 2021, Dr. Clancy performed a neuropsychological evaluation of the Student (the IEE). PD2. The IEE was performed in one day. Dr. Clancy did not observe the Student in school. Tr. 417. Dr. Clancy noted that the Student's attention and activity level for testing was "adequate." PD2 pp.7-8. He did not need redirection in order to perform the assessments. Tr. 375. She observed him to be restless in his seat, and to tap the table and move continuously while he worked. He appeared to respond to questions in a rushed and impulsive fashion at times, and displayed issues with planning and organizing complex tasks. Dr. Clancy observed the Student to use his fingers to perform addition and subtraction calculations. *Id.* PD2 pp.7-8.

57. Dr. Clancy's testing determined the Student's full scale IQ to be 92, which is in the average range at the 30th percentile. His verbal abilities are stronger than his visual/spatial reasoning abilities. His nonverbal reasoning abilities are in the 21st percentile and abstract reasoning is in the 16th percentile. PD2 p.8; Tr. 373-74.

58. Dr. Clancy determined that the Student's cognitive profile scores showed a lack of progress in some academic areas, such as vocabulary, when compared with his 2019 evaluation. None of the changes in cognitive scores were statistically significant, however. Tr. 373-74.

59. The Kaufman Test of Educational Achievement 3<sup>rd</sup> Edition (KTEA 3) demonstrated that the Student's math skills were in the very low range. PD2 p.11. His overall math score and his math computation scores were both in the 2nd percentile compared to same age peers. *Id.* at 11, 22; Tr. 391. Compared with testing from 2019, the Student's math skills had regressed and the degree of regression in the area of math concepts was statistically significant. Tr. 393. Dr. Clancy opined that this represented "not only his neurocognitive profile of weaknesses in visual spatial skills, nonverbal abstract reasoning, and executive functioning that underpin mathematics, but also the insecure remediation of his math skills based on the limited intervention support, paucity and restricted scope of the math goals (N=2)<sup>9</sup> outlined in his current IEP." PD2 p.12. Use of his fingers to

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<sup>9</sup> The undersigned assumes this parenthetical means there were two goals.

perform calculations resulted in errors on basic items, such as his finding that two plus four equals seven. *Id.*

60. Testing with the Wechsler Individual Achievement Test 4<sup>th</sup> Edition (WIAT 4) showed that the Student's ability to perform untimed math problems using basic concepts was in the low average range, and his ability to perform untimed calculations using fractions and algebra was in the very low range (8th percentile). PD2 p.12.

61. Dr. Clancy diagnosed the Student with an SLD in mathematics with impairment in the following areas: memorization of arithmetic facts, accurate and fluent calculation, and accurate math reasoning. PD2 p.12. She also diagnosed him with generalized anxiety disorder evidenced by separation anxiety, phobic behavior, obsessive/compulsive thoughts and behaviors, panic, and social anxiety. *Id.* at 13.

62. Dr. Clancy's findings with respect to his anxiety profile state that individuals like the Student may not always report or demonstrate visibly high levels of anxiety, but they often feel uncomfortable when taking a test or when they feel they are struggling with a task. Students with anxiety also often demonstrate a "cognitive style" that can affect how they process information. Such students may excel at tasks that are a good match for their strengths but have difficulty on unfamiliar, abstract, or open ended tasks. They also feel challenged by time pressure. PD2 p. 13.

63. Dr. Clancy opined that children like the Student often need a lot of reassurance and prefer the security of adult assistance even if they could work through a task on their own. They are often very sensitive to feedback that they may have made a mistake. Such students benefit from a "nurturing yet encouraging approach that simultaneously supports their needs while also gently challenging them to build their resiliency and independence." PD2 p.14.

64. Dr. Clancy recommended that the Student could best be supported by receiving structured, graduated support to help develop his confidence and ability to tackle time pressure and increasingly complex and unfamiliar tasks. He needs concrete, step by step instruction and ample practice and repetition. She also recommended that the Student participate in counseling and cognitive behavioral therapy outside of school to treat anxiety based symptoms. PD2 p.14

65. In the IEE "summary of findings and clinical impressions," Dr. Clancy concluded that the Student had not made any clear and statistically significant improvement in his math skills, but rather, he had regressed. She concluded his deficits would become increasingly apparent as the Student progresses into higher level math. She further concluded that his IEP was "woefully inadequate" to address



the breadth and depth of his math disability. She recommended that his IEP be “closely aligned with grade level expectations in math” and focus on key concepts. PD2 pp.14 15.

66. The IEE concludes that the Student will have difficulty performing demanding and complex tasks. It recommends minimizing the need for him to do multiple tasks at the same time, and pre teaching the general framework of new information at a slow pace. PD2 p11. The IEE also concludes that the Student’s anxiety causes him to need frequent check ins by instructors to ensure his understanding, additional repetition of information, and presentation of information at a pace that is comfortable for him. He also requires demonstration of skills, and redirection. *Id.*

67. Dr. Clancy provided 19 recommendations for the Student, including, in part:

- i. SDI in math fluency, calculation and problem solving for a minimum of 300 minutes per week using an empirically supported structured mathematics program during ninth and tenth grade.
- ii. SDI in math fluency, calculation and problem solving for a minimum of 225 minutes per week using an empirically supported structured mathematics program during eleventh and twelfth grade.
- iii. Private math instruction outside of school hours throughout high school for a minimum of 180 minutes per week.
- iv. Provision of a calculator and math calculation table for use at all times in the classroom and during tests.
- v. Manageable amounts of work as skills are learned.
- vi. Pre teaching algorithms and strategies.
- vii. Emphasis on mastery rather than quantity and provision of extended time for tests and exams.
- viii. IEP accommodations for attention and executive functioning including preferential seating, repetition of directions, and use of a planner.
- ix. Presentation of material in small chunks at a controlled pace in a step by step fashion and practicing steps independently.

- x. Individual counseling with a therapist.<sup>10</sup>

PD2 pp. 15 19.

The 2021 22 school year and the 2021 Reevaluation

68. The Student was in ninth grade during this school year and instruction was delivered in person. Tr. 357 58.

69. On August 26, 2021, the Parents provided the District with Dr. Clancy's IEE report and requested an IEP meeting to review the report. PD1.

70. The Student's IEP team met on September 23, 2021. The meeting was attended by: the Student's IEP manager, Elizabeth Hinson;<sup>11</sup> the Parents; Parent attorney Mr. Ford; District attorney Ms. Baisch; school psychologist Dr. Steve Hirsch;<sup>12</sup> administrator Becky Worrell; general education teacher Melissa Gioino; Dr. Irwin; and Dr. Clancy. D13.

71. District IEP team members were surprised by Dr. Clancy's testing results because the Student was performing much better in class than he performed on assessments in the IEE. Tr. 559.

72. Dr. Hirsch did not recommend at that meeting that the Student be placed in the math skills class because his weakness in calculation and basic operations could be addressed by accommodations, such as a calculator. Dr. Hirsch opined that the District's goal is always to keep a student in the general education setting if possible. Tr. 702.

The fact that he has trouble doing maybe six times four, because it's not easy to do that on your fingers, is important but not so important that we should pull him out of class to teach him. He should not be out of the general education curriculum, out of the algebra curriculum, to work on six times four. That could be accommodated through a calculator or fingers or any tool, a multiplication table, whatever works for him.

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<sup>10</sup> It is unclear whether this counseling was recommended to be school-based or occur in the home/community setting.

<sup>11</sup> Ms. Hinson has a master's degree in education. She earned a special education endorsement in 2018 or 2019. Tr. 271. She has been a teacher since 2007. *Id.* at 272.

<sup>12</sup> Dr. Hirsch has a bachelor's degree in psychology, a master's degree in experimental psychology, and a PhD in biobehavioral psychology. Tr. 623-24. He has been a school psychologist since 1986 and has also taught psychology at the college level. He retired in 2022.

Tr. 704. Dr. Hirsch opined that additional data could be collected to determine if the Student's anxiety was addressed adequately by the accommodations, but data collection would need to be required by the provisions of the IEP. *Id.* at 719 20.

73. Following the meeting, the District issued a PWN to the Parents informing them that the District was proposing to "change" the Student's IEP although no changes were set out in the PWN. Rather, the PWN states that the IEP team reviewed the IEE and considered adding additional support in foundational mathematics. The team rejected changes to the Student's math instruction because he was responding well to instruction in his co taught algebra class and was demonstrating understanding of the concepts that were areas of concern articulated by Dr. Clancy. The team agreed to have Dr. Hirsch reevaluate the Student and that they would revisit changing the Student's IEP after the reevaluation. D13 p.1.

74. The Student was again in a co taught math class, Algebra 1, during the 2021-22 school year. PD43; PD35 p.3; Tr. 274. Ms. Hinson was the special education teacher and Melissa Gioino<sup>13</sup> was the general education math teacher. Tr. 276. The class contained about 30 students. *Id.* at 279. Approximately ten of the Students were receiving special education. *Id.* at 290.

75. The Student also received SDI in the special education setting in his homeroom that year.<sup>14</sup> Ms. Hinson was one of his homeroom teachers. Tr. 294. Homeroom met for 35 minutes four times per week. *Id.* at 280; PF23. There were two special education teachers and one instructional assistant for the 20 students in the Student's homeroom class. Tr. 307

76. Ms. Hinson opined that the Student responded well to the math instruction he received. Tr. 300. As of September 2021, the Student had an average grade in the general education class, understood the concepts, and "was doing a good job" with the supports provided. *Id.* at 311. The Student got a score of 28.5 out of 32 on the math unit 1 test. PD40 p.5; Tr. 340. However, he received a 12 out of 24, i.e., a score of 50%, on the unit 2 test. This score caused Ms. Hinson some concern. PD40 p.5; Tr. 360. The Student scored 100% on the three "learning checks" he completed independently.<sup>15</sup> PD 40; Tr. 853 54.

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<sup>13</sup> Ms. Gioino has an undergraduate degree in mathematics and a master's degree in teaching. She has taught high school math since 2015. Tr. 844-46.

<sup>14</sup> Homeroom is also referred to at Shorecrest as Highlander Home, HH, and/or HiHo. Tr. 306; PF23.

<sup>15</sup> "Learning checks" are similar to a short quiz. Tr. 859-60.

77. Ms. Gioino recalls the Student was “on par” with the other students in the class and did not stand out as needing excessive support. Tr. 852. She recalls the Student working well in groups. *Id.* at 851. Ms. Gioino had no concerns about the Student’s ability to participate in the general education curriculum that was delivered in her math class. Tr. 855.

78. Students were permitted to use calculators in the class because this did not interfere with mastery of algebra 1 concepts. Tr. 855. The calculator assisted with computation skills which were not the focus of the class. *Id.* at 855-86.

79. In October 2021, the Student scored a 440 on the iReady math assessment. This placed him in the 8<sup>th</sup> percentile for his grade level and at a third grade level of performance. PC23. The notes on the iReady diagnostic results page state that the Student “would benefit from intensive intervention focused on skills and concepts related to quantitative reasoning and representation.” They also recommend “instruction that connects understanding of algebraic representation, computation, and problem solving skills” to strengthen math abilities across all domains. *Id.* at 3.

80. In the fall of 2021, the Student’s results on the statewide Smarter Balanced math assessment placed the Student at the lowest level, a level 1. This indicated that the Student did not meet the state expectations for math skills. PF12. The Student had scored higher on this test when he was in sixth grade than he did in 2021 when he was in ninth grade. *Id.*

81. The District’s reevaluation of the Student was performed by Dr. Hirsch in October and November 2021. D16. At the time, the Student was receiving SDI only in math computation. *Id.* at 1. The notification/consent form for the reevaluation stated that the reevaluation would address the following areas: review of existing data, social/emotional, academic, classroom data, general education, student observation, study skills/organization, and age appropriate transition assessment. D14 p.3.

82. Classroom teachers who provided input to the reevaluation noted the Student’s level of engagement to be different in various classes. In science, the Student was on task 90% of the time, worked effectively in groups, and took notes 100% of the time. In Spanish class, the Student did not appear to be on task at all, never asked or answered questions, and did not take notes unless requested to do so by the teacher. D16 p.8.

83. As part of the reevaluation, Ms. Hinson completed a teacher observation form. She noted “some concern” about the Student’s ability to perform two step equations. She observed him to take notes in class, be on task, and participate in class

approximately 50% of the time. He worked effectively in small groups or partner work 30% of the time. PD16. Ms. Hinson noted that the Student had been provided with the following accommodations: additional time to complete tests and assignments, additional instruction and direction, preferential seating, an alternative setting to complete tests and assignments, shortened and modified assignments, and copies of notes from a peer or the teacher. *Id.* Ms. Hinson observed that the Student was off task at times but responded to redirection. He was often off task when he worked with friends and did not get much work done at those times because he was very social and liked to talk to his friends, as did many of his peers. PD16; Tr. 329. Ms. Hinson observed the Student to be a good self advocate when he needed additional support, and that he required reminders to complete homework assignments. PD16. She did not observe him to exhibit anxiety related to math. *Id.* at 331.

84. The Student's science teacher, Jessica Raman, stated that the Student completed his assignments before the due date and "added creativity" to his assignments. His major challenge was getting distracted by peers. She advised that he should "continue doing what he is doing he is doing really well in science!" PD27.

85. The Student's English teacher, Leif Stanton, expressed concern that the Student did not use English conventions well and his organization of written thoughts was very unclear. This teacher identified the Student as "someone I've been keeping a closer eye on." PD28.

86. The reevaluation report noted that the Student's writing lacked organization and he did not appear to understand how to write and support a thesis or contention. D16 p.2. The reevaluation determined that the Student did not qualify for SDI in reading, but he did qualify for SDI in written language. *Id.* at 6

87. The reevaluation's findings regarding math were lengthy and detailed. They state, in part:

[Student] has performed below standard on state math assessments but not significantly low. His scores have typically been at level 2. This is typical of students with math on their IEPs but not necessarily in pullout remedial math classes. His history on the district math assessment, iReady, were quite consistent with state assessment results. [Student's] scores have not met standard.<sup>16</sup> His score, relative to other students, typically goes up considerably during the year

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<sup>16</sup> Dr. Hirsch does not focus on the grade equivalents provided by the iReady results because grade equivalents are "very misleading in testing." Tr. 653.

showing that he makes considerable growth throughout the year. When administered the iReady as part of the current evaluation, his score of 440 is quite low and typical of students with math on the IEP. The low score in fall seems consistent with the pattern repeatedly shown throughout his educational career, namely low scores in fall relative to peers, and then significantly raised by winter (January).

...

Other than having gaps in math computational knowledge and perhaps a tendency to remember algorithms in order to solve problems without the deeper understanding of problem solving, there was little evidence of a math disability. Math will continue to be recommended to the IEP strictly because of the consistent low [to] low average math achievement and a low self confidence that will no doubt make more advanced math classes even more difficult. Additionally, there are issues around anxiety, self confidence, and organization that come out in the area of math.

D16 p.6. Dr. Hirsch went on to determine the Student has an SLD in math based on Dr. Clancy's evaluation, standardized math assessments, and teacher input. D16 p. 13.

88. Dr. Hirsch explained at the due process hearing that the Student had "big gaps" in his math skills, such as in operations, but he was able to grasp the concepts that were introduced in algebra. Tr. 655. The Student's use of his fingers when doing calculations did not concern Dr. Hirsch. *Id.* at 696.

89. Dr. Hirsch observed the Student was motivated to perform well in math and did not give up on difficult problems. However, the Student needed encouragement when presented with a new type of math problem. He seemed hesitant to address challenges and Dr. Hirsch attributed this to anxiety. Tr. 673 74; D16 p.6. Dr. Hirsch concluded, "My suspicion is that, as a result of either failure or predicted failure, and lack of self confidence in his ability to solve math problems, there has been an impairment to his progress in math." D16 p.6.

90. The Student scored in the low average range in study skills/organization. D16 p.10.

91. In social/emotional, the Student exhibited elevated levels of anxiety, primarily around math. D16 p. 12. Significant findings by Dr. Hirsch in social/emotional included a diagnosis of generalized anxiety disorder based on the results of the Multidimensional Anxiety Scale (MASC 2). *Id.* at 11. Social/emotional was not

recommended as an area needing an IEP goal, but Dr. Hirsch recommended a “sub goal in the area of math to address heightened math anxiety.” *Id.* at 12.

92. According to the reevaluation summary, Dr. Hirsch’s recommendations to the IEP team included, “Math, not just computation but problem solving, math anxiety and math organizational skills, all deserve specially designed instruction attention.” D16 p.3.

93. The Student’s IEP team met on November 16, 2021, to review the reevaluation. The District proposed modifying the math computation goal and adding an additional written language goal. D16 p.15. At the time, the Student was demonstrating 50% accuracy without a calculator on his first IEP goal (operations with integers) and 90% accuracy with a calculator. He was demonstrating 60% accuracy on his second IEP goal (two step equations). PC20. Ms. Hinson felt it was appropriate to discontinue the goal related to operations with integers because that would “keep up with the times.” Tr. 326. She explained, “If he’s able to accurately answer a math problem using a calculator, especially when it comes to operations of integers, I’m okay with focusing our time together on a higher level mathematical concept.” *Id.* at 326 27.

94. The IEP team met again on December 15, 2021, to update the Student’s IEP after considering the reevaluation results. PD35 p.14. The team added writing as an area in which the Student would receive SDI, and updated the IEP goals to read:

Math: By 12/19/2022, when given problems involving algebraic sense (multi step equations and systems of equations) [Student] will utilize example problems and a checklist of steps to accurately solve equations improving math problem solving skills and organization from 50% accuracy to 80% accuracy as measured by teacher generated assessment.

Written expression: By 12/19/2022, when given a writing prompt requiring one paragraph or more [Student] will utilize a checklist to write a topic sentence, use transitions, cite specific evidence, and provide detailed commentary, improving the ability to structure ideas through writing from a score of 65% for “structure” on a writing rubric (beginning skill) to a score of 80% for “structure” on a writing rubric (approaching proficient) as measured by student work samples and teacher rubric.

*Id.*

95. The IEP states under “adverse impact summary” that the Student “is experiencing self doubt, anxiety and difficulties with organization around math. It has prevented him from being very successful in the past and despite the ability to perform many math tasks, he appears reluctant to take on math problems.” PD35 p.4.

96. Dr Clancy opined at the due process hearing that the math goal in this IEP is inadequate because it does not address math anxiety. Tr. 399.

97. Dr. Hirsch opined at the due process hearing that accommodations and modifications can appropriately address math anxiety.

Our primary purpose in co taught classes is that we don’t single out students that have IEPs. Give them the same general curriculum, but give them enough support that they don’t have to go to a remedial class for instruction. That has all sorts of social implications.

Tr. 680.

98. The SDI provided by the December 2021 IEP was as follows:

**Services 12/20/2021 - 12/19/2022**

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
<b>Special Education</b>							
No	Math	Special Ed Staff	IEP Case Manager	230 Minutes / Weekly	General Education	12/20/2021	12/19/2022
No	Written Expression	Special Ed Staff	IEP Case Manager	30 Minutes / 2 Times Weekly	Special Education	12/20/2021	12/19/2022
No	Math	Special Ed Staff	IEP Case Manager	30 Minutes / 2 Times Weekly	Special Education	12/20/2021	12/19/2022
<b>Total minutes per week student spends in school:</b>				1745 minutes per week			
<b>Total minutes per week student is served in a special education setting:</b>				120 minutes per week			
<b>Percent of time in general education setting:</b>				93.12% in General Education Setting			

PD35 p.10. The two 30 minute special education math sessions were to take place in the Student’s homeroom period with Ms. Hinson.

99. New accommodations were added to the IEP including no timed tests, access to study guides during testing, access to example problems during testing, and the option of retaking tests until mastery is shown. PD35 p.14. The IEP also checked the “no” box for ESY. *Id.* at 12. The PWN issued after the meeting stated that the ESY decision could be revisited in the spring. *Id.* at 14. Dr. Hirsch opined that ESY should be considered for the Student given the pattern of his iReady scores. Tr. 685 86.

100. On January 17, 2022, the Parents informed the District that they would be unilaterally placing the Student at Brightmont for one to one instruction in math and



were seeking reimbursement from the District for that placement. PF5. The Parents stated the Student would stay enrolled in the District for all other course work and written expression SDI. *Id.*

101. Brightmont is a nonpublic agency school (NPA).<sup>17</sup> It tailors one to one instruction for students to build skills. Tr. 746. Courses are typically aligned with state standards. *Id.* at 746-47.

102. The Parents placed the Student at Brightmont because they felt he was lagging in math and was not showing improvement, and the setting of the math SDI caused anxiety and embarrassment that were impacting the Student's mental health. Tr. 791, 804-05. The District declined to fund the Brightmont placement. D21. The District's position was that the Student could receive FAPE in the District and placement at Brightmont was not his least restrictive environment (LRE). *Id.*

103. At the time the Student withdrew from math class in the District, Ms. Hinson felt he was on track to meet his math IEP goal. Tr. 352. As of January 2022, the Student had a grade of C in algebra 1. He had grades of C in Spanish 2 and honors English. D24.

104. On January 21, 2022, Brightmont administered the Star Diagnostic Test (Star test) in math to the Student. PF7. The Star test is a timed test on which use of a calculator is not permitted. Tr. 462, 774. The Student's test results placed him in the 14<sup>th</sup> percentile and at a grade equivalent of 5.4. This indicated that he needed intervention. PF7.

105. The Student was placed into algebra 1 instruction when he entered Brightmont. His teacher was and continues to be Sheba Abraham. Tr. 746; PF16. Ms. Abraham has a bachelor's degree in information technology and a master's degree in computer science. PF32. She has experience working as a tutor, but has no formal training in teaching and no experience working in a classroom setting. PF32; Tr. 498-99. Ms. Abraham teaches math and science at Brightmont. Tr. 449.

106. The Student received three hours per week of one to one instruction at Brightmont. Tr. 479. Ms. Abraham observed several things when she started working with the Student, including that he has difficulty memorizing formulas, and he is slow to grasp concepts. *Id.* at 455-56. She also noted him to have anxiety about whether he could do the work. *Id.* at 489. He would often say, "That looks difficult," or, "I don't think I can do it." *Id.*

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<sup>17</sup> School districts are permitted to contract with NPAs to provide FAPE to students whose needs cannot be met by the school district. WAC 392-172A-04080.

107. When she started working with him, Ms. Abraham assured the Student that he could ask her for help if he was stuck on a problem. Tr. 481. If he felt he could not do something, she would tell him to take a deep breath and that “it’s okay.” Then she would break the problem into small pieces, and they would solve it piece by piece. *Id.* at 490. Ms. Abraham views it as essential that the Student is confident in his work. *Id.* at 494.

108. Brightmont developed an IEP for the Student which had one goal, which was: By 12/19/2022, when given problems requiring multiple steps, [Student] will utilize example problems and a checklist of steps to independently solve assigned problems improving math problem solving skills and organization from 10% independently solving problems to 80% independently solving problems as measured by teacher data collection and observation. PF19. Ms. Abraham worked mainly on two issues with the Student: his difficulty memorizing formulas and his ability to grasp concepts. Tr. 455 56.

109. In February 2022, the Student’s IEP progress report from the District stated that his overall math grade was 75% and he was working with staff to utilize example problems to accurately solve algebraic equations. D36. After the February reporting, there were no more math progress reports because the Student had enrolled in Brightmont and no longer attended math class in the District. *Id.*

110. The Student remained in Ms. Hinson’s homeroom class after he withdrew from taking math in the District. Tr. 865. The Parents asked that Ms. Hinson not discuss math with the Student after he moved to Brightmont. The Parents made clear that they did not want any math SDI to be provided by the District after the Student started receiving math instruction at Brightmont. *Id.* at 831 33, 865 66.

111. When the Student took the Star test again at Brightmont in April 2022, he scored above average for ninth grade math concepts. Tr. 776 77. He met the expected benchmarks for achievement and did not exhibit major deficiencies in math. PF22; Tr. 762. This represented a significant improvement over his January 2022 score. Mr. Beals,<sup>18</sup> Director of the Brightmont Seattle campus, has seen this type of rapid improvement before in students with math anxiety. He thinks such students are more relaxed the second time they take the test and are accustomed to the Brightmont environment. Tr. 777 78.

112. The Student received a grade of “B” in his algebra 1 second semester course at Brightmont. Tr. 468.

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<sup>18</sup> Mr. Beals has a Bachelor of Arts degree in education, and a Master of Business Administration degree. PF30.

113. Ms. Abraham has observed the Student's learning pace increase over the time she has worked with him. She has also seen his confidence improve. Tr. 481-85. She has worked one on one with the Student year round; there was no break over the summers. *Id.* at 486.

114. Ms. Abraham has worked with the Student remotely several times and noted that he is not as comfortable in that setting as he is in person. She felt he was distracted, probably by other people being present in the home. Tr. 494.

#### The 2022-23 school year

115. The Student was in tenth grade during this school year. He continued to attend Brightmont for math instruction.

116. On November 14, 2022, the District issued an invitation to a December 7<sup>th</sup> meeting to review the Student's IEP. PE2 p.1. The math goal in the new proposed IEP was: By 12/11/2023, when given problems involving geometric sense (quadratic equations) [Student] will utilize example problems and a checklist of steps to accurately solve equations improving math problem solving skills and organization from 50% accuracy (entry level) to 80% accuracy as measured by teacher generated assessment. *Id.* at 5. The IEP proposed 230 minutes per week of math SDI delivered by special education staff in the general education setting. *Id.* at 14. There was no longer SDI in the special education setting.

117. The Parents felt the math SDI that was offered was inadequate and the Student's anxiety would get worse due to not having SDI in a special education setting. Tr. 795.

118. The PWN issued after the IEP meeting states:

Parents have placed Student privately for instruction in the area of math and Student has not participated in math instruction at Shorecrest since the development of the previous IEP.<sup>19</sup> Goals, present levels of performance, and the District's offer of FAPE in the area of math have therefore not been altered in this IEP. Parents were offered the opportunity to discuss the math portion of the IEP at the meeting and declined. Parents can request an IEP meeting at any time if they would like to discuss updating the IEP in this area.

PE2 p.17.

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<sup>19</sup> The "previous IEP" referenced here is presumed to be the December 2021 IEP.

119. On November 21, 2022, the Parents filed their Complaint in this action.

120. The Student was in the second semester of geometry at Brightmont at the time of the due process hearing and was passing the class. Tr. 472-73. He began receiving four hours per week of instruction at Brightmont in January 2023 and continues to do so. *Id.* at 476-78.

121. The Parents have seen the Student's confidence improve since he has attended Brightmont. He expresses an understanding of math and seems brighter and enthused when he discusses his math instruction. Tr. 808.

Other relevant findings

122. The Parents presented the following summary of their requested reimbursement for math instruction at Brightmont, travel to and from Brightmont, and Dr. Clancy's fees that were not covered by the District:

Brightmont Academy Expenses January 2022 - Present				
<b>January 2022 - June 2022</b>		<b>Amount paid</b>		<b>Transportation costs</b>
Enrollment fee		\$200.00		
30 Sessions		\$2,700.00		January 2022 - April 2023: 153 trips @ 9 miles R/T=1377mi.
23 Sessions		\$2,070.00		
<b>July 2022 - December 2022</b>				
57 Sessions		\$5,130.00		
<b>January 2023</b>				
9 Sessions		\$900.00		
<b>February - April 2023</b>				
43 Sessions		\$3,870.00		
		<b>Total</b>	<b>\$14,870.00</b>	
Projected total costs for Brightmont Instruction 2023				
Period	Sess. per week	# of sessions	Rate	Total
May - June 2023	4	33	\$90.00	\$2,970.00
July - August 2023	3	31	\$90.00	\$2,790.00
				<b>\$5,760.00</b>
IEE Costs - Dr. Clancy				
1/9/2021	IEE	\$1,200.00		
9/23/2021	IEP mtg	\$787.50		<b>\$1,987.50</b>

PF29 p.1. Mileage expenses through June 2023 amount to \$1001.26. *Id.* at 12.

123. The \$1200 expense for Dr. Clancy's IEE covers the social/emotional functioning assessment that was not approved by the District and was paid for by the

Parents. Tr. 408. The \$787.50 expense was for time Dr. Clancy spent preparing for the September 2021 IEP meeting, which included meeting with the Parents' attorney. *Id.* at 409.

## CONCLUSIONS OF LAW

### Jurisdiction and Burden of Proof

1. The Office of Administrative Hearings 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 IDEA; Chapter 28A.155 Revised Code of Washington (RCW); Chapter 34.05 RCW; Chapter 34.12 RCW; and the regulations promulgated pursuant to these statutes, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392 172A Washington Administrative Code (WAC).

2. The burden of proof in an administrative hearing under the IDEA is on the party seeking relief. See *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005). Since the Parents are the party seeking relief in this case, they have the burden of proof. 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, 256 P.3d 339 (2011). Therefore, the Parents' burden of proof in this matter is preponderance of the evidence.

### The IDEA and FAPE

3. The IDEA and its implementing regulations provide federal funds to assist state and local agencies in educating children with disabilities, and condition such funding upon a state's compliance with extensive goals and procedures. In *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982) (Rowley), the Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the 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 206-207 (footnotes omitted).

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

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

*Id.* at 188-189.

5. The Supreme Court clarified the substantive portion of the *Rowley* test quoted above in 2017:

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

*Endrew F. v. Douglas County Sch. Dist. RE 1*, 580 U.S. 386, 137 S.Ct. 988, 999-1000 (2017).

6. 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.” *Endrew 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 U.S. Dist. LEXIS 77834 \*21, 119 LRP 18751 (W.D. Wash. 2019), *aff’d sub nom. Crofts v. Issaquah Sch. Dist. No. 411*, 22 F.4<sup>th</sup> 1048 (9th Cir. 2022) (quoting *Endrew F.*, 137 S.Ct. at 994).

7. 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 benefit.

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

Whether the District’s 3 x 3 model predetermined the Student’s IEP team’s decisions as they relate to the District’s provision and allocation of SDI minutes to the Student

8. This action was filed on November 21, 2022. The IDEA has a two year statute of limitations for complaints pertaining to the identification, evaluation, educational placement, or provision of FAPE to a student. “The 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.” WAC 392 172A 05080. The Parents have not argued that the statute of limitations does not apply to their claims in this case. Therefore, only claims that arose on or after November 21, 2020, will be considered.

9. “[P]redetermination occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives.” *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 F. App’x 342, 344 (9<sup>th</sup> Cir. 2007). Predetermination of a student’s IEP provisions is a procedural violation that can deprive the student of FAPE. According to the U.S. Court of Appeals for the Ninth Circuit, a school district violates IDEA procedures “if it independently develops an IEP, without meaningful

parental participation, and then simply presents the IEP to the parent for ratification.”  
*Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9<sup>th</sup> Cir. 2003).

10. The District implemented the 3 x 3 model in the fall of 2020. The Student’s IEP was amended on October 20, 2020, to provide him with 30 minutes of math SDI per week during the first half of the school year. A cursory review of the evidence surrounding the IEP team’s decision to provide only 30 minutes of SDI per week indicates that predetermination may have occurred. However, this IEP team decision occurred outside the two year period at issue pursuant to the statute of limitations. Therefore, any allegation that the October 20, 2020 IEP provisions were pre determined cannot be reached.

11. The Student’s IEP team did not make any other decisions until April 13, 2021, during the annual IEP review. The April 2021 IEP provided for 30 minutes of math calculation SDI in a special education setting twice per week, as well as 120 minutes of math calculation SDI in the general education setting each week. The evidence indicates that the April 2021 IEP was developed appropriately with input from members of the IEP team. The IEP was then amended at a subsequent review meeting in May after the Parents expressed additional concerns pertaining to the Student. As such, the evidence does not support a conclusion that the April 2021 IEP was predetermined.

12. For these reasons, the Parents have not met their burden to prove that the District’s 3 x 3 model predetermined the Student’s IEP team’s decisions regarding the provision and allocation of SDI minutes.

Whether the District’s 3 x 3 model served the purpose of inappropriately easing the District’s administrative burden to provide the Student with FAPE and/or inappropriately reducing the overall number of SDI minutes the District provided to the Student

13. As set forth above, FAPE consists of educational instruction specially designed to meet the unique needs of the child. *Rowley*, 458 U.S. at 188 89. Administrative considerations such as lack of adequate personnel or resources do not relieve a school district from its obligation to make FAPE available to disabled students. *OSEP Memorandum 95 9*, 21 IDELR 1152, 21 LRP 2967 (OSEP 1994).

14. The Parents argue that implementation of the District’s 3 x 3 model caused the Student’s IEP team to make decisions based on considerations of administrative convenience rather than on the unique needs of the Student. These arguments appear to pertain primarily to decisions made regarding the provisions of the October 20, 2020 IEP. As set forth above, the IDEA’s statute of limitations prevents



consideration of the appropriateness of IEP team decisions made prior to November 21, 2020. The propriety of decisions made in the development of the October 2020 IEP therefore cannot be reached.

15. To the extent the Parents argue that the District's duty to provide the Student with FAPE was "inappropriately eased" during the time period that can be considered here, the nature of those arguments is unclear. There is no claim that the October 2020 IEP was implemented inappropriately. Moreover, the April 2021 IEP was developed appropriately, and the evidence does not support a conclusion that its provisions were dictated by administrative considerations or otherwise amounted to an "inappropriate easing" of the District's duty to provide FAPE.

16. For these reasons, the Parents have not met their burden of proof as to this issue.

Whether the District's educational programming, including the Student's placement for math, denied the Student FAPE due to the programs not being reasonably calculated to meet the Student's needs in the area of math

17. In developing a student's IEP, WAC 392 172A 03110 requires the IEP team to consider:

- (a) The strengths of the student;
- (b) The concerns of the parents for enhancing the education of their student;
- (c) The results of the initial or most recent evaluation of the student; and
- (d) The academic, developmental, and functional needs of the student.

18. As set forth above, 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. According to the Ninth Circuit, the pertinent question with respect to whether an IEP offers FAPE is whether the IEP was appropriately designed and implemented so as to provide the student with a meaningful benefit. *Adams v. Oregon*, 195 F.3d 1141, 1149 (9<sup>th</sup> Cir. 1999). The appropriateness of an IEP is determined by reviewing its goals and services at the time it was offered and determining whether it was reasonably calculated at that time to confer an educational benefit. *Id.*

19. The Ninth Circuit has explained the Endrew F. standard as follows:

[T]he 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," [citations omitted] taking into account the progress of his non disabled peers, and the child's potential.

*M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1201 (9<sup>th</sup> Cir 2017).

20. When determining whether an IEP is appropriate, "the question is whether the IEP is *reasonable*, not whether the court regards it as ideal." *Endrew F.*, 580 U.S. at 399 (emphasis in original) (citing *Rowley*, 458 U.S. at 206 07). The IDEA does not require states to provide disabled children with "a potential maximizing education," but rather with a "basic floor of opportunity." *Rowley*, 458 U.S. at 197 201. A student is not denied FAPE simply because the district's proposed educational plan provides less educational benefit than that which a student's parents might prefer. *A.W. v. Tehachapi Unified Sch. Dist.*, 2019 U.S. Dist. LEXIS 37815 (E.D. Cal 2019). However, a reviewing court may fairly expect school district authorities "to be able to offer a cogent and responsive explanation for their decisions that show the IEP is reasonably calculated to enable the child to make progress appropriate in light of his circumstances." *Endrew F.*, 580 U.S. at 404.

21. In the case of a child who is being educated in a general education classroom, their IEP should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." *Rowley*, 458 U.S. at 203 204 (1982). However, advancement from grade to grade in and of itself does not dispositively mean a child is receiving FAPE. *Id.* at 203 n. 25.

22. In the present case, the Student achieved average and above average grades in general education math (grades of A and C), and he advanced from grade to grade. When his Parents moved him to Brightmont for math instruction, the Student was placed into algebra 1, the same class he had been taking in the District. The evidence does not show that the Student had to repeat any of the classes he had taken and passed in the District in order to succeed at Brightmont. At the time of the due process hearing, the Student was in geometry at Brightmont, the same course he would have been in had he stayed in the District.

23. However, the Student's scores on the iReady assessments he took in District regularly placed him far below his grade level at the fifth to sixth grade level when he was in eighth grade, and at the third grade level when he was in ninth grade. His Smarter Balanced assessment placed him at the lowest level. While the iReady tests are not given significant weight for all the reasons articulated by the District staff at

the due process hearing, the scores do indicate persistent weakness in basic math skills. Similarly, the Student's scores on Dr. Clancy's assessments also indicate such a weakness, placing the Student in the 2<sup>nd</sup> percentile for math computation and overall math, and in the 8<sup>th</sup> percentile for calculations using fractions and algebra. The Student's initial performance on the Star test also evidenced weak math skills. However, approximately three months later, the Student's performance on the Star test showed him meeting benchmarks for ninth grade and exhibiting no major deficiencies in math.

24. The evidence is abundantly clear that the Student suffered from anxiety, particularly around math. The Student's IEPs repeatedly identified his "self doubt and anxiety" as having an adverse educational impact. Dr. Hirsch opined that the Student had "big gaps" in his math skills and his lack of confidence and anxiety had likely impaired his progress in math. Dr. Hirsch diagnosed the Student with generalized anxiety disorder and recommended an IEP sub goal to address math anxiety. Dr. Hirsch also opined that computation, problem solving, and math organizational skills "all deserved specially designed instruction attention." Similarly, Dr. Clancy diagnosed the Student with generalized anxiety disorder and social anxiety. She opined that the Student needed "a lot" of reassurance while being gently challenged to build his independence, and that he needed presentation of information at a pace that was comfortable for him. It is beyond dispute that as of the conclusion of Dr. Hirsch's evaluation in November 2021, at the very latest, the IEP team possessed abundant evidence that anxiety was adversely impacting the Student's education.

25. The Student's April 2021 IEP contained a goal pertaining to calculation with integers and provided 180 minutes of math calculation SDI per week. This IEP targeted the Student's apparent area of weakness and provided an appropriate amount of SDI. While it did not specifically address anxiety in a goal, the IEP provided several new accommodations to address anxiety. The IEP team did not yet have the generalized anxiety disorder diagnoses from Dr. Clancy and Dr. Hirsch when this IEP was created. It is therefore concluded that this IEP was reasonably calculated to enable the Student to make appropriate progress at the time it was developed. It may not have been "potential maximizing," but it provided the Student with a basic floor of opportunity as is required for FAPE.

26. The Student's December 15, 2021 IEP presents a different story. It did not contain a goal pertaining to calculation even though the Student had only demonstrated 50% accuracy on calculation with integers without using a calculator, while the IEP goal of April 2021 called for 80% accuracy. The calculation goal was dropped in the December 2021 IEP in part because the Student, like all students in

algebra 1, was permitted to use a calculator in class. Although additional accommodations were put in place to address the Student's anxiety, the IEP did not contain a goal or a subgoal pertaining to anxiety. It did not address computation or math organizational skills as had been recommended by Dr. Hirsch. It is notable that no major changes were made to the Student's IEP after two very comprehensive evaluations starkly highlighted his significant math anxiety and math skills weaknesses. It cannot be concluded that this IEP was reasonably calculated to provide the Student with FAPE when it was developed. Consequently, the Student was not receiving FAPE as of December 15, 2021.

27. For these reasons, it is concluded that the Parents have met their burden to prove by a preponderance of the evidence that the Student's December 2021 IEP was not reasonably calculated to meet his needs with respect to math.

Whether the District's educational programming, including the Student's placement for math, denied the Student FAPE due to the programs not being reasonably calculated to meet the Student's needs in that the District failed to offer the Student ESY services in math

28. WAC 392 172A 02020 pertains to ESY services and provides that the purpose of ESY is the "maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors." WAC 392 172A 02020(5). The need for ESY must be based on documented evidence of regression, or determinations of the IEP team. *Id.* at (6). ESY 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." *Id.* at 3.

29. Provision of ESY is the exception, not the rule. *N.B. v. Hellgate Elem. Sch. Dist.*, 541 F.3d 1202, 1211 (9<sup>th</sup> Cir. 2008). ESY is only necessary when the benefits a student gains during the school year will be significantly jeopardized if the student is not provided with an educational program over the summer. *Id.* A parent must show that that "an ESY is necessary to permit [the child] to benefit from his instruction." *Id.* at 1212 (citations omitted).

30. In the present case, the Student's IEP team never determined that he needed ESY, although it is not clear whether and when the team actually addressed the issue. However, the Student advanced from grade to grade in math and the evidence does not demonstrate that his ability to benefit from his instruction was jeopardized due to lack of ESY. The Student began each school year relatively on par with the other students and did not demonstrate summer regression that was out of the ordinary. At the start of ninth grade, he scored a 28.5 out of 32 on his first assessment. While his iReady scores did indicate a pattern of low scores at the start

of the school year and increased scores as the year progressed, that is not enough evidence from which to conclude that the Student regressed so much as to have required ESY in order to receive FAPE.

31. The Parents have therefore not met their burden to prove this claim.

Whether the Student was entitled to a comprehensive and fully funded IEE by the District during 2021

32. Parents have a right to obtain an IEE if they disagree with a school district's evaluation of their child, under certain circumstances. WAC 392 172A 05005; 34 CFR 300.502(a)(1). An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district, at district expense. WAC 392 172A 05005(1)(c)(i); 34 CFR 300.502(b). If a parent requests an IEE, a district must either ensure that an IEE is provided at no cost to the parent without unnecessary delay, or initiate a due process hearing within 15 calendar days to show that the district's evaluation is appropriate. WAC 392 172A 05005(2)(c).

33. A district cannot respond to an IEE request by proposing to reevaluate a student. *Fullerton Sch. Dist.*, 58 IDELR 177, 112 LRP 8549 (SEA CA 2012). A district also cannot offer to "piece together" a complete evaluation by compiling a mixture of independent assessments and assessments performed by the district. *Jones Herrion v. District of Columbia*, 2019 U.S. Dist LEXIS 176173 (D.D.C. 2019).

34. In the present case, the District granted the Parents' request for an IEE in the areas the Parents originally requested, math and cognitive, but denied the subsequent request for a social/emotional assessment to be included in the IEE. The District instead treated the request for an IEE in social/emotional as a request for reevaluation and incorporated a social/emotional assessment into the Student's triennial reevaluation conducted by Dr. Hirsch approximately six months later.

35. The first issue, then, is whether the District's position that the Parents could not request an IEE in an area that was not covered by the initial evaluation because "there was nothing to disagree with" was correct. It is concluded that it was not. When evaluating a student for special education eligibility, a district must ensure that the student is assessed in all areas related to the suspected disability including, if appropriate, social and emotional status. WAC 392 172A 03020(3)(e). A parent is not required to use a specific word or phrase to express their disagreement with a district evaluation when requesting an IEE. *Genn v. New Haven Bd. of Education*, 219 F. Supp. 3d 296 (D. Conn. 2016). It is clear from the context of the Parents' IEE request and their discussion with Dr. Irwin that they did not feel the Student had been assessed in all areas of suspected disability in the initial evaluation in 2019,

and that the failure to initially evaluate the Student in social/emotional was part of the basis for their IEE request.

36. The next question is whether, upon declining to fund an IEE in the area social/emotional even though it had agreed to fund an IEE in other areas, the District should have filed for due process to establish the appropriateness of its initial evaluation rather than addressing the Parents' request by incorporating a social/emotional assessment into a subsequent reevaluation. Guidance from the Office of Special Education Programs (OSEP) of the U.S. Department of Education's Office of Special Education and Rehabilitative Services, provides as follows:

Specifically, you ask whether once a district's evaluation is complete and the parent communicates a desire for a child to be assessed in a particular area in which they have not previously expressed concern, would the district have the opportunity to conduct an evaluation in the given area before a parent invokes the right to an IEE. ... Under 34 CFR § 300.502, parents of a child with a disability have a right to seek an IEE at public expense if the parents disagree with the evaluation conducted by the public agency. This is so even if the reason for the parent's disagreement is that the public agency's evaluation did not assess the child in all areas related to the suspected disability. ... The IDEA affords a parent the right to an IEE at public expense and does not condition that right on a public agency's ability to cure the defects of the evaluation it conducted prior to granting the parent's request for an IEE. *Therefore, it would be inconsistent with the provisions of 34 CFR § 300.502 to allow the public agency to conduct an assessment in an area that was not part of the initial evaluation or reevaluation before either granting the parents' request for an IEE at public expense or filing a due process complaint to show that its evaluation was appropriate.*

*Letter to Carroll*, 68 IDELR 279, 116 LRP 46076 (OSEP October 22, 2016) (emphasis added).

37. The above guidance makes clear that when the District declined to fund an IEE of the Student in social/emotional, it was required to file a due process complaint to establish the appropriateness of its initial evaluation. It did not do so. If a district fails to file a due process complaint within 15 days of denying an IEE request, the district is required to fund the requested IEE. The District has not cited authority for the proposition that it can unilaterally pick and choose what areas can be assessed in an IEE based solely on reference to the areas it assessed in its own challenged

evaluation. Rather, the District argues that the initial evaluation of the Student performed in 2019 was appropriate at the time it was conducted, so an assessment in social/emotional “is not appropriately within the scope of an IEE at public expense.” District’s Post Hearing Brief at 35. But this puts the cart before the horse. The issue is not whether the March 2019 evaluation was appropriate the issue is that the District did not file for due process to establish whether the evaluation was appropriate. Rather, the District decided the issue for itself, declining to fund a social/emotional IEE on the basis that the initial evaluation was appropriate while also failing to file for due process. This was a clear violation of WAC 392 172A 05005(2)(c).

38. The remedy when a District denies an IEE request and fails to timely request a due process hearing to establish the appropriateness of its evaluation is the provision of an IEE at public expenses. It is therefore concluded that the District is required to fully fund Dr. Clancy’s IEE and must reimburse the Parents for the portion of Dr. Clancy’s IEE that was not already paid for by the District.

Whether the Student’s placement at Brightmont for math instruction was proper

39. WAC 392 172A 04115, entitled “Placement of students when FAPE is at issue,” provides in part:

If the parents of a student, who previously received special education and related services under the authority of a school district, enroll the student in a private preschool, elementary or secondary school, or other facility without the consent of or referral by a school district or other public agency, a court or an administrative law judge may require a school district or other public agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that a school district or other public agency had not made a free appropriate public education available to the student in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by a school district or other public agency.

WAC 329 172A 04115(3).

40. Caselaw regarding unilateral parental placement is consistent with the WAC. According to the U.S. Supreme Court, parents who unilaterally enroll a student in a private school are entitled to tuition reimbursement if: (a) the school district’s

placement violated the IDEA, and (b) the parents' private school placement is proper under the IDEA. *Florence County Sch. Dist. v. Carter*, 510 U.S. 7, 114 S. Ct. 361, 364 (1993); see *Sch. Committee of Burlington Massachusetts Dep't of Educ.*, 471 U.S. 359, 369, 105 S. Ct. 1996 (1985). In *Carter*, the U.S. Supreme Court held that reimbursement is not barred by a private placement's failure to meet all state educational standards. The private facility at issue in *Carter* employed at least two faculty members who were not state certified, did not develop IEPs, and was not on the approved list of private schools, but the Court concluded that these factors did not bar the parents from receiving reimbursement for the placement. 510 U.S. at 14 15.

41. In the Ninth Circuit, for a unilateral private placement to be proper it must have been reasonably calculated at the time of enrollment to meet the Student's needs. *J.T. v. Dep't of Education*, 695 Fed. Appx. 227 (9th Cir. 2017). As such, parents must demonstrate that the placement "provides educational instruction specially designed to meet the unique needs of a handicapped child, supported by such services as are necessary to permit the child to benefit from instruction." *C.B. v. Garden Grove Sch. Dist.*, 635 F.3d 1155, 1159 (9th Cir. 2011). In *C.B. v. Garden Grove*, the student at issue had unique needs in math, among other areas. The private center in which he was placed provided only language based services, and no instruction in math. Nonetheless, the Ninth Circuit found the private placement was proper because it met some, though not all, of the student's educational needs, and provided significant educational benefits. *Id.* at 1159 1160. In contrast, a private placement is not proper when the educational benefits conferred are "meager" and the student at issue makes no progress in essential areas. *M.N. v. State of Hawaii*, 509 F. App'x 640, 641 (9th Cir. 2013).

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

43. With respect to whether Brightmont was a proper placement for the Student for purposes of reimbursement of tuition, it has been concluded above that the District was not providing FAPE to the Student as of December of 2021. The next inquiry is whether placement of the Student at Brightmont was proper. Brightmont provided tailored, encouraging, and supportive one to one math instruction to the Student. This included reassurance that he could ask his teacher for assistance at any time, and that she would help reduce his anxiety by breaking problems into smaller pieces. The Student made grade level progress, advancing from algebra to geometry, and his confidence has improved. For these reasons, a preponderance of the evidence establishes that Brightmont was a proper placement for the Student.



44. Because the Parents have established that the Student was denied FAPE by the District and Brightmont was a proper placement, they are entitled to reimbursement. The remaining question is to determine how much reimbursement is appropriate. *J. T. v. Dep't of Educ.*, 695 F. App'x 227 (9th Cir. 2017). “[E]quitable considerations are relevant in fashioning relief.” *Carter*, 510 U.S. at 16. At this stage, the tribunal must “exercise its ‘broad discretion’ and weigh ‘equitable considerations’ to determine whether, and how much, reimbursement is appropriate.” *J.T.*, 695 F. App'x. at 228. ALJs have broad latitude to fashion appropriate equitable remedies for the denial of FAPE. *Burlington v. Massachusetts Dept. of Educ.*, 471 U.S. 359; *Parents of Student W. v. Puyallup School Dist., No. 3.*, 31 F.3d 1489, 1496 (9th Cir. 1994). “Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” *Parents of Student W. v. Puyallup*, 31 F.3d at 1497. Appropriate relief can include compensatory education, which is an equitable remedy, to compensate for a deficient program that denied FAPE. *Reid v. District of Columbia*, 401 F.3d 516, 521-23 (D.C. Cir. 2005). To accomplish the IDEA’s purposes, the ultimate award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. *Reid*, 401 F.3d at 524. Moreover, academic progress or lack thereof at the private placement is a relevant equitable factor. *J.T. v. Dep’t of Educ.*, 2018 U.S. Dist. LEXIS 92407, \*10 (D. Haw. 2018).

45. In the present case, the equities do not weigh strongly for or against the District or the Parents.

46. Throughout 2022, the Student received three hours of one to one instruction per week, including during the summer, at Brightmont. He began receiving four hours per week at the start of 2023. Both three and four hours per week year round constitute an intensive level of instruction that exceeds what the District would have been required to provide in order to deliver FAPE to the Student. Consequently, reimbursement of all the hours the Student has attended Brightmont to date would be very excessive. A reasonable compensatory education award that best approximates where the Student would have been had the District provided him with FAPE in the first place is reimbursement for the Student’s placement at Brightmont from January 2022 through December 2022. This amounts to \$10,100 in tuition and fees, and \$568 in transportation costs, for a total of \$10,668. An award of any additional compensatory education is not supported by the evidence and would be excessive.

Whether the Student's placement at Brightmont for math instruction continues to be appropriate and should be his prospective placement

47. The Student is currently taking a grade level math course at Brightmont. There is little to no evidence that the Student continues to need the intense and restrictive level of one to one instruction provided at Brightmont in order to receive FAPE. Brightmont provides only one to one instruction for its students, and there is no expectation that students will move beyond needing a one to one instructor at all times. Ongoing placement of the Student at Brightmont therefore runs counter to Dr. Clancy's recommendation that he be given the opportunity to build resiliency and independence.

48. Prospective placement at Brightmont also runs counter to Dr. Hirsch's recommendation that the Student receive instruction with nondisabled peers. Districts are required to educate students with disabilities in the general education environment to the maximum extent appropriate. WAC 392 172A 20250(1). The Parents have not shown that the Student's disability is so severe that education in the general education setting, with the use of supplementary aids and services, cannot be satisfactorily achieved. See WAC 392 172A 20250(2). Rather, the evidence is quite clear that Brightmont is too restrictive and is therefore not the Student's LRE.

49. Again, the IDEA does not require a school district to provide disabled children with "a potential maximizing education," but rather with a "basic floor of opportunity." Ongoing placement at Brightmont has not been shown to be necessary for the Student to receive a basic floor of opportunity and thereby receive FAPE.

50. For these reasons, the Parents have not met their burden to prove that the Student's placement at Brightmont for math instruction continues to be appropriate and should be his prospective placement.

Whether the Parents are entitled to their requested remedies

51. When a parent proves a violation of the IDEA, a tribunal may "grant such relief as the court determines is appropriate" based on the evidence. 20 USC § 1415(i)(2)(C)(iii). Relief is "appropriate" if it furthers the purposes of the IDEA and helps to ensure that a student receives the education to which he was statutorily entitled at the time of the violation. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 719 (3d Cir. 2010).

52. It is concluded above that the District should have funded the social/emotional portion of Dr. Clancy's IEE. The Parents are therefore entitled to reimbursement from the District in the amount of \$1200.

53. The evidence also establishes that Dr Clancy's attendance at the September 2021 IEP meeting was warranted. The results of her IEE were surprising to the District because the Student was performing much better in class than he did on the IEE assessments. Dr. Hirsch attended that IEP meeting and was preparing to conduct the District's reevaluation in response, in part, to Dr. Clancy's IEE. It is therefore quite reasonable that the IEP team be provided with an opportunity to interact with Dr. Clancy. As such, the District is ordered to reimburse the Parents \$787.50 for the cost of Dr. Clancy's attendance at the IEP meeting. See *Fullerton Sch. Dist.*, 58 IDELR 177, 112 LRP 8549 (SEA CA 2012) (ordering that parents be reimbursed for the cost of the independent evaluator's attendance at an IEP meeting which was warranted because the district staff had concerns about the evaluator's report and its recommendations).

54. As set forth above, the Parents are awarded compensatory education in the form of tuition reimbursement in the amount of \$10,668.

55. The Parents request in their briefing that this final order address who should evaluate the Student if a new reevaluation were to be conducted. Parents' Post Hearing Brief at 45. Because this issue was not addressed at the due process hearing and the necessary facts have not been presented, this issue cannot be decided and will not be reached here.

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

## ORDER

1. The Parents have met their burden to prove that the Shoreline School District violated the IDEA and denied the Student FAPE as set forth above.
2. The District is ORDERED to reimburse the Parents for tuition at Brightmont and travel expenses in the amount of \$10,668. Such reimbursement shall be made within 30 days of the date of this order.
3. The District is further ORDERED to reimburse the Parents for Dr. Clancy's fees in the amount of \$1,987.50. Such reimbursement shall be made within 30 days of the date of this order.

4. All other remedies requested by the Parents have been considered and are DENIED.

Served on the date of mailing.



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Jacqueline H. Becker  
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 (90) days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Legal Services, PO Box 47200, Olympia, WA 98504 7200. To request the administrative record, contact OSPI at [appeals@k12.wa.us](mailto:appeals@k12.wa.us).

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that true copies of this document were served upon the following as indicated:

Parents

via First Class Mail

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Dated September 18, 2023, at Seattle, Washington.

  
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cc: Administrative Resource Services, OSPI