STATE OF WASHINGTON
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May 21, 2015

Parent
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In re: Seattle School District
OSPI Cause No. 2014-SE-0101
OAH Docket No. 12-2014-OSPI-00044

Dear Parties:

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

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

Sincerely,

Michelle C. Mentzer
Administrative Law Judge

cc: Administrative Resource Services, OSPI
Michelle C. Mentzer, Acting Senior ALJ, OAH/OSPI Caseload Coordinator

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

IN THE MATTER OF:	OSPI CAUSE NO. 2014-SE-0101
	OAH DOCKET NO. 12-2014-OSPI-00044
SEATTLE SCHOOL DISTRICT	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Michelle C. Mentzer in Seattle, Washington, on March 9 and 10, 2015. The Parent of the Student whose education is at issue[1] appeared and was represented by Angela Shapow, attorney at law. The Seattle School District (District) was represented by David Hokit, attorney at law. The following is hereby entered:

STATEMENT OF THE CASE

The Parent filed a due process hearing request on December 29, 2014. A prehearing conference was held on January 26, 2015. A prehearing order was issued on February 9, 2015.

The due date for the written decision was continued to 30 days after the close of the hearing record, pursuant to a joint request for continuance. *See* First Prehearing Order of February 9, 2015.[2] The hearing record closed with the filing of post-hearing briefs on May 1, 2015. Thirty days thereafter is May 31, 2015. The due date for the written decision is therefore May 31, 2015.

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Joint Exhibits: J-1 through J-10.

Parent Exhibits: P-1 through P-6; P-7, page 1 (only page 1 was admitted, and only for the limited purpose of showing that the IEP team considered it); P-8 through P-14; P-16; and P-18 through P-19.

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[1] In the interests of preserving the family's privacy, this decision does not name the parents or student. Instead, they are each identified as "Parents," "Mother," "Father," and/or "Student." The Student lives with both Mother and Father, but only the Mother filed the due process hearing request. She is therefore referred to as the "Parent" herein.

[2] The prehearing order of February 9, 2015 was titled "First Prehearing Order" in anticipation that additional prehearing orders would be entered. However, there were no additional prehearing orders.

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District Exhibits: D-1 through D-16. D-15 was admitted only for a limited impeachment purpose.[3]

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

Beth Carter, District Early Childhood Special Education Supervisor;
Julie Cairns, Teacher, University of Washington Experimental Education Unit (EEU);
Rebecca Partridge, M.D.;
Chris Matsumoto, Principal, EEU;
Mother of the Student ("Parent" herein); and
Michele Drorbaugh, District Transportation Manager.

ISSUES

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

a. Failing to provide appropriate transportation to school for the Student since the beginning of the 2014-2015 school year;
b. Allowing a District administrator, who is not a member of the Student's individualized education program (IEP) team, to override IEP team decisions regarding the Student's transportation;

2. Whether the Parent is entitled to the following requested remedies, or other equitable relief as appropriate:

a. Provision of transportation for the Student that does not exceed forty (40) minutes one way, to and from school; and
b. Reimbursement of the Parent's costs in driving the Student to school since October 31, 2014.

See First Prehearing Order of February 9, 2015.[4]

FINDINGS OF FACT

1. In making these Findings of Fact, the logical consistency, persuasiveness and plausibility of the evidence has been considered and weighed. To the extent a Finding of Fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted has been determined more credible than the conflicting evidence.

2. The Student is five years old and has been diagnosed with Down syndrome. The current school year, 2014-2015, is the Student's third year of preschool. He has received special

[3] Exhibit D-14 was admitted after the hearing by written stipulation of the parties dated March 31, 2015.

[4] The Parent originally requested an additional remedy: compensatory education for the late arrival of the Student's bus at school. *See* First Prehearing Order of February 9, 2015. The parties have resolved that aspect of the case. The request for that remedy was withdrawn.

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education and related services from the District throughout his preschool years. The Student will enter kindergarten in September 2015. J-5;[5] J-8; Testimony of Parent; Testimony of Matsumoto.

3. The District offers blended preschools (blending disabled and non-disabled children in the same classes) at 16 of its elementary schools. Each of the District's preschool classrooms is staffed by a special education teacher and two classroom assistants. Each preschool has a speech-language pathologist, an occupational therapist, and a physical therapist on site, as well as other related service providers if necessary. Preschool classes typically have 12 disabled children and four typically developing children. Testimony of Carter.

4. For his first year of preschool, the Student attended the District's Greenwood Elementary School. Thereafter, he attended the University of Washington's Experimental Education Unit (EEU). The EEU is not one of the District's preschools, but has a similar staffing model to the District preschools. Testimony of Carter; Testimony of Matsumoto. When the Student transitioned from his District preschool to the EEU, he loved it in his first week and fit right in. Testimony of Parent. The Student's preschool program is five days a week, 2.5 hours per day. Testimony of Cairns; Testimony of Carter.

5. The EEU offers blended preschool classes and blended kindergarten classes. Families apply to the EEU and are selected based on a lottery. The District has a contract with the EEU to serve 60 District preschool students and 20 District kindergarten students per year. Testimony of Carter; Testimony of Matsumoto. The Student's preschool class at the EEU has 16 students, six of whom receive special education and 10 of whom do not. J-8:16; Testimony of Matsumoto. The Parent hopes the Student will be selected to attend kindergarten at the EEU next year. She views the EEU as a desirable placement because it uses cutting-edge methodologies and has more adult support in the classroom due to the presence of graduate students. Testimony of Parent. The Student's kindergarten assignment within the District is at Thornton Creek Elementary School. Testimony of Matsumoto.

6. The Student has been daytime toilet trained since age two. This is young for a boy, and extremely young for a child with Down syndrome. Testimony of Parent. The Student's language skills are delayed, with his speech intelligible only to people who are familiar with him. Testimony of Parent. His IEP includes communication goals, such as improving articulation and improving independent social communication with peers. J-8:11-12.

7. Prior to July 2014, the Student's Parents lived three miles from the EEU. The Student rode a District school bus to school, and his ride took approximately 20 minutes. The Parents thereafter moved to a residence 6.1 miles from the EEU. The Parent did not inquire about the length of the Student's bus ride from their new home until after they had moved. Testimony of Parent. They now live near the northern boundary of the District. D-14.

8. The Student was the first of 14 children picked up on the route from his new home. The bus route started at his home near the northern boundary of the District, and proceeded

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[5] Exhibits are cited in the following format. "J-5" refers to Joint Exhibit 5. If particular pages within an exhibit are cited, the format would be, for instance, "P-3:2-3" meaning Parent Exhibit 3, pages 2 – 3.

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southward to the EEU. P-18:1. His ride was much longer than it had been the previous year. School started on September 15, 2014, and no data on the length of the ride was kept during September. For the remaining time the Student rode the bus (the month of October 2014), his ride time averaged 68 minutes, and ranged from 52 to 78 minutes. His bus arrived at the EEU late every day: 13 minutes late on average, and ranging from 3 to 24 minutes late. (Twenty-four minutes late was an outlier; the next highest number of minutes late was 15 minutes.) J-10; P-19. (The issue of a remedy for the bus's late arrival at school was settled by the parties prior to the hearing.) After school, the Student's bus takes him to an afternoon preschool that is 20 to 25 minutes from the EEU. He continues to ride the afternoon bus. Testimony of Parent.

9. Beginning October 31, 2014, the Parent drove the Student to school in the morning and he no longer rode the bus to school. Thereafter, the District was able to decrease the average number of minutes that the bus arrived late. J-10.[6] However, the duration of the ride did not decrease, but actually became longer. It increased gradually from an average of 68 minutes in October 2014 to an average of 74 minutes in January 2015 (the last month for which information is in evidence). The percentage of the time that the bus ride was longer than one hour also increased, from 78% of the time in October 2014, to 95% of the time in January 2015. On no day was the bus ride 40 minutes or less. P-19.[7]

10. Pursuant to the District's written policy, elementary school bus rides are designed to have one-way travel times of 45 minutes or less where feasible, if the school is within the student's attendance area. For schools outside a student's attendance area, bus rides are designed to have one-way travel times of 60 minutes or less where feasible. D-16:3. Preschools are located at elementary schools, so the elementary school policy applies to them. Testimony of Drorbaugh. Thus, the Student's ride was supposed to be 60 minutes or less where feasible, pursuant to District policy, since the EEU is outside his attendance area.

11. On September 22, 2014, the Parent emailed the District's Transportation Manager, Michele Drorbaugh, complaining about several things, including that the Student's ride to school was more than an hour long, and this was unacceptable given the Student's age and disabilities. In reply, Ms. Drorbaugh acknowledged that the Student's ride was approximately 63 minutes long, but stated that if a child requires a limited ride time, this needs to be stated in his individualized education program (IEP). P-4.

12. The Parent noticed in October that the Student was resisting getting ready for school and resisting riding the school bus, both of which were unusual behaviors for him. Testimony of Parent. She told one of the Student's physicians, Dr. Rebecca Partridge, that the resistance to going to school began about a month after school started, which would place it about October 15, 2014. D-12:17.

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[6] In October 2014, when the Student was still riding the bus, it was 13 minutes late on average; in November 2014, that figure was 7 minutes; in December 2014, 6 minutes; and in January 2015, 5 minutes. J-10.

[7] In October 2014, average ride time was 68 minutes, and the ride was longer than an hour 78% of the time; in November 2014, the average was 68 minutes, longer than an hour 79% of the time; in December 2014, the average was 73 minutes, longer than an hour 93% of the time; and in January 2015, the average was 74 minutes, longer than an hour 95% of the time. P-19.

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13. On October 27, 2014, the Parent again emailed Ms. Drorbaugh requesting, among other things, that another bus be added so that rides for the young, disabled EEU students are not longer than 45 minutes. Ms. Drorbaugh responded that the Student's ride is currently 60 minutes long, and an additional bus was not warranted. P-4.

14. On October 30, 2014, the Parent rode the bus to school with the Student. The children were all EEU preschoolers and were strapped into restraint seats. The Parent noticed that the children talked boisterously, and the bus was very loud for that reason. The Parent sat in the place of the Student's usual seat-mate, who is the only non-disabled child on the bus. She is in the Student's class. Testimony of Parent.

15. The Parent testified as follows: The bus ride on October 30, 2014 took 71 minutes. After 25 minutes, the Student asked to get off the bus, and after 40 minutes, he asked to go to the bathroom and cried. The Parent asked the bus driver what happens when a child has to use the bathroom during the ride, and the driver said she generally could not stop and take a child to the bathroom because the other children would be left unattended. The driver said that in an emergency, she could stop at a school and have a school administrator watch the other children while she took a child to the bathroom.[8] Otherwise, the child would have to urinate in their clothing and EEU staff would change their clothes upon arrival at school. The Parent did not ask the driver to stop so she could take the Student to the bathroom while the driver watched the other children. Testimony of Parent.

16. Beginning October 31, 2014, and continuing through the date of the hearing, the Parent has driven the Student to school in the morning instead of having him ride the school bus, but she has continued to advocate for changes on the ride. The Parent testified that beginning in late September or early October, 2014, the Student has had numerous urination accidents outside of school, as well as disturbing, aggressive behavior that is very unusual for him. Testimony of Parent. In mid-January 2015, the Parent reported to Dr. Partridge that urination accidents were occurring several times a week. Testimony of Partridge.

17. On November 3, 2014, the Parent sent a letter to the District's Interim Superintendent. She wrote that the Student's ride sometimes exceeded 70 minutes, and he routinely arrived 10 to 15 minutes late to school, and up to 30 minutes late. She stated that during the previous two years, the Student loved riding the bus but recently he did not want to ride in the morning. She related her experience on the day she rode the school bus with him, and what the bus driver had told her. The Parent, who is an attorney, wrote that the situation violated the IDEA and denied the Student a FAPE. She stated she would continue to drive the Student to school and she would take further action if there was no change in policy within 10 days. P-5. The Parent forwarded a copy of this letter to EEU Principal Chris Matsumoto, and asked that the matter be put on the agenda for an IEP meeting two days later. Testimony of Parent.

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[8] According to the Transportation Manager, in addition to schools, other safe locations may be used for bathroom stops, such as fire stations. The Transportation Manager also indicated it does not have to be an emergency, but just a child's need to use the bathroom. Testimony of Drorbaugh.

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18. On November 5, 2014, the Student's IEP team met for the annual revision of his IEP. J-8. In attendance were the Parent, Principal Matsumoto, the Student's classroom teacher Julie Cairns, and his school occupational therapist and school speech therapist. EEU Principal Matsumoto was the District's administrator designee at the meeting. By the time the team finished discussing other matters and was going to move on to the transportation issue, the speech therapist had to leave for class. The occupational therapist was there for part of the transportation discussion then she had to leave for class as well. The Parent shared her complaints about the Student's morning bus ride, her experience when she rode the bus, and her request for a shorter ride and an on-time arrival at school. Testimony of Parent; Testimony of Matsumoto; Testimony of Cairns. The Parent reports that the other members of the IEP team were shocked and outraged by what the Parent shared with them. Testimony of Parent.

19. The IEP adopted at the November 5, 2014 meeting had the following placement provisions. It stated that the Student would spend 100% of his time in a general education setting (J-8:15), and also stated the following:

> *An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education class, and in nonacademic and extracurricular activities, including a description of any adaptations needed for participation in physical education:*
>
> [The Student] participates in blended preschool program with 6 students that receive special education services and 10 students who are typically developing during all times and activities in the classroom.

J-8:16 (italics added to indicate language that is part of the IEP form; non-italics indicates language about this Student).

20. The next day, November 6, 2014, the Student's teacher, Ms. Cairns, emailed the Parent at the request of Principal Matsumoto. Ms. Cairns asked: "Would you be able to send in a statement about [the Student's] bus ride, so that I can make sure it is written on the Prior Written Notice on his IEP before I lock it." D-7; Testimony of Matsumoto; Testimony of Cairns. On November 10, 2014, the Parent replied with a paragraph describing the problem. The paragraph was preceded by this statement: "I've written this from my point of view, but let me know if you want it in the third person." *Id.* Ms. Cairns changed the paragraph to the third person herself, and otherwise copied it verbatim into the prior written notice (PWN) that was sent to the Parent along with the new IEP. J-8:18-19. Even though the PWN was finalized sometime after the Parent submitted her paragraph on November 10, 2014, the PWN still bore the date of the November 5, 2014 IEP meeting, and stated the IEP would be effective November 7, 2014 – a date that had already passed by the time the PWN was issued. There is no evidence what date the PWN was actually issued. Because the District failed to update the date on the PWN to make it accurate, the effective date of the PWN is found to be the effective date stated in it: November 7, 2014.

21. The pertinent paragraph of the PWN is in the section titled "Any other factors that are relevant to the action." It stated:

> [The Student's] increased resistance to riding the morning bus after two years of looking forward to it, combined with his mother's discovery that it arrived late to

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> school, prompted her to ride the bus with him on October 30, 2014. His bus ride was 71 minutes that day. He asked to get off the bus after 25 minutes and had to go to the bathroom after 40 minutes. He was taken to the bathroom before getting on the bus. The bus driver told [the Student's] mom that children who have to go to the bathroom are forced to wet their pants because she, as the sole adult in charge of 14 small children, cannot get off the bus to take a child to the bathroom. SPS Transportation has refused [the Student's] mom's repeated requests to decrease [the Student's] bus ride, including her request to add a bus to his route. [The Student's] teacher reports that the bus regularly arrives 10-15 minutes late. His late arrival results in lost educational and therapy minutes. Forty minutes is the maximum time [the Student] can ride a bus one-way and he must be on a bus that delivers him with enough time to get to his classroom by the start of school.

J-8:18. Ms. Cairns agrees with the 40-minute maximum ride limitation for the Student stated in the PWN. Testimony of Cairns. In the section titled "Description of any other options considered and rejected," the PWN stated: "Nothing was considered and rejected." In the section calling for the reasons those options were rejected, the PWN stated that did not apply. *Id.*

22. In addition to her concerns about toileting, the Parent was also concerned about the long bus ride because the Student does not self-entertain for more than a few minutes and has very limited verbal ability to ask for help. Although he is a very social child, his socializing is limited on the bus because he is too short to see over the seat in front of him, and cannot turn behind him because he is strapped into a car seat. The Student does have a classmate who sits next to him on the bus, and she is the only non-disabled child on the route. When the Parent rode the bus with him, the Student was nodding off to sleep but was repeatedly roused by bumps. (The Parent also rode the bus with him on another occasion, which must have been in a prior school year, and he fell asleep on that bus ride.) He also falls asleep on car rides. Testimony of Parent.

23. After the PWN was issued, the Parent expected the Transportation Department to begin providing the Student with a 40-minute maximum bus ride. Testimony of Parent. Principal Matsumoto and Ms. Cairns, on the other hand, believed the PWN simply served to document the Parent's transportation complaint and the fact that it was discussed at the IEP meeting. Testimony of Matsumoto; Testimony of Cairns. Although Principal Matsumoto serves as the District's administrator designee on IEP teams at the EEU, he does not have allocation authority over the District's transportation resources. Testimony of Matsumoto. The Transportation Department does not receive copies of PWNs; it receives only the section of IEPs titled "Special Education and Related Services," because transportation is a related service and a student's transportation needs should be listed in that section. Testimony of Drorbaugh. If the Transportation Department had received the November 2014 PWN, the department would have investigated the Student's transportation needs further because there was nothing about a limited ride in the "Special Education and Related Services" section. The department could have viewed videotape of his bus rides as part of this investigation. *Id.*

24. The Parent waited several weeks after the PWN was issued for the District to notify her of the Student's new, shorter bus route. Then, because nothing had happened, she contacted a District ombudsman who set up a conference call with the District's Transportation Department. Testimony of Parent. On or about December 8, 2014, the Parent filed a citizen's complaint

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about the Student's bus ride with the Office of Superintendent of Public Instruction. Testimony of Carter. (Counsel stipulated that the citizen's complaint is stayed pending the outcome of this due process proceeding.)

25. Beth Carter, the District's Early Childhood Special Education Supervisor, became involved in the case when she received the Parent's OSPI citizen's complaint. Ms. Carter was unable to ascertain from the EEU members of the IEP team the basis for the 40-minute ride limitation, so Ms. Carter wished to reconvene the IEP team to discuss the Student's transportation needs. Testimony of Carter. On December 19, 2014, Ms. Carter and the Parent exchanged emails about the necessity for such a meeting. The Parent stated it was unnecessary because the IEP team had already met and decided on the Student's transportation needs. Ms. Carter wanted the team to have an in-depth discussion about any data or documentable circumstances that would require a shorter bus ride. P-6. An IEP meeting was scheduled, over the Parent's objections. J-9.

26. On December 22, 2014, the Student's pediatrician wrote a letter stating the Student frequently needs to use the bathroom after about 40 minutes and has no bathroom access on the bus, so he has to wet himself and has become very anxious about the bus ride as a result. P-7:1. The pediatrician, Dr. David Bowe, did not testify at the hearing. His letter was admitted in evidence for the limited purpose of showing that the IEP team considered it.

27. On December 26, 2014, the Parent filed the due process hearing request in this case.

28. On January 7, 2015, Dr. Rebecca Partridge,[9] a physician who had previously seen the Student on one occasion and who is a specialist in Down syndrome, wrote a letter on behalf of the Parent. Dr. Partridge wrote that the Student is presently "not yet able to hold his urine for longer than about 40 minutes." She wrote that, as a result, his bus ride should be no longer than this. D-12:32. Dr. Partridge did not speak with either of the Parents about these matters, or examine the Student concerning them. Dr. Partridge received an electronic message from her nurse, who had spoken with the Parent. Dr. Partridge wrote the letter based on the nurse's message. Dr. Partridge does not recall if she looked at her chart notes from her previous visit with the Student before writing the letter. Testimony of Partridge.

29. Also on January 7, 2015, Ms. Carter joined the IEP team for its meeting concerning the Student's bus ride. She, not Principal Matsumoto, served as the District's administrator designee for the meeting. She had the authority to allocate the District's transportation resources, as Principal Matsumoto did not. Testimony of Carter; Testimony of Matsumoto.

30. The IEP team considered Dr. Bowe's letter, which it received prior to the meeting. The Parent brought to the meeting another letter, from a private occupational therapist. Testimony

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[9] Rebecca Partridge, M.D. FAAP, obtained her M.D. from the University of Utah in 2002, and completed a residency and fellowship in pediatrics. She has served an assistant professor of pediatrics at the University of Washington School of Medicine and Seattle Children's Hospital. She is presently the Director of the Down Syndrome Program at Virginia Mason Clinics in Issaquah, Washington and University Village (Seattle). She is certified by the American Board of Pediatrics, with an additional certification in pediatric emergency medicine. At least one-third of her current caseload is children with Down syndrome. P-9; Testimony of Partridge.

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of Parent. (This second letter is not in evidence.) Ms. Carter wanted more time to consider the second letter before discussing it. Testimony of Carter. The IEP team discussed the instructional opportunities the Student was missing when the bus arrived late. The team decided his bus route would be altered to remedy the late arrival problem. Regarding the duration of his ride, it was decided that classroom staff would collect data for the next four weeks on how frequently the Student used the bathroom at school. This would help determine his needs regarding ride duration. The team planned to meet again at the beginning of February on these matters. J-9:20-21. (There was no evidence at the hearing about whether a February 2015 meeting occurred.) The PWN concerning the January 2015 meeting listed the educational impacts that had occurred "when" the Student arrived late. Additionally, it noted that "if" the Student is wet when he arrives, he is missing additional instruction time while changing his clothes. *Id.*

31. After the January 7, 2015 IEP meeting, EEU classroom staff collected data on the frequency of the Student's bathroom use. Principal Matsumoto testified that he believes they found the Student used the bathroom approximately every 1.5 hours. Testimony of Matsumoto. However, no documentation of this data was offered in evidence, only the hearsay recollection of Principal Matsumoto, who did not himself gather the data. The Parent did not offer any testimony on the frequency of the Student's bathroom use at home.

32. On January 15, 2015,[10] the Parents took the Student to see Dr. Partridge. On January 27, 2015, Dr. Partridge wrote a second letter for them, stating the Parent reported the Student was experiencing daytime wetting and increased anxiety. Dr. Partridge diagnosed secondary enuresis, which means urinary incontinence after having achieved continence. Dr. Partridge wrote that this would be expected from very long bus rides during which the Student is unable to toilet. She wrote that having to wet himself was developmentally inappropriate, put him at high risk for urinary tract problems, and created stress and conflict for him. She further explained that Down syndrome individuals typically have strong visual memories, but struggle with placing events in time. This results in an inability to understand that past stressful events are, in fact, in the past. It puts them at high risk for developing post-traumatic stress disorder. She therefore predicted that it would take significant time for the Student to feel comfortable riding the bus again, after having wet himself on the bus. P-8; Testimony of Partridge. The Parent shared Dr. Partridge's second letter with Ms. Carter. Testimony of Parent.

33. Ms. Carter requested parental consent to communicate with Dr. Bowe and/or Dr. Partridge, but the Parents said they would not consent. Testimony of Carter. The Parent testified the request to contact the physicians was a delaying tactic. Testimony of Parent.

34. In addition to the matters stated in her letters, Dr. Partridge testified as follows: The Parents reported on January 15, 2015, that Student was having urination accidents several times a week. The Parent also reported, based on having ridden the bus with her son, that he typically felt the need to urinate after 20 minutes on the bus. Given this fact, the Student's bus ride should be 20 minutes or less ideally, and 45 minutes is probably not appropriate, depending on his anticipated needs during the ride. The Student would be expected to resist a bus ride of

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[10] Dr. Partridge testified it was January *16*, 2015. However, her January 27, 2014 letter states she saw the Student on a Thursday. P-8. January 15, 2015 was a Thursday.

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over an hour, and not be ready to learn when he arrived at school. A long bus ride is a waste of the Student's time that could otherwise be used for activities or education. Putting the Student in a situation where he is forced to backtrack on his toilet training would be very detrimental to his sense of confidence and control. Down syndrome children tend to internalize negative social interactions (such as might occur if a child wet himself sitting next to a peer). They are very sensitive to social cues, both verbal and nonverbal. Down syndrome individuals have low muscle tone, including smooth muscle tone, which affects continence. However, the Student most likely is only mildly affected in this regard, if at all, because he achieved full continence at a young age. Dr. Partridge's information about the Student's bus behavior and his incontinence came only from the Parent. Dr. Partridge does not know how many times the Parent rode the bus with the Student. Testimony of Partridge. There is no evidence Dr. Partridge received any information from classroom staff about his readiness to learn upon arriving at school. There is no evidence Dr. Partridge was told about the Student's tendency to sleep on the bus.

35. The Parent testified as follows: On two occasions, classroom staff told her that the Student arrived at the EEU from the bus having wet himself. Additionally, on a third occasion, the Parent noticed that the Student was wearing different pants and underwear than he wore in the morning, indicating he may have had an accident during the day. The Parent does not remember the date of any of these events. She does not remember which classroom staff told her about his arriving wet. She did not make any notation about when any of these events occurred. Testimony of Parent. The Parent did not mention the alleged bus wetting incidents in any of her emails or letters to District staff about his bus ride, nor in her due process hearing request. *See* P-3; P-4; P-5; D-7; P-6; J-1. She did not mention it at the November 2014 IEP meeting when the length of the bus ride was discussed. Testimony of Matsumoto. The Parent first raised it at the January 7, 2015 IEP meeting, where EEU staff responded that they did not recall the Student ever arriving wet from the bus. Testimony of Carter. Teacher Cairns testified that she does not recall the Student ever arriving wet from the bus, and neither did one of her classroom aides. Testimony of Cairns.[11]

36. The Parent pursued her transportation complaint with assiduity and care. Her failure to raise the two alleged bus wetting incidents in any of her communications with District or EEU staff from September through December 2014, and her failure to make any notations or be able to recall any details about the incidents, renders her testimony insufficiently reliable to form the basis for a finding of fact. This is especially true given her testimony that it would be an absolutely humiliating and devastating incident for the Student to wet himself among peers on the bus. Despite this, the Parent never mentioned the alleged incidents in her multiple written communications with the District, or at the November 2014 IEP meeting, though she testified the issue foremost on her mind at that meeting was the bus problem. The Parent's testimony that classroom staff told her the Student arrived wet from his bus ride is hearsay and is found insufficiently reliable to form the basis for a finding of fact. For these reasons, the Parent has

[11] Ms. Cairns' testimony about the aide's statement is hearsay, but the hearsay does not form the exclusive basis for a finding of fact. The hearsay corroborates Ms. Cairns' testimony, which is not hearsay. *See* RCW 34.05.461(4).

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not established that the Student ever wet himself on a school bus ride in the 2014-2015 school year.[12]

CONCLUSIONS OF LAW

The IDEA

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

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

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

Rowley, supra, 458 U.S. at 206-207 (footnotes omitted).

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

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

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[12] The Parent testified she did not make notes or remember the details of the bus wetting incidents because she did not understand their connection to the length of the bus ride until after she rode the bus on October 30, 2014. Testimony of Parent. This does not explain why the Parent never mentioned the two alleged incidents *after* October 30, 2014, such as in her written communications protesting the long bus ride on November 3, November 10, December 19, or December 26, 2014, or at the IEP meeting on November 5, 2014. P-5; D-7; P-6; J-1.

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> 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" as defined by the Act.

Rowley, 458 U.S. at 188-189.

4. For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Rowley,* 458 U.S. at 200 - 201. An IEP must be "reasonably calculated to enable the child to receive educational benefits." *Id.*, 458 U.S. at 207. "Under the 1997 amendments to the IDEA, a school must provide a student with a 'meaningful benefit' in order to satisfy the substantive [FAPE] requirement[ ]." *M.M. v. Lafayette School Dist.*, 767 F.3d 842, 852 (9th Cir. 2014) (internal citation and quotation marks omitted).

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

November 2014 Prior Written Notice

6. The November 2014 PWN stated in unequivocal terms: "Forty minutes *is the maximum time* [the Student] can ride a bus one-way and he must be on a bus that delivers him with enough time to get to his classroom by the start of school." J-8:18 (italics added). The PWN did not document that any request made by the Parent had been denied. Rather, it stated: "*Nothing* was considered and rejected." J-8:18 (italics added).

7. PWNs must include "[a] description of the action . . . refused by the agency" and "an explanation of why the agency . . . refuses to take the action." WAC 392-172A-05010(2)(a) - (b); *see also* 34 CFR §300.503. Since the PWN included neither of these things, it must be concluded that nothing proposed by the Parent, such as the 40-minute bus ride limitation, was rejected.

8. The District was bound by the terms of the November 2014 PWN, and continued to be bound by them after the January 2015 IEP meeting, since the January 2015 IEP team did not revoke the 40-minute ride limit. The January 2015 PWN states the team decided to gather more data concerning the Student's toileting needs, but it did not revoke the 40-minute limit stated in the prior PWN. Gathering more data can be done whether a limit is revoked, or a limit remains in place. It is consistent with either. It makes sense that the IEP team did not revoke the terms of the November 2014 PWN, since the IDEA's stay-put mandate[13] was in place at the January 2015 meeting (the Parent having filed her due process hearing request in December 2014). For these reasons, the 40-minute maximum ride time required by the November 2014 PWN has been in effect from that time forward.

9. Parents must be able to rely on what is written in PWNs and IEPs. The requirement of formal notification to parents of decisions made, and documents adopted, by school districts is central to the IDEA. The Ninth Circuit has stated:

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[13] The IDEA's stay-put provision is found at 20 USC §1415(j).

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> The IDEA explicitly requires written prior notice to parents when an educational agency proposes, or refuses, to initiate or change the educational placement of a disabled child. *See* [former] 20 U.S.C. §1415(b)(1)(C) [now §1415(b)(3)]. The Supreme Court has explained the great importance of such procedural components of the IDEA. . . .
>
> We find that this formal requirement has an important purpose that is not merely technical, and we therefore believe it should be enforced rigorously. The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any.

Union School Dist. v. Smith, 15 F.3d 1519, 1526 (9th Cir.), *cert. denied*, 513 U.S. 965, 115 S. Ct. 428 (1994).

10. The explanations offered by the principal Matsumoto and teacher Cairns about their intent in including language in the PWN about a maximum 40-minute ride does not change the legal effect of that language. They testified they simply wished to record in the PWN that *the Parent* raised these concerns. However, the PWN does not say: "The Parent reports" or "The Parent expressed the following concerns." In fact, teacher Cairns changed the Parent's written statement from a first-person statement (indicating it was the Parent's concern) to a third-person statement (indicting it was the team's statement). A school district's actions must be judged by what is actually written in a PWN and/or IEP, not by the mental intent of district staff, for the reasons stated above by the Ninth Circuit and by other authorities. *See Union School Dist. v. Smith, supra*; *Systema v. Academy School Dist. No. 20*, 538 F.3d 1306, 1315-16 (10th Cir. 2008); *A.K. v. Alexandria City School Bd.*, 484 F.3d 672, 682 (4th Cir. 2007); *Z.F. v. S. Harrison Community School Corp.*, 2005 U.S. Dist. LEXIS 42445, at pp. *52-53, 106 LRP 34735 (S.D. Ind. 2005); *Pikes Peak Bd. of Coop. Educ. Servs.*, 111 LRP 32454 (SEA CO 2011).

11. Neither does the Transportation Manager's testimony change the legal effect of the PWN. She explained that a limit on transportation time should appear in the section of the IEP titled "Special Education and Related Services," since transportation is a related service. She further explained that her department receives that section of IEPs, but does not receive the PWNs. Again, the internal procedures of the Transportation Department do nothing to change the legal effect of what is written in the PWN provided to the Parent.[14]

[14] It is likewise irrelevant that two of the IEP team members were excused from the November 2014 IEP meeting before the team fully discussed the Parent's transportation concerns, which concerns the Parent had requested in advance be on the meeting agenda. At most, it was a procedural violation on the District's part if these team members were excused before the meeting ended without the team having obtained the Parent's written consent to excuse them. *See* WAC 392-172A-03095(5)(a) (requiring written parental consent to excuse a team member from either the whole or a part of an IEP meeting); *see also* 34 CFR §300.321. However, it would be a greater procedural violation to deny the relevant portion of the meeting its IEP-meeting status than to countenance the procedural violation of excusing members early with oral, but not written, parental consent. (It is unknown whether written parental consent was obtained in this case, only that there is no written consent in the record.) The transportation discussion was on the agenda, it was discussed during the IEP meeting, and it was documented in the PWN that summarized

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12. The next question to be answered is whether the District's failure to comply with the November 2014 PWN was a procedural violation of the IDEA, a substantive violation, or both types of violation. It can be viewed as a procedural violation: failing to notify the Parent that the pertinent statements in the PWN were statements about *her concerns*, rather than statements about what the District would provide. Procedural violations of the IDEA amount to a denial of FAPE only if they: impede a student's right to a FAPE; significantly impede a parent's opportunity to participate in the decision-making process regarding the provision of a FAPE; or cause a deprivation of educational benefits. 20 USC §1415(f)(3)(E)(ii); WAC 392-172A-05105(2); 34 CFR §300.513. Failing to inform the Parent that the District would *not* provide a bus ride of 40 minutes or less, but would only document that she *wanted* this, significantly impeded her opportunity to advocate for the Student's needs. The Parent ceased advocating for a 40-minute bus ride because she thought she had won that battle. She waited several weeks for the Transportation Department to implement the PWN, before resuming her advocacy in December 2014 when she realized the department was not implementing it.

13. The matter can also be viewed as a substantive violation of the IDEA: a failure of implementation. Failures to implement an IEP or PWN violate the IDEA if those failures are material. On the other hand, minor discrepancies between the services a school provides and the services required by the document do not violate the IDEA. See *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811, 821-22 (9th Cir. 2007). Here, the failure was material. Following the November 2014 PWN, the bus ride on the Student's route got longer, not shorter. The ride was longer than 40 minutes every day, not just occasionally. Following the November 2014 PWN, the Parent continued providing a related service every day that the District was obligated to provide. *See Maine Regional School Unit No. 51*, 58 IDELR 117 (SEA ME 2011) (Failure to arrive on time on a few occasions would not be a material violation of the IEP, but here the violation was material; the student's transportation arrangement caused him anxiety and late arrival at school; transportation should assure he arrives on time and ready to learn except in exigent circumstances).

14. In summary, whether viewed as a procedural or a substantive violation of the IDEA, the District's failure to comply with the maximum bus ride time set forth in the November 2014 PWN constituted a denial of FAPE.

Did the District allow an administrator who was not a member of the Student's IEP team to override an IEP team decision about the Student's transportation?

15. A school district may choose the person it wishes to serve as its administrative representative on an IEP team. *See* WAC 392-172A-03095(1)(d); 34 CFR §300.321. Nothing in the law prevents a district from changing the administrative representative on an IEP team from one person to another. That is what the District did at the January 2015 IEP meeting. Ms. Carter served as the administrator designee at that meeting instead of Principal Matsumoto. There was nothing impermissible in the District doing this. Moreover, IEP teams may override their own previous decisions; IEPs are amended and changed all the time. The January 2015

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what was decided at the meeting. These are the operative facts, not whether some members of the team left early.

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IEP team, with Ms. Carter as a member, did not, in fact, override the previous team's decision. It added some data collection, but did not revoke the 40-minute maximum ride time set forth in the November 2014 PWN.

16. Nor is there any evidence Ms. Carter overrode the November 2014 PWN *prior to* the January 2015 IEP meeting by taking some unilateral action. The District was failing to implement the 40-minute maximum ride provision in the PWN for several weeks before Ms. Carter became involved with the case on or about December 8, 2014, and there is no evidence she directed the Transportation Department what to do thereafter.

Is the District required to provide 40-minute transportation to a parental choice school outside the Student's attendance area?

The 40-minute transportation limit

17. The Parent has not carried her burden of proof that the Student has a medical, physical, or educational need for a 40-minute ride limitation. The legal conclusions above are based solely on the fact that the 40-minute limitation was adopted in the November 2014 PWN, not that it was proven necessary in the hearing.

18. The letters and testimony provided by the Student's physicians simply adopted the Parent's 40-minute assertion. The physicians cited no data, testing, examination of the Student, or research leading them to select the 40-minute limit. It came from the Parent. The Parent adopted this time limit based on her unreliable testimony that classroom staff told her he arrived wet at school, and the Parent's assertion that on the single occasion she rode the bus, the Student asked to use the bathroom after 40 minutes. Given the lack of reliability of the testimony that the Student had arrived wet at school, the hearsay testimony about the Student requesting bathroom use after 40 minutes on the bus on October 30, 2014, is an insufficiently reliable basis on which to make a finding of fact. Relying exclusively on hearsay from the Student would also unduly abridge the District's opportunity to confront witnesses and rebut evidence, and so it is prohibited. *See* RCW 34.05.461(4). If the hearsay evidence about his needing bathroom access every 40 minutes had been corroborated by other evidence (which it was not), then reliance on the Student's hearsay statement would not be "exclusive" reliance and so would not be prohibited. *Id.* Finally, even if it were found that on October 30, 2014, the Student requested bathroom use after 40 minutes on the bus (which it is not), that finding would still be based on a single bus ride. The Parent provided no evidence as to how often the Student uses the bathroom at home.[15]

19. Nor has the Parent carried her burden of proof that there is an educational necessity for a 40-minute limitation on the Student's bus ride. There is arguably wasted time on a longer bus ride that could otherwise be used for more beneficial purposes. However, it must be

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[15] On the District's side, there was hearsay testimony from Principal Matsumoto (who did not have personal knowledge about the fact) that in the classroom, the Student used the bathroom approximately every 1.5 hours. A finding of fact cannot be based exclusively on this hearsay testimony because it would unduly abridge the Parent's opportunity to confront witnesses and rebut evidence. *See* RCW 34.05.461(4). Principal Matsumoto testified about this matter after the Parent had already called teacher Cairns (who had personal knowledge) as a witness, so Ms. Cairns could not be questioned about it.

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remembered that this occurs once a day, not twice, since the Student's after-school bus ride is much shorter than the Parent's requested limit. It should also be remembered that a shorter morning ride, if the bus is not tardy, would add no instructional minutes to the Student's day. A reconfigured route providing a 40-minute ride would involve the bus picking him up later than it previously did, meaning he could potentially sleep later in the morning. Instead of that, the Student appears to have gotten extra sleep on the bus. Finally, the entire bus ride is not a waste, as the children talk socially during the ride. The Student's seat-mate is the only non-disabled child on the bus. She is in the Student's class. Talking with her is an opportunity to socialize with a typically developing peer, so this is not entirely wasted time. Independent social communication with peers is one of the Student's IEP goals.

20. One of the issues in this case is whether the District failed to provide appropriate transportation since the beginning of the 2014-2015 school year. There is no need to consider this issue from November 7, 2014 forward, as it has already been decided: this is when the PWN went into effect and the Student's morning transportation materially failed to comply with it thereafter. Prior to that date, the Student's average morning bus ride was 68 minutes. (There is no data from September 15, 2014, when school began, through the end of September. But in both October and November 2014, the morning bus ride averaged 68 minutes.) There is no reliable evidence in the record on how frequently the Student needed bathroom access, from either the Parent or the District. Nor is there evidence from anyone who rode the bus (other than the Parent, who only rode once, and whose testimony is not found wholly reliable) or anyone who viewed videotape of the bus rides, to give evidence on the Student's demeanor on the bus. The Parent testified that the Student began resisting getting ready for school in the morning and resisting getting on the bus, but he did this during the same period when his behavior significantly deteriorated in other contexts as well. The Parent posits a causal relationship: that his behavior deteriorated in other contexts because of traumatization on the bus. However, it may be that the deterioration of the Student's behavior occurred concurrently in several contexts during the same period of time without there being a causal relationship. Parents know their children best in general, but the evidence in the present record does not establish a causal relationship by a preponderance of the evidence.[16]

21. Two and a half months after he stopped riding the bus, the Parent told Dr. Partridge that the Student was having urination accidents several times a week. Given that it has not been found he had any accidents on the bus, there is insufficient basis to believe the bus ride caused this backward step in his toilet training. Dr. Partridge's opinions on the appropriate length of the Student's bus ride were based on reports from the Parent that have not been substantiated: that the Student typically felt the need to urinate after 20 minutes on the bus (though it is quite possible Dr. Partridge has a mistaken recollection and the Parent actually said 40 minutes); that the Student wet himself twice on the bus; and that the Student's bus ride caused his behavioral

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[16] The alleged causal relationship between the Student's long bus ride and his behavior problems in other contexts is also put in doubt by the time sequence. According to the Parent, the behavior problems in other contexts started *before* his resistance to the morning routine and morning bus ride: The former problems started in late September or early October 2014. The resistance to the morning routine and bus ride started around mid-October 2014. While the Parent understandably could only provide approximate dates, the sequence she did provide is another reason to question the causal relationship she posits, and to find that it may be a concurrent relationship instead.

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deterioration in other contexts. For these reasons, the Parent has not established that prior to November 7, 2014, the District violated the IDEA and denied the Student a FAPE.

22. In summary, the District is obligated to provide a 40-minute maximum ride time not because it has been shown to be medically, physically, or educationally necessary, but because the November 2014 PWN adopted it and the January 2015 PWN did not revoke it. This is not to suggest that the IEP team and/or the Student's medical providers should not gather more information about the Student's needs. It is only found that the current record fails to establish 40 minutes as his maximum ride time. The ride times on the Student's morning bus route increased after he stopped riding it (the most recent monthly data showed the ride was 74 minutes on average). This is excessive and does not comply with the District's own policy. The Student's IEP team may need to consider these matters again if the Student's kindergarten school assignment is a significant bus ride from his home.

Parental choice schools

23. In her opening statement at the hearing, The Parent asserted that the issue in this case does not include the Student's placement, or what school the Student should attend, but only whether his bus ride should be limited to a certain number of minutes. This view of the issues is overly narrow. It ignores one of the remedies the Parent requests. She requests not only reimbursement for past transportation, but a prospective remedy: an order that the Student's transportation be limited to a 40-minute maximum going forward. The current school year, 2014-2015, will end shortly after the entry of this Order. It is unknown what school the Student will attend for kindergarten in the fall of 2015. Consideration of a prospective remedy must take into account the possibility that the Student will attend a different school for kindergarten than he currently attends. Whether the District is obligated to provide time-limited transportation *regardless of what school the Parents choose for the Student* is therefore a question this decision must address.

24. The District argues that, regardless of what is in the November 2014 PWN, it is not required to provide 40-minute transportation to a parental choice school outside the Student's attendance area because it has offered to provide 40-minute transportation to six other preschools at which the Student's IEP could be implemented. The District is correct that a student's "educational placement" is generally distinct from the particular school building in which it is implemented. *See M.A. v. Jersey City Bd. of Ed.*, 592 Fed. Appx. 124, 64 IDELR 196 (3rd Cir. 2014, unpublished); *K.L.A. v. Windham Southeast Supervisory Union*, 371 Fed. Appx. 151, 54 IDELR 112 (2nd Cir. 2010, unpublished); *N.S. v. Hawaii Dept. of Ed.*, 2010 U.S. Dist. LEXIS 57045, 54 IDELR 250 (D. Haw. 2010).

25. The District is also correct that parents do not have a right under the IDEA to insist on transportation to a parental choice school if the student's educational placement and IEP services can be provided at another school location. The Parent's testimony about the special features of the EEU did nothing to contradict the District's evidence that the Student's IEP services (including the related service of 40-minute transportation) can be implemented at six different preschools in the District. *See Fick v. Sioux Falls 49-5*, 337 F.3d 968, 970 (8th Cir. 2003) (no IDEA violation to deny request for transportation outside of student's cluster boundary, where request was based on personal reasons and not required to meet student's

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educational needs); *Timothy H. v. Cedar Rapids Community School Dist.*, 178 F.3d 968 (8th Cir. 1999) (no §504[17] or IDEA violation to deny request for transportation to parental choice school outside student's attendance area where student could receive FAPE at her neighborhood school);[18] *Baltimore County Public Schools*, 61 IDELR 210 (SEA MD 2012) (no IDEA violation to deny transportation to parental choice magnet school that may have a better carpentry program for high school student, where another school within the student's transportation zone has an accredited carpentry program); *Los Angeles Unif'd School Dist.*, 53 IDELR 138 (SEA CA 2009) (no IDEA violation to deny transportation to school outside student's catchment area where school within his catchment area offered program that would meet his needs; parent failed to prove his unique needs required transportation to one school rather than the other).[19]

26. However, the District's arguments are unavailing in the present circumstances because it has *not* reassigned the Student to another preschool. It is obligated to provide 40-minute transportation to the EEU unless and until it changes the Student's school assignment, or the IEP team adopts a different transportation provision than set forth in the November 2014 PWN. If another preschool was able to meet the service and placement provisions of the Student's IEP, then the District could have reassigned the Student to that school, provided an adequate plan was adopted to ease his transition. The stay-put mandate of the IDEA only protects "educational placements," which are distinct from school locations as long as another school can provide a student's IEP services and placement, and an adequate transition plan is adopted. It is understandable that the District may not have wished to risk stay-put litigation by reassigning the Student to another school. However, the fact remains that the District did not reassign the Student to another school and it is now too late in the school year (the third week of May) to provide an appropriate transition to a different school.[20] The Parent had no

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[17] This refers to §504 of the Rehabilitation Act of 1973, 29 USC §701 *et seq.*

[18] The Eighth Circuit in *Timothy H.* mostly addressed §504 claims, but the court stated the parents' arguments were the same under the IDEA, so the court would only address their §504 claims. *Timothy H., supra,* 178 F.3d at 973 n. 6. *Timothy H.* also discussed the underlying ALJ decision, which addressed both the IDEA and §504, and the court adopted the same reasoning as the ALJ. *See Id.,* 178 F.3d at 970-971; *Cedar Rapids Community School Dist.,* 24 IDELR 485 (SEA IA 1996) (underlying ALJ decision).

[19] *See also cases under §504: Conroe (TX) Indep. School Dist.*, 39 IDELR 132 (Office for Civil Rights (OCR) 2003) (no §504 violation to discontinue transportation when student transferred from her neighborhood school to a choice school within the district; FAPE was available at the neighborhood school); *Richland (WA) School Dist. No. 400*, 22 IDELR 992 (OCR 1995) (no §504 violation to discontinue transportation when student transferred from neighborhood school to a choice school with the district; evidence did not support parent's contention that the student had a disability-related need to attend the choice school).

[20] There was uncontradicted evidence at the hearing from Dr. Partridge that Down syndrome children typically need a gradual transition to change schools. Testimony of Partridge. Although two years ago the Student adapted quickly to a new school, that was at the beginning of a school year. At that time many children are new to a classroom and a teacher, and the rules and routines of the classroom are being taught for the first time. Parents also have the summer to prepare a student for the change. Switching schools in the middle of a school year a child misses these things, and also arrives at a time when other children have already formed friendship groups. One month is an insufficient time period to both prepare the Student for a mid-year transition and to successfully accomplish it.

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obligation to voluntarily move the Student to a different school given that the District did not reassign him.

27. It is also arguable that the District preschools, while able to provide the Student's IEP *services*, could not provide his IEP *placement*. The placement provision of the Student's IEP does not simply state "blended preschool program." It states: "blended preschool program with 6 students that receive special education services and 10 students who are typically developing". J-8:16. As the Parent argues, District preschools have a significantly different blend of students than this: 12 students who receive special education services and 4 students who are typically developing. The IEP's placement provision (and his current school) provide that he participates in class with 62.5% typical peers, while at a District preschool he would participate with 25% typical peers. A child's educational placement typically refers to the *ratio of time* spent in the general education vs. special education environments (here, the IEP provides that 100% of the Student's time will be in the general education environment, and it does so regardless of the fact that 37.5% of his classmates receive special education). However, his IEP also refers to the *ratio of students* who are general education vs. special education students in his environment. Because this is a novel question about which no authority on point was cited by either party, and because this case can be resolved on other grounds, the question discussed in this paragraph is not decided. Nothing in this discussion is meant to imply that IEP placement language must include student ratios as this one does, or that this Student requires a certain ratio. Those questions are not at issue.

Remedies

28. The Parent is entitled to reimbursement for her expenses in transporting the Student to school because the District failed to comply with the 40-minute maximum ride limitation in the November 2014 PWN. The Parent's period of reimbursement will begin on the effective date of the PWN, November 7, 2014. Her reimbursement period will continue through the date the District begins providing the Student's morning transportation, as discussed in the next paragraph.

29. Within one week of the date of this Order, the District shall offer the Student District-provided transportation of 40 minutes or less to the EEU on school days. This obligation shall continue unless and until either the Student's school assignment changes (so that 40-minute transportation is provided to a different school), or the IEP team changes the 40-minute ride limitation set forth in the November 2014 PWN The District shall not change the Student's school assignment during the remainder of the 2014-2015 school year. The District is not obligated to transport the Student in a bus during the period when it is required to provide 40-minute transportation to the EEU. During that time, the District may choose to use a different vehicle, provided that both the vehicle and the driver meet all applicable legal requirements for the transportation of school children.

30. The distance between the Parent's home and the EEU is 6.1 miles. She shall be compensated for this mileage at the federal Internal Revenue Service mileage reimbursement rate existing at the time the driving occurred. The number of days of reimbursement shall be determined by school attendance records showing each day during the reimbursement period that the Student attended school.

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31. The Parent requests a prospective order that the District not be permitted to change the presently-existing 40-minute ride limitation because the Student requires that limitation. However, the Parent has not carried her burden of proof that the limitation is based on the Student's medical, physical, or educational needs. That order will therefore be denied.

32. 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 District violated the IDEA and denied the Student a FAPE by failing to comply with its November 2014 prior written notice requiring that the Student's one-way transportation time between home and school be no longer than 40 minutes. However, the Parent has not established a medical, physical, or educational need for this 40-mimute maximum, so the terms of this Order are limited as set forth below.

2. The Parent is awarded reimbursement for her expenses in transporting the Student to school, to be calculated as set forth in the Conclusions of Law, above, from November 7, 2014 through the date the District begins providing that transportation pursuant to paragraph 3 of this Order.

3. Within one week of the date of this Order, the District shall offer the Student District-provided transportation of 40 minutes or less to his current school, the EEU. This obligation shall continue unless and until either the Student's school assignment changes (so that 40-minute transportation is provided to a different school), or the IEP team changes the 40-minute ride limitation set forth in the November 2014 PWN. The District shall not change the Student's school assignment during the remainder of the 2014-2015 school year. The District is not obligated to transport the Student in a bus during the period when it is required to provide 40-minute transportation to the EEU. During that time, the District may choose to use a different vehicle, provided that both the vehicle and the driver meet all applicable legal requirements for the transportation of school children.

Signed at Seattle, Washington on May 21, 2015.

Michelle C. Mentzer
Administrative Law Judge
Office of Administrative Hearings

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Right To Bring A Civil Action Under The IDEA

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

CERTIFICATE OF SERVICE

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

Parent
[redacted]
Seattle, WA 98125

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cc: Administrative Resource Services, OSPI
Michelle C. Mentzer, Acting Senior ALJ, OAH/OSPI Caseload Coordinator

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