STATE OF WASHINGTON
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March 2, 2018

Parent
[redacted]

Lisa Pitsch, Director of Special Education
Mukilteo School District
9401 Sharon Drive
Everett, WA 98204-2699

Ryan Ford, Attorney at Law
Ford Law Firm PLLC
103 12th Ave #515
Seattle, WA 98122

Carlos Chavez, Attorney at Law
Pacifica Law Group LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101

In re: Mukilteo School District
OSPI Cause No. 2017-SE-0090
OAH Docket No. 09-2017-OSPI-00402

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,

MATTHEW D. WACKER
Administrative Law Judge

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

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

IN THE MATTER OF:	OSPI CAUSE NO. 2017-SE-0090
	OAH DOCKET NO. 09-2017-OSPI-00402
MUKILTEO SCHOOL DISTRICT	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

A hearing in the above-entitled matter was held before Administrative Law Judge (ALJ) Matthew D. Wacker in Everett, Washington, on December 4, 5, 6, and 12, 2017. The Parent of the Student whose education is at issue[1] appeared and was represented by Ryan Ford, attorney at Law. The Mukilteo School District (the District) was represented by Carlos Chavez, attorney at law. Also present for the District was Lisa Pitsch, director of special education. The following is hereby entered:

STATEMENT OF THE CASE

The Parent filed a Due Process Hearing Request (the Complaint) on September 25, 2017. A Scheduling Notice was entered on September 26, 2017. The Scheduling Notice set a prehearing conference for October 25, 2017, and a due process hearing for November 8, 2017. On September 27, 2017, the Parent filed what was construed as a motion regarding the Student's stay-put placement. On September 29, 2017, an Order Setting Prehearing Conference was entered which set a prehearing conference for October 6, 2017, to address the Parent's stay-put motion. On October 4, 2017, the District filed its Response to the Parent's Complaint.

On October 6, 2017, the Parent filed a Memoranda in Support of Parent's Motion to Enforce Stay-Put. The prehearing conference was held later the same day. At the prehearing conference, the parties agreed that the District would file its Opposition to Parent's Stay Put Motion on October 9, 2017, and oral argument on the parties' pleadings would be heard at a prehearing conference on October 10, 2017. An Order Setting Prehearing Conference was entered on October 9, 2017, memorializing the parties' agreed schedule to hear and decide the stay-put issue. The District filed its Opposition to Parent's Stay Put Motion on October 9, 2017, and oral argument was heard on October 10, 2017. On October 16, 2017, an Order Granting Parent's Stay-Put Motion was entered.

On October 24, 2017, the Parent filed a First Amended Due Process Hearing Request. A prehearing conference was held on October 25, 2017. The Parent's amendment to the Complaint was granted at the prehearing conference. A First Prehearing Order was entered on November 13, 2017 which, *inter alia*, set a readiness prehearing conference for November 21, 2017, set a due process hearing for December 4-6, 2017, set forth a statement of the issues and remedies

[1] In the interests of preserving the family's privacy, this decision does not name the parent or student. Instead, they are each identified as "Parent" and "Student."

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for the hearing, and granted the District's motion to extend the due date for a written decision in the above matter.

The due process hearing was held as scheduled over three days on December 4-6, 2017, but was not completed. By agreement of the parties, a fourth day of hearing was scheduled and held on December 12, 2017. At the conclusion of the due process hearing, the parties agreed to file written post-hearing briefs on January 24, 2018. Also at the conclusion of the hearing, the ALJ ordered the District to provide an additional document as a proposed exhibit for the ALJ's review.[2] After review of the proposed exhibit, on December 18, 2017, the Parent filed a Motion for Sanctions Based Upon Spoliation of Evidence, Motion to Suppress Duplicate Evidence And in The Alternative, Objection to And Motion to Suppress Exhibit C-1. On December 19, 2017, the District filed an Opposition to Parent's Motion for Sanctions and Other Relief. On December 20, 2017, a post-hearing conference was held by agreement of the parties. After hearing from both parties, the ALJ determined that proposed Exhibit C1 did not warrant reopening the record, and accordingly struck the proposed exhibit.

Due Date for Written Decision

The due date for a written decision in the above matter was set at thirty (30) calendar days from the close of record. *See* November 13, 2017 First Prehearing Order. On February 22, 2018, a second post-hearing conference was held at the request of the undersigned ALJ. At the post-hearing conference, the District moved to extend the due date for a written decision in the above matter to the close of record plus thirty-seven (37) calendar days. The Parent did not object and the motion was granted. The record closed with the filing of written post-hearing briefs on January 24, 2018. Thirty-seven calendar days from January 24, 2018 is March 2, 2018. Therefore, the due date for a written decision in the above matter is **March 2, 2018.**

EVIDENCE RELIED UPON

The following exhibits were admitted into evidence:

Parent Exhibits: P1-P31;
District Exhibits: D1-D15.

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

Tamara Leupold, former District paraeducator;
Ken Clements, District school psychologist;
Inga Dabasinskaite, District special education teacher;
Parent of the Student;
Darcy Lynn Doyle-Hupf, executive director, Northwest's Child (By telephone);
Shelly Oraze, District special education teacher;
Pamela Ziemann, District special education teacher;
Julia Kim, District school psychologist;

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[2] The proposed exhibit was a copy of notes taken by Ann Oswald at a meeting held on August 29, 2017. It was identified as proposed Exhibit C1.

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Karamia Powell, District speech-language pathologist;
Sharon Moore, District occupational therapist;
Cindy Steigerwald, District director of transportation and safety;
Laura Ploudre, District assistant director of special education.

ISSUES AND REMEDIES

The statement of the issues and remedies for the due process hearing is:

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

i. Failing to implement the Student's individualized education program (IEP) from September 6, 2017, through October 16, 2017, when it refused to provide special transportation for the Student to and from Northwest Child, a childcare facility located outside of the District's geographical boundaries;

ii. Predetermining that the Student did not require special transportation to and from Northwest Child in August 2017;

iii. Failing to have a general education teacher of the Student attend an IEP team meeting on August 29, 2017;

iv. Denying the Parent meaningful participation at the August 29, 2017 IEP team meeting;

v. Failing to provide the Parent with proper prior written notice (PWN) in September 2017 regarding the IEP team's decision that the Student did not require special transportation to and from Northwest Child;

b. And, whether the Parent is entitled to her requested remedies:

i. Declaratory relief that the District violated the IDEA and denied the Student FAPE based on the above issue(s);

ii. An order that the District will provide the Student with special transportation to and from Northwest Child for the remainder of the 2017-2018 school year;

iii. An order that the District shall pay for the Student to attend Northwest Child for after-school care for the remainder of the 2017-2018 school year;

iv. Compensatory education and related services for the Student equivalent to the number of days the Student would have received instruction beginning September 6, 2017, but for the District's failure to provide special transportation to and from Northwest Child;

v. Reimbursement to the Parent for expenses incurred for babysitting, mileage and time taken off from her employment in order to transport the Student to and from Northwest Child beginning September 6, 2017.

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See November 13, 2017 First Prehearing Order.

FINDINGS OF FACT

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

General Background

1. The Student was determined eligible for special education and related services under the developmental delay eligibility category based upon an initial evaluation in December 2012. *See* P3p1.[3]

2. The Student began attending a developmental preschool at Challenger Elementary School in December 2012, when he was three years old. He continued attending developmental preschool at Challenger Elementary during the 2013-14 school year. *Id.* The Student transferred to another developmental preschool at Columbia Elementary School for the 2014-15 school year. *Id.*; Ziemann, T355.[4]

3. Pamela Ziemann was the Student's special education teacher during the 2014-15 school year. *Id.* at T330. Tamara Leupold was a paraeducator in Ms. Ziemann's classroom. *Id.* at T351; Leupold, T20. Ms. Ziemann's developmental preschool class only served students with developmental disabilities. Ziemann, T356.

4. An individualized education program (IEP) team meeting regarding the Student was held on October 29, 2014. D1p1, P1. The IEP noted that the Student's developmental disabilities affected his social/emotional/behavioral and communication skills to the point that his ability to participate in typical and appropriate preschool activities was adversely impacted. The Student had not met the communication goals in his prior IEP. D1p3. The Student was severely delayed in the area of sound production. D1p1.

5. The IEP noted the Student had made some improvements with his social and emotional skills over the last year, but when he would get frustrated he would throw everything off of tables, throw or tip over his chair, would refuse to do some tasks, and was unable to negotiate with a peer to solve a conflict independently. D1pp4-5.

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[3] Citation to the exhibits of record is by exhibit number and page number. For example, citation to "P3p1" is a citation to Parent's Exhibit P3 at page 1. Citation to the District's exhibits will begin with "D" to distinguish from the Parent's exhibits.

[4] Citation to the transcript of the due process hearing is by witness and transcript page number. For example, citation to "Ziemann, T355" is a citation to the testimony of Ms. Ziemann at page 355 of the transcript.

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6. Ms. Ziemann and Ms. Leupold opined that in terms of inappropriate behavior, the Student was the one of the worst or the worst student in the classroom. Ziemann, T333; Leupold, T88. On at least one occasion, the Student urinated in Ms. Ziemann's classroom. On one or two occasions the Student took his clothes off in the classroom or climbed on top of or under desks. Ziemann, T332-T333.

7. The Student would also scream, cry, throw objects in class and bite. Some of these behaviors occurred on a daily basis, others multiple times per week. Leupold, T26. The Student would refuse to follow instructions, and sometimes became "physically unsafe," and required a space in the classroom away from the other students. The Student's urinating in the classroom appeared intentional. Kim, T361-T362.

8. Julia Kim, the District school psychologist assigned to Columbia Elementary School who was familiar with the Student, recalls conversations with the Parent during the school year regarding problems the Student was having at his childcare providers. Ms. Kim was aware that the Student had been "kicked out" of one or more childcare providers during the 2014-15 school year. Kim, T366-T367.

9. Ms. Ziemann recalls communication with the Parent during the school year regarding problems the Student was having with at his childcare providers. Ziemann, T336. Ms. Ziemann recalls the Parent telling her that the Student was kicked out of at least one childcare provider during the school year. *Id.* at T337.

District First Provides Transportation to Out-of-District Childcare

10. During April 2015, the Parent was told that the Student could no longer continue to attend Kindercare, his before and after-school childcare provider, due to his poor behavior. Exhibit P12p1; Parent, T210. Kindercare was located within the geographical boundary of the District. Parent, T502-T503. The Parent was able to locate another childcare provider, Joy Day Care, that agreed to accept the Student. The Parent went to the District to arrange transportation for the Student to his new childcare provider on April 22, 2015. However, the Parent was told that the District would not transport the Student to Joy Day Care because it was located outside the geographical boundary of the District. *See generally* P12p1. Joy Day Care is located in the Everett School District. *See* reference to "the daycare located in Everett School District" at D2p1.

11. On April 29, 2015, the Parent wrote an email to multiple individuals, including Renae Leeming, then the District's assistant director of special education. The email summarized the circumstances of the Student's involuntary removal from Kindercare, the Parent's unsuccessful effort to find a new childcare provider within the District's boundary, and the District's refusal to transport the Student to his new out-of-District childcare provider, Joy Day Care. *Id.*

12. Later on April 29, 2015, Ms. Leeming wrote in an email to Cindy Steigerwald, the District's director of transportation and safety, that:

> I have contacted [the Parent]...and left a message on her cell phone that we will provide transportation for [the Student] in (sic) the daycare located in Everett School District. I let [the Parent] know that you will be calling her to work out the details.

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D2p1. Ms. Leeming is no longer employed by the District, and did not appear as a witness at the due process hearing.

13. The Student attended Joy Day Care from on or about April 30, 2015 until the beginning of June, when the childcare provider told the Parent that the Student could not continue at Joy Day Care due to his behavior. Parent, T210, T213, T504.

14. After Joy Day Care, the Parent was able to find a relative of a friend, who the Parent was able to get approved through the Washington State Department of Social and Health Services (DSHS) to provide childcare for the Student. However, after only two or three weeks, that individual told the Parent that she could no longer provide care for the Student because he was too much to handle. *Id.* at T388.

15. The Parent's older daughter, visiting from Ohio, then provided childcare for the Student for a couple of weeks until she had to return home. *Id.* at T508-T509.

16. After the Parent's daughter returned to her home, the Parent expanded her search for another childcare provider. The Parent was finally able to find a childcare provider who would accept the Student; Northwest's Child (NW Child). However, the NW Child facility that accepted the Student was located outside geographical boundary of the District in the Edmonds School District. Doyle-Hupf, T272.

Northwest's Child and Darcy Lynn Doyle Hupf

17. Among other programs, NW Child provides after-school services for children and teens with moderate to severe developmental and physical disabilities. P31p1. It is a licensed childcare provider. NW Child has two sites that provide after-school services.[5] It maintains a much higher staff-to-child ratio, 1:2, than is typical for other licensed childcare providers. The much higher staff-to-child ratio allows NW Child to work on goals in disabled children's IEPs from their schools. *Id.* at T225-T228, T241-T242. The environment is purposely kept calm, predicable and consistent to reduce any "sensory overload" the children may experience. This is particularly critical for children on the autism spectrum. *Id.* at T243. However, NW Child does not employ state-certificated teachers or other service providers like occupational therapists or speech-language pathologists. *Id.* at T281-T281.

18. Darcy Lynn Doyle-Hupf is the founder and executive director of NW Child. NW Child is a non-profit agency. P31p1. NW Child began to offer childcare services to disabled students in 1991. Ms. Doyle-Hupf earned a teaching degree in special education from Central Washington University in 1981. *Id.* at T221; P31p1. But she has never taught in a public school setting. *Id.* at T268. She has provided respite care services since she was a teenager. She has experience as an in-home care provider with nurse delegation training. Ms. Doyle-Hupf is a licensed foster

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[5] Although it is not entirely clear from the record, the Student initially began attending a NW Child site in the Edmonds School District. At some point between when he initially began attending NW Child and the 2017-18 school year, NW Child relocated to a location in Lynnwood, Washington, just outside the geographical boundary of the District. Doyle-Hupf, T242. The Lynnwood NW Child site is between 7.5 and 9 miles from the Student's current placement (2017-18 school year) at Challenger Elementary School, and about 5 miles outside the District's geographical boundary. P12p1.

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care parent, and has been a foster parent to multiple children with special needs. She is also a court-appointed special advocate (CASA) at the Kent Justice Center in King County. *Id.* at T221-T224; P31p2. Ms. Doyle-Hupf has held a number of jobs involving children and adolescents with special needs. *See generally* P30.

19. The Student began attending NW Child in July 2015. In lieu of attending extended school year (ESY) services with the District, the District provided transportation for the Student to NW Child during the summer vacation. P19p1.

2015-16 School Year: Developmental Kindergarten at Challenger Elementary

20. The District continued to provide the Student with out-of-District transportation to NW Child during the entire 2015-16 school year. However, the Student only required transportation to NW Child at the of each school day because the NW Child facility in the Edmonds School District did not open until 9:00 a.m. in the morning. The facility closed at 6:00 p.m. Parent, T396, T515; D3pp1-2, P19pp1-2.

21. On October 13, 2015, a reevaluation team meeting and an IEP team meeting were held. As a result of the reevaluation, the Student's eligibility category was changed from developmental delay to autism. P3p2. The IEP noted that the Student continued to struggle with expressive communication, characterizing his speech as consisting of "unintelligible jargon" which would "not be known by a stranger." D4p3. The IEP noted that the Student "still has difficulty regulating his emotions when he feels frustrated." It noted that while the Student had made improvement from his previous IEP, he still would take off his shoes and attempt to flee from a group when frustrated. *Id.* The Student's IEP placed him in a separate classroom, a self-contained developmental kindergarten class, with no access to typically developing peers. *Id.* at p11.

22. On January 27, 2016, a meeting was held to consider the results of a functional behavioral assessment (FBA) of the Student. P5. The FBA noted that since early October the Student regularly had tantrums when he did not get his way. His behaviors included taking off his clothing, destroying materials, and throwing furniture. The Student also showed unprovoked aggression, including hitting, kicking, pinching and scratching staff and peers. And at times the Student would wait through the school day "before finding an opportunity to exact revenge on a peer." *Id.* at p1.

23. On March 31, 2016, the District sent the Parent a Prior Written Notice (PWN) regarding the Student. The PWN informed the Parent that the District was adding a behavioral intervention plan (BIP) and an emergency response protocol (ERP) to the Student's IEP based upon the results of the Student's reevaluation. D5p14, P6p14.

24. On May 22, 2016, the Parent sent Ms. Leeming an email. D6p3, P20p2. The Parent was following up a conversation the prior week regarding the Student's transportation for the next school year. The Parent was aware Ms. Leeming was going to retire and wanted to ensure a smooth transition for the Student. The Parent was aware by this time that the Student would be transferring to the autism program at Columbia Elementary School for the 2016-17 school year. The Parent reminded Ms. Leeming that the Student attended NW Child after school. Id.

25. On May 31, 2016, Ms. Leeming sent an email to Ms. Steigerwald, asking her if the District would be able to honor the Parent's request for continued out-of-District transportation to NW

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Child for the next school year. Ms. Leeming referenced the Parent's "difficult time finding childcare for her son with behavioral disabilities." D6p2, P20p2.

26. Ms. Steigerwald replied via email the same day, asking whether "the team determined this was still appropriate?" D6p2, P20p1.

27. Ms. Leeming replied to Ms. Steigerwald via email on June 2, 2016, stating:

> This is not a team recommendation. This has to do with the mother finding daycare for her child who exhibits behavior problems. She says he had been kicked out of several daycares in Mukilteo and this is the only one she found who will take him and that she trusts.

D6p1.

28. Ms. Steigerwald replied the same day with an email stating in part that, "[m]y question is do we still need to meet this request and at (sic) when do we reevaluate?...It appears we have created a service expectation here and I think we need to determine limits." D6p1.

29. The District continued to transport the Student to NW Child during the 2016 summer vacation.

2016-17 School Year: First Grade at Columbia Elementary

30. The District continued to provide the Student with out-of-District transportation to NW Child at the end of each school day during the entire 2016-17 school year. Parent, T510-T511.

31. An IEP team meeting was held on October 10, 2016. The new IEP noted that the Student still included the use of pictures to assist with his expressive communication, but that unlike prior years when he required a BIP, he was "responding to classroom behavioral intervention embedded in his classroom program. D8p2. The Student was now spending 12% of his school day with general education peers for assemblies, lunch and recess, and physical education and music. *Id.* at pp12-13. The remainder of his school day was still spent in a self-contained classroom. *Id.* at p8.

District Discontinues Out-of-District Transportation

32. On August 22, 2017, Laura Ploudre,[6] the District's assistant director of special education made a telephone call to the Parent. D9pp2-3. Present with the Parent when she received Ms. Ploudre's call was Tamara Leupold, the paraeducator from the Student's developmental preschool class during the 2014-15 school year.[7] The Parent used the speaker on her phone so that she could share Ms. Ploudre's call with Ms. Leupold. Parent, T412; Leupold, T36.

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[6] Ms. Ploudre had replaced Ms. Leeming as the District's assistant director of special education upon Ms. Leeming's retirement.

[7] Beginning in August 2016, Ms. Leupold has provided 20 hours of respite care services per month for the Parent. Leupold, T20.

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33. Ms. Ploudre does not "recall the phone conversation in any detailed way." Ploudre, T689. Accordingly, the testimony of Ms. Ploudre concerning her statements during the call are found to be deserving of less weight than the testimony of Ms. Leupold and the Parent regarding what was said during the call.

34. The Parent recalls Ms. Ploudre stating during the call that the District would transport the Student anywhere she wanted the Student to go to childcare, so long as it was inside the District. Parent, T410-T411. Ms. Ploudre wanted to set a meeting to consider the Student's transportation for the upcoming 2017-18 school year. When the Parent asked Ms. Ploudre if this was going to be an IEP team meeting, Ms. Ploudre said it was not considered an IEP team meeting. Leupold, T36; Parent, T569.

35. Ms. Ploudre sent an email to the Parent later the same day. Ms. Ploudre's email stated in part that:

> Thank you for the phone conversation today...Our department has been working with transportation to review our practice of providing transportation to out-of-district childcare locations...we are convening IEP meetings to review the needs of the individual student relative to school-to-daycare transportation. **Transportation to the daycare you have chosen for [the Student] will not be provided for the coming school year unless the IEP team determines that continuing to do so is necessary to allow him to access his special education services.**

D9pp2-3 (Emphasis added). A meeting was finally confirmed for August 29, 2017 at 3:15 p.m. at Challenger Elementary School. D10p1.

36. There is no written invitation to any IEP meeting on August 29, 2017 in the evidence of record.

37. On August 29, 2017, the following individuals met at Challenger Elementary School: the Parent, Ms. Doyle-Hupf, Ms. Leupold, Ms. Ploudre, Ms. Steigerwald, the Student's special education teacher, Inga Dabasinskaite, District School Psychologist Ken Clements, and Anne Oswald, a teacher on special assignment to the District's special education department that Ms. Ploudre recruited to act as a general education teacher representative.[8, 9] Ploudre, T675. Ms. Oswald is also a certificated general education teacher. *Id.* at T722.

38. Prior to the meeting, Ms. Ploudre, Ms. Steigerwald and Ms. Oswald had never attended a single IEP meeting concerning the Student, and had never met the Student. Parent, T419-T420,

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[8] Although Ms. Ploudre asserted that Ms. Oswald was present to act as a general education teacher representative, Ms. Ploudre's later PWN did not identify Ms. Oswald as a member of the "team." See D12p3, P11p10("The team, comprised of school psychologist, teacher, parent, and special education assistant director, met to discuss the parent's request for out-of-district transportation...") Apparently either Ms. Oswald or Ms. Dabasinskaite were not part of the team. And apparently Ms. Ploudre did not consider Ms. Doyle-Hupf or Ms. Leupold members of the team as well, as they were not included in the PWN. *Id.*

[9] Ms. Ploudre recruited Ms. Oswald, who never met or taught the Student, despite knowing the Student had been taught by general education teachers in the past for music and physical education. Ms. Oswald is a certificated general education teacher. Ploudre, T722.

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T422; Steigerwald, T583; Ploudre, T687, T723. Ms. Steigerwald did not consider herself part of the team, but rather a "guest" and did not offer an opinion. Steigerwald, T588-T589. However, Mr. Clements recalled Ms. Steigerwald was in support of stopping transportation. Clements, T129.

39. To prepare for the meeting, Ms. Ploudre reviewed "all existing data and documents describing the [S]tudent's programs and progress up until the time that we met to the present." Ploudre, T687. However, upon examination by Parent's counsel at hearing, Ms. Ploudre was unable to recall details of the Student's programs, progress, or circumstances with any reasonable degree of specificity. *Id.* generally at T690-T695.

40. During the course of the meeting, the Parent, Ms. Leupold and Ms. Doyle-Hupf all expressed their opinion that the Student required out-of-District transportation to NW Child. P11p10.

41. Mr. Clements and Ms. Dabasinskaite opined that the Student's transportation should continue "while the issue was being decided," and/or until the Student's IEP was due for review in October. Clements, T128-T129; P11p10.

42. Mr. Clements believed that the decision to discontinue the Student's out-of-District transportation to NW Child had already been made prior to the meeting, and that the reason for the meeting was for the IEP team to "document" that decision. Mr. Clements believed that the "district representatives came into the meeting with an idea of how they would like it to go." Clements, T122. Later, under questioning by the District's counsel, Mr. Clements stated, "I believe Ms. Ploudre and Ms. Steigerwald came into the meeting wanting to communicate that the transportation was going to be ending." *Id.* at T143.

43. When Ms. Dabasinskaite[10] was asked at the due process hearing if she believed that she had input into the decision to stop the Student's out-of-District transportation, she replied "no." She then clarified that she did not believe it was her decision to make, that a decision about transportation was for the District. Dabasinskaite, T193.

44. No consensus was reached at the meeting about whether the Student's out-of-District transportation should be stopped. Finally, Ms. Ploudre made the decision that transportation would be stopped, characterizing it not as her decision, but the District's decision. Dabasinskaite, T185. However, Ms. Dabasinskaite felt that Ms. Ploudre had made the decision to stop transportation. Id. at T185-T186.

The Parent's Search for In-District Childcare Providers

45. While still at the meeting, the Parent asked Ms. Ploudre if Ms. Ploudre could help her find a childcare provider within the geographical boundary of the District that would accept the Student. Parent, T434. The Parent eventually received a list titled "Childcare and Preschool Services Within Mukilteo School District Boundaries 2017-2018. P30. The Parent called every provider on the District's list except Kindercare. Parent, T462-463. The Parent did not attempt to contact

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[10] Ms. Dabasinskaite was the Student's special education teacher during 2016-17 school year, and had been assigned as his special education teacher for the 2017-18 school year.

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Kindercare due to her prior experience during the 2014-15 school year when Kindercare did not allow the Student to continue attending. *Id.* But the Parent did not visit any of the providers on the District's list. *Id.* at T563. The Parent did not identify any providers for the Student.

46. Ms. Ploudre also asked Ms. Doyle-Hupf if she would help the Parent identify an in-District childcare provider that would accept the Student. Doyle-Hupf, T239.

47. Ms. Doyle-Hupf conducted internet searches, contacted her childcare licensor, who licenses all school-age programs in Snohomish County, and contacted Child Care Aware, a state-wide referral agency for childcare providers. Despite her search, Ms. Doyly-Hupf was unable to identify any childcare providers in the District for the Student. *Id.* at T239.

48. Based upon her decades-long experience involving the provision of childcare for disabled students and the search she conducted after the August 29, 2017 meeting, Ms. Doyle-Hupf opined that there is no childcare provider located within the District's geographical boundary that will accept the Student and provide him with after-school child care. *Id.* at T233.

49. Ms. Doyle-Hupf opined that the Student would not be successful at a typical childcare provider due to his specialized needs. The Student would likely not be able to interact appropriately with typically developing peers, and would likely be "overwhelmed." *Id.* at T245. Given Ms. Doyle-Hupf's education, training, and decades-long experience involving the provision of childcare for disabled students and her knowledge of the Student, it is found as fact that the Student would more likely than not be unable to sustain attendance at a childcare provider that did not provide the type of environment offered at NW Child.

50. The District has offered no evidence affirmatively going to prove that any childcare provider exists within the District that would accept and provide after-school childcare for the Student for the 2017-18 school year.

51. After careful consideration of the record in this matter, it is found as fact by a preponderance of credible evidence (i.e. on a more likely than not basis) that no childcare provider exists within the District's geographical boundary that will accept the Student and provide him with after-school care for the 2017-2018 school year. This finding of fact is made with the acknowledgment that while the Parent's search for such a childcare provider was not perfectly meticulous in its complete exhaustion of every possible provider, it was none the less a reasonable search. Had the Parent's search been the only evidence of record to support a finding there is no in-District childcare provider that would accept and serve the Student, this would have been a much more difficult determination. However, very significant weight is given to the efforts and search made by Ms. Doyle-Hupf, the results of which support finding there is no such in-District childcare provider. And finally, the District has offered no evidence of its own to support a finding there is any such childcare provider in the District. The Parent's burden of proof is only to establish by a preponderance of credible evidence that no such childcare provider exists within the District. Given the evidence of the Parent's search and Ms. Doyle-Hupf's search, and the lack of any evidence presented by the District in opposition, the Parent has met her burden.

The District's Prior Written Notices

52. After the August 29, 2017 meeting, Ms. Ploudre began sending the Parent what would ultimately be a series of three PWNs. P11p2, P11p5, P11p10.

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53. On September 5, 2017, Ms. Ploudre sent her first PWN to the Parent via email at 4:07 p.m. P11p2.[11] The email informed the Parent that the District was refusing to initiate out-of-District transportation to childcare because it was not "required for [the Student] to access his special education services at this time." The PWN stated the action would be initiated the next day, September 6, 2017. *Id.* September 6, 2017 was the first day of school for the 2017-18 school year. D15.

54. After reviewing the first two PWNs, the Parent responded to Ms. Ploudre via email on September 14, 2017. D12pp1-2. The Parent identified what she considered to be a number of errors and omissions in the PWN. P11pp8-9.

55. On September 19, 2017, Ms. Ploudre responded via email and attached a third PWN. D12p1, D12p3, P11p10-11.

The Parents' Family Circumstances

56. The Parent is a single mother raising the Student and two minor siblings. The Parent is employed at a multi-specialty physicians office as a medical assistant. She currently works from 8:30 a.m. to 5:30 p.m., on Monday and Wednesday through Friday. Parent, T200-T202; P12p1. She earns $24.97 per hour at her job. *Id.* at T495. The Parent's monthly net income is approximately $2,500.00 after deductions. The family resides in rent-controlled or restricted housing. *Id.* at T558. The Parent would be unable to relocate her family to the Edmonds School District, thereby residing in the same school district where the Student attends NW Child after school, because she cannot afford a higher monthly rent. *Id.* at T558. The Parent does not know how she would financially support and provide care for her children is she were compelled to quit her job in order to transport the Student to NW Child after school. *Id.* at T473-T475. The Parent has attempted to change her work schedule to accommodate getting the Student to NW Child, but is unable to do so because of union rules regarding seniority. *Id.* at T501-T502, T546, T568; P25.

The Impact of Discontinuing Out-of-District Transportation[12]

57. Due to the termination of out-of-District transportation to NW Child after school, the Student missed a total of eight days of school. Parent, T401-T403, T452-T455. Because of his absence from school, the Student did not receive any of the services required by his IEP. Those services included speech-language pathology services, occupational therapy services, and specially designed instruction regarding the Student's social and emotional behaviors. D8p12.

58. Unable to have the Student attend NW Child because the District was refusing after-school transportation and needing to work, the Parent located a babysitter for the Student. On

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[11] Ms. Ploudre sent a second PWN via email at 4:36 p.m. the same day. P11p5. The second PWN corrected minor omissions in the first PWN.

[12] The District started providing out-of-District transportation to NW Child for the Student on October 18, 2017 as the result of the undersigned ALJ's Order Granting Parent's Stay-Out Motion in the above matter.

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September 6, 2017, the Parent incurred an expense of $80.00 for the babysitter. On the remaining seven days when the Student could not go to school because the Parent had no way to get him to NW Child, the Parent incurred a daily expense of $50.00 for the babysitter. Parent, T453. The Parent's total expense for the babysitter was therefore $430.00.

59. On other school days between September 6 and October 17, 2017, either the Parent or the Student's maternal grandmother transported the Student to NW Child so he could also attend school. *Id.* at T454.

CONCLUSIONS OF LAW

The IDEA and Jurisdiction

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

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

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

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

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

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

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600 University Street
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(206) 389-3400 1-800-845-8830
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Endrew F. v. Douglas County Sch. Dist. RE-1, ___ U.S. ___, 137 S. Ct. 988, 999-1000 (2017). The Ninth Circuit has explained the *Endrew F.* standard as follows:

> In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can "make progress in the general education curriculum," 137 S. Ct. at 994 (citation 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 (9th Cir.), *cert. denied*, ___ U.S. ___, 138 S. Ct. 556 (2017).

6. Procedural safeguards are essential under the IDEA. The Ninth Circuit has stated:

> Among the most important procedural safeguards are those that protect the parents' right to be involved in the development of their child's educational plan. Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.

Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 882 (9th Cir. 2001).

7. Procedural violations of the IDEA amount to a denial of FAPE 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 decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
> (III) caused a deprivation of educational benefits.

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

Whether the District Denied the Student FAPE by Failing to Implement the Student's IEP and Refusing to Provide Out-of-District Transportation to NW Child

8. It will come as no surprise to the parties herein that this issue has been the subject of recent litigation before OAH. Two recent decisions have confronted this issue. *See* In re Mukilteo School District, Cause No. 2017-SE-0086 (SEA WA 2017); In re Mukilteo School District, Cause No. 2017-SE-0089 (SEA WA 2018). It is apparently an issue of first impression in the Ninth Circuit. Ultimately, neither of the two earlier administrative decisions had to confront the legal issue of out-of-district transportation head-on because in both of those cases the ALJs found that the parents had not met their burden of proof to establish there were no in-district childcare providers that could have served the students in those cases.

9. Unlike those earlier cases, the evidence in this case does establish as fact that there is no childcare provider located within the District that will accept the Student with all his associated special needs and behavioral problems. *See* Finding of Fact #51. Having cleared this evidentiary hurdle, the legal question must be squarely addressed. The undersigned generally agrees with the earlier decisions' analysis of the case law on this issue.

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10. The rules set forth in Chapter 392-172A WAC are meant to "ensure that all students eligible for special education have available to them a free appropriate public education (FAPE) that emphasizes special education and *related services* designed to meet their unique needs and prepare them for further education, employment, and independent living." WAC 392-172A-01005(2); 34 CFR §300.1(a) (emphasis added).

11. "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education. WAC 392-172A-01155(1); 34 CFR §300.34(a). "Transportation" includes travel to and from school and between schools. *Id.*, (3)(p)(i); (c)(16).

12. The IDEA makes specific provision for services that enable a child to be physically present in class. *Irving Independent School Distr. v. Tatro*, 468 U.S. 883, 891 (1984)(Without CIC services available during the school day, respondents' child cannot attend school and thereby benefit from special education.)

13. Transportation that is not necessary to assist a student eligible for special education to be present in class and benefit from that education, including transportation that is geared toward parental convenience or non-educational preferences, is not a service designed to meet their unique education needs. *See N. Allegheny Sch. Dist. v. Gregory P.*, 687 A.2d 37, 40 (Pa. Commw. Ct. 1996)(The IDEA "require[s] that the district provide each exceptional student with an appropriate education, transportation between his residence and his school, and additional transportation or other related services *where needed to address his educational needs*. This is an important and sometimes heavy responsibility, but it does not extend to accommodating all the lifestyle preferences and personal needs of parents whose children happen to have special educational needs" (emphasis in original)); *see also Fick v. Sioux Falls Sch. Dist.*, 39 IDELR 151 (8th Cir. 2003)(upholding the district's denial of transportation to an out-of-district daycare when the transportation request was made for personal reasons unrelated to the student's educational needs); *see also Mukilteo Sch. Dist.*, 43 IDELR 231 (SEA WA 2005)(district not required to transport student to childcare location convenient to parent, both in price and consistency of care, when student's IEP does not require after school childcare in order for student to achieve educational benefit); *see also Kimberly Area Sch. Dist.*, 114 LRP 36099 (SEA WI, 2014)(rejecting the parents' challenge to the district's denial of out-of-district transportation to the student's daycare when district's program met the student's needs and the daycare was a private decision made by the parents and despite assertions that the daycare provided a small, stable environment which led to improvement in the student's development and stabilization).[13]

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[13] There are a few very early cases addressing the issue of whether a school district must provide transportation as a related service for a student eligible for special education to a childcare provider located outside a school district's geographical boundaries. *See e.g., In the Matter of Amee W.*, 1986-87 EHLR Dec. 508:234 (SEA WA 1986); *In re Jesse D. v. Hartford Board of Ed.*, 401 IDELR 356 (SEA CT 1989). In both cases it was held that a school district must provide such transportation to an out-of-district childcare provider. These early cases, however, conflict with the greater weight of authority of the subsequent decisions cited above, and it is concluded these earlier cases are not controlling under the facts in the present case.

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Seattle, WA 98101-3126
(206) 389-3400 1-800-845-8830
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14. It is first concluded that the Student's attendance at NW Child rather than an in-District childcare provider is not due to any personal preference, convenience, choice, or desire on the part of the Parent. As noted above, the Parent has met her evidentiary burden and established there is no current in-District childcare provider who would accept the Student and his special needs.

15. The Parent argues that NW Child provides an environment and services that contribute to the Student's receipt of educational benefit by, for example, working on the Student's IEP goals or moderating the Student's inappropriate behaviors. The Parent also argues that the District treated NW Child as part of the Student's extended school day and as a behavioral intervention for the Student. *See* Parent's Post-Hearing Brief at p.3. These arguments are categorically rejected. The Parent's evidence supporting these arguments is conjectural and suspect at best. It is concluded that the Parent has not established that NW Child, apart from allowing the Student to leave his District elementary school at the end of the school day and have a childcare facility to go to until the Parent can pick him up after work, provides any such educational benefit for the Student. This conclusion, however, does not end the legal analysis.

16. Just as in Irving Independent School Distr., *supra*, NW Child allows the Student to be physically present at school and thereby receive the benefit of the specially designed instruction and related services in his IEP. The analogy is simple and obvious. If a school district can be required under the IDEA to provide a student with clean intermittent catheterization (CIC) as a related service throughout the school day in order for the student to remain at school, it requires no stretch of imagination or the law to conclude a school district must transport a student to an after-school childcare provider. Without somewhere to go after school, a student of the Student's age (second grade) could never be expected to arrive at school to *begin* his school day.

17. The fact that the only childcare provider which will accept and serve the Student after school is outside of the geographical boundary of the District is legally immaterial because the Student has been determined to be a student eligible for special education and related services under the IDEA. The IDEA imposes many, many legal obligations on school districts that simply do not apply to general education students. As remarked above, the critical factor that distinguishes the Student's case from the earlier cases involving the District is that the Parent herein was able to carry her evidentiary burden and establish that there is no childcare provider within the District that will serve the Student.

18. The District advocates the "slippery slope" argument that a conclusion it is obligated to transport the Student outside the District knows no bounds. The undersigned is not convinced this argument is meritorious. NW Child is located a matter of a few miles outside the District. This is not a case where a school district is asked or ordered to transport a student many hours outside its boundary. There is an element of reasonableness to a school district's obligations under the IDEA. A school district owes no duty to maximize a student's potential or provide the absolute best educational program for a student eligible for special education. Were this a case where transporting the Student would impose a substantial and overly burdensome hardship on the District, the result might be different. But those are not the facts today. Indeed, one wonders what argument the District might make given it transported the Student to NW Child for over two years without any apparent hardship.

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19. Accordingly, it is concluded that the District denied the Student FAPE when it terminated his out-of-District transportation to NW Child, and the District will be ordered to resume that transportation. This is a substantive violation of the IDEA.

Whether the District Denied the Student FAPE by Predetermining the Student Did Not Require Transportation to NW Child

20. The Parent argues that the District predetermined in advance of the August 29, 2017 meeting that it would terminate the Student's transportation to NW Child. The undersigned agrees.

21. The school members of an IEP team are not required to come to an IEP meeting with a blank mind regarding what they believe should be in the IEP. Rather, they must listen to parents' views with an open mind. *See H.B. v. Las Virgenes Unif'd Sch. Dist.*, 239 Fed. Appx. 342, 345 (9th Cir. 2007 unpublished); *D.M. v. Seattle Sch. Dist.*, 2016 U.S. Dist. LEXIS 122519, 68 IDELR 165 (W.D. WA 2016); *Doyle v. Arlington County Sch. Bd.*, 806 F. Supp. 1253, 1262 (E.D. Va. 1992) (cited with approval in *K.D. v. Hawaii Dept. of Educ.*, 665 F.3d 1110, 1123 (9th Cir. 2011)), *affirmed*, 1994 U.S. App. LEXIS 30495, 110 LRP 18163 (4th Cir. 1994 unpublished).

22. It is prohibited to enter an IEP meeting with a decision finalized, and employ a "take it or leave it" approach. *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). School members of the team may come to the table "with pre-formed opinions regarding the best course of action for the child as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions." *Nack v. Orange City Sch. Dist.*, 454 F.3d 604, 610 (6th Cir. 2006) (internal citation omitted); *see H.B.*, 239 Fed. Appx. at 345 (no predetermination occurred even though district desired that student return to public school and came to the IEP meeting believing its proposed placement provided FAPE).

23. Facts supporting a conclusion that a district has predetermined a decision involving a student's education should be compelling. If not, administrative tribunals and courts risk indulging in overzealous "Monday-morning quarterbacking." But the facts in the Student's case are quite compelling. From Ms. Ploudre's first telephone call to the Parent where she stated that the District would transport the Student anywhere the Parent wished so long as it was within the District, to Mr. Clements clearly expressed opinion that the decision to stop transporting the Student to NW Child had already been made prior to the meeting, to Ms. Dabasinskaite's opinion that she had no input into the decision, to Ms. Ploudre's PWN that identified only four persons present at the meeting as team members, the facts in this case speak for themselves. It is concluded on a more probable than not basis that Ms. Ploudre had already decided prior to the August 29, 2017 meeting that the District would no longer transport the Student to NW Child. The District therefore predetermined a decision that was legally the decision of the team to make. This is a procedural violation of the IDEA.

Whether the District Denied the Student FAPE by Failing to Have a General Education Teacher at the August 29, 2017 Meeting

24. Ms. Ploudre asked Ms. Oswald to participate as a general education teacher representative at the August 29, 2017 meeting. While a certificated general education teacher, Ms. Oswald has never been one of the Student's general education teachers. Ms. Ploudre knew this.

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600 University Street
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25. The individual chosen to serve as the general education teacher on a student's IEP team does not need to be the student's current teacher. However, the individual selected must actually have worked with the student. *A.G. v. Placentia-Yorba Linda Unified Sch. Dist.*, 52 IDELR 63 (9th Cir. 2009, *unpublished*); See also *R.B. by F.B. v. Napa Valley Unified Sch. Dist.*, 48 IDELR 60 (9th Cir. 2007). By failing to have a general education teacher of the Student, past or present, at the August 29, 2017 meeting, the District committed a procedural violation of the IDEA.[14]

Whether the District Denied the Parent Meaningful Participation at the August 29, 2017 Meeting

26. It is axiomatic that by predetermining it would terminate the Student's out-of-District transportation to NW Child, the District denied the Parent meaningful participation at the August 29, 2017 meeting. Having already decided prior to the meeting, the District, through Ms. Ploudre, did not provide the Parent any participation, much less any meaningful participation, in the decision-making process at the meeting. This is serious procedural violation of the IDEA. *See* M.C., *supra*.

Whether the District Failed to Provide the Parent With Proper Prior Written Notice

27. The Parent is correct that prior written notice must be sent a "reasonable time" before, in this case, the District planned to terminate the Student's transportation to NW Child. *Letter to Chandler*, 59 IDELR 110, 112 LRP 27623 (OSEP 2012). In this case, the Parent received Ms. Ploudre's first PWN the day before the school year started and the day before the Student's transportation to NW Child would be terminated. This is clearly a procedural violation of the IDEA. However, the District is equally correct, and the record is clear, that the Parent was aware at the conclusion of the August 29, 2017 meeting that the decision had been made to terminate the Student's transportation. This was eight days prior to the first day of the school year on September 6, 2017. Furthermore, while the Parent disagreed with some of the statements in Ms. Ploudre's first PWN, it cannot be concluded that those disagreements regarding content interfered with the Parent's ability to promptly file a request for a due process hearing and invoke stay-put to preserve the Student's transportation during the pendency of that request. It is concluded that this procedural violation does not warrant a remedy.

The Parent's Requested Remedies

28. The District has committed one substantive violation and four procedural violations of the IDEA. 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 decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or
> (III) caused a deprivation of educational benefits.

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[14] To some extent this conclusion is premised on the assumption that the August 29, 2017 meeting was in fact an IEP meeting under the IDEA. But the issue of whether that meeting was an IEP meeting was not clearly raised or litigated by the parties, and consequently will not be adjudicated herein.

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

29. With respect to the procedural violation regarding PWNs, it has already been concluded that procedural violation does not warrant any remedy. The remaining three procedural violations predetermining transportation to NW Child would be terminated, failing to have a general education teacher of the Student at the August 29, 2017 meeting, and denying the Parent meaningful participation at the August 29, 2017 meeting, all warrant a remedy. It is manifest that by predetermining termination of transportation to NW Child, the District significantly impeded the Parent's opportunity to participate in the decision-making process.

30. In real substance, the Parent's first requested remedy is that the District be ordered to provide the Student with transportation to and from NW Child for the remainder of the 2017-18 school year.[15] This is a reasonable and appropriate remedy for the District's substantive violation of the IDEA. The District shall be ordered to convene the Student's IEP team and amend the Student's current IEP to expressly include as a related service transportation of the Student from his school at the end of the school day to NW Child for a period of one calendar year from entry of this order. This is a longer period than the Parent has requested, but is warranted in light of the multiple procedural violations committed by the District.

31. The Parent next requests that the District be ordered to pay for the Student's attendance at NW Child for the remainder of the 2017-18 school year. While the authority of an ALJ to award appropriate remedies is in essence an authority grounded in equity, with which comes very considerable latitude to determine what is equitable and appropriate, the undersigned is not convinced the Parent's request is warranted. The District would not otherwise have any legal obligation to pay for any student's before or after-school childcare, be it a special education student or a general education student. Awarding the Parent this requested remedy would likely result in the unjust enrichment of the Parent under the facts in this case. This requested remedy is denied.

32. The Parent next requests compensatory education and related services for the Student equivalent to the number of days the Student would have received those services but for the District's failure to provide special transportation to and from NW Child. This is a proper remedy. The District will be ordered to calculate and provide to the Student, on a minute-for-minute-lost basis, all the special education and related services the Student would have received had he attended school on those eight school days as compensatory education. The District shall provide said compensatory services within three months of entry of this order. The District shall work cooperatively with the Parent to schedule the provision of this compensatory education.

33. The Parent next requests reimbursement for expenses incurred for providing supervision (babysitting) for the Student on days he could not go to school because the Parent had no way to get him to NW Child after school, as well as mileage and time taken off work from the Parent's

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[15] This is the language in the Statement of Issues and Remedies. See pp. 3-4 of this Order and the November 13, 2017 First Prehearing Order. However, it was not apparent at the time the Statement was developed that the Student only attends NW Child *after* school. NW Child does not open in the morning until after the Student's school day has started.

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600 University Street
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employment to transport the Student to and from NW Child. The undersigned first concludes that reimbursement for supervision of the Student is appropriate. The District shall be ordered to pay the Parent the sum of $430.00 as that reimbursement. The District shall make said payment within thirty calendar days of entry of this order. Reimbursement for the Parent's mileage and any time taken off work to transport the Student to NW Child is more problematic. The record is not entirely clear why the Parent did not utilize the services of a babysitter rather than take time off from work. To a very real and practical extent, parents are responsible for providing such care and services to their own children. And with respect to any expenses incurred by the maternal grandmother of the Student, any obligation on the part of a grandparent, while laudable, is that much more remote. It is concluded that these requested remedies should be denied.

34. 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

IT IS ORDERD:

1. That the Mukilteo School District has committed one substantive violation and four procedural violations of the IDEA. As remedies for these violations, the Parent is awarded the following remedies;

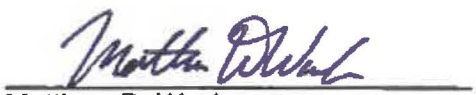
2. The District is ordered to convene the Student's IEP team and amend the Student's current IEP to expressly include as a related service transportation of the Student from his school at the end of the school day to NW Child for a period of one calendar year from entry of this order.

3. The District is ordered to convene the Student's IEP team and calculate and provide to the Student, on a minute-for-minute-lost basis, all the special education and related services the Student would have received on the eight school days between September 6 and October 18, 2017 that he did not attend school due to the District's violations of the IDEA as compensatory education. The District shall provide said compensatory services within three months of entry of this order. The District shall work cooperatively with the Parent to schedule the provision of this compensatory education.

4. The District is ordered to pay the Parent the sum of $430.00 as reimbursement for expenses she incurred due to the District's violations of the IDEA. The District shall make said payment within thirty calendar days of entry of this order.

5. All remaining requested remedies are denied.

Signed at Seattle, Washington on March 2, 2018.



Matthew D. Wacker
Administrative Law Judge
Office of Administrative Hearings

Office of Administrative Hearings
One Union Square, Suite 1500
600 University Street
Seattle, WA 98101-3126
(206) 389-3400 1-800-845-8830
FAX (206) 587-5135

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. MDW

Parent
[redacted]

Lisa Pitsch, Director of Special Education
Mukilteo School District
9401 Sharon Drive
Everett, WA 98204-2699

Ryan Ford, Attorney at Law
Ford Law Firm PLLC
103 12th Ave #515
Seattle, WA 98122

Carlos Chavez, Attorney at Law
Pacifica Law Group LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101

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

Office of Administrative Hearings
One Union Square, Suite 1500
600 University Street
Seattle, WA 98101-3126
(206) 389-3400 1-800-845-8830
FAX (206) 587-5135